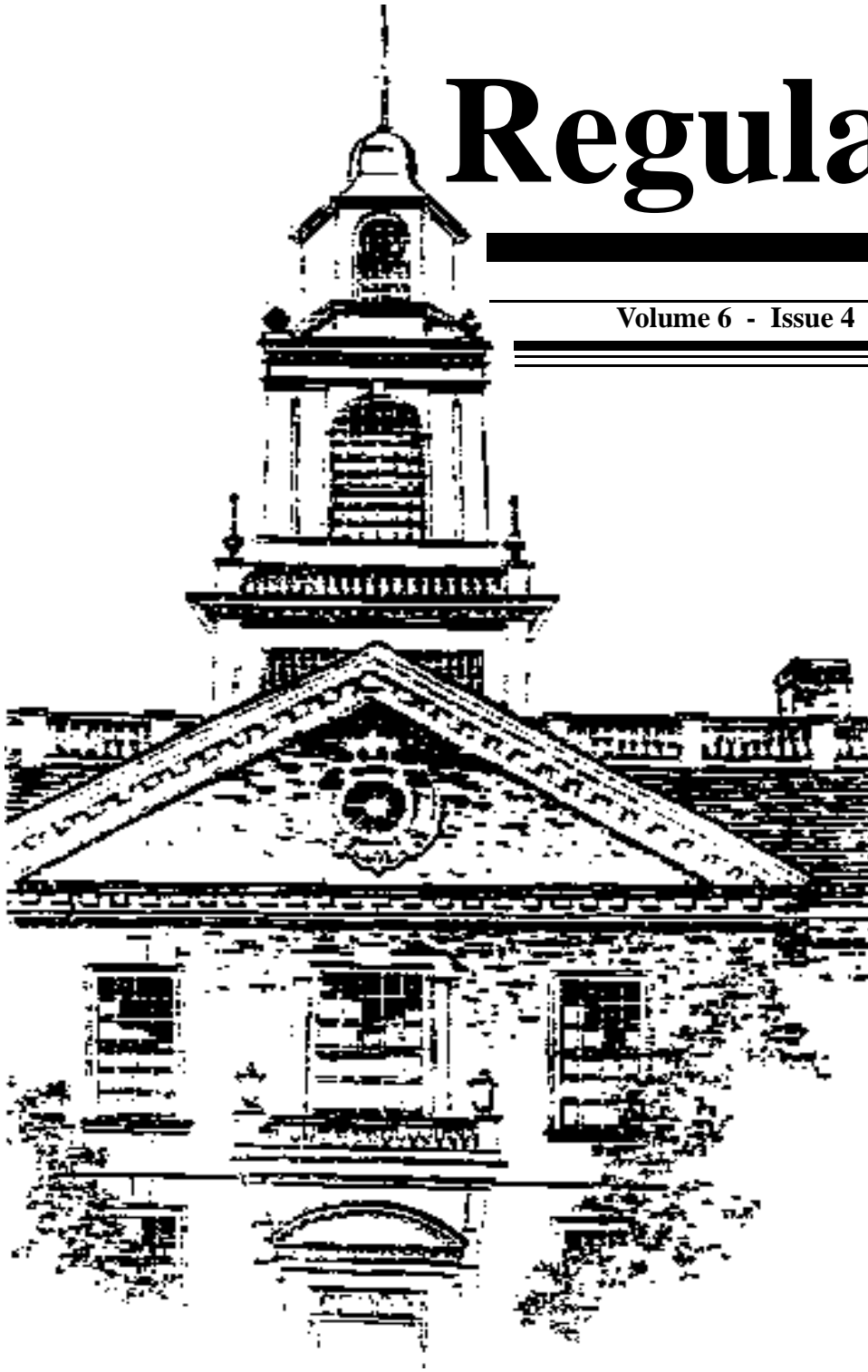


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# Delaware Register of Regulations



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Issue Date: October 1, 2002

Volume 6 - Issue 4

Pages 390 - 560

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### Regulations:

Emergency

Proposed

Final

### Governor

Executive Orders

General Notices

Calendar of Events &

Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before September 15, 2002.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
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.

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Symbol Key

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

Emergency Regulations

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

**DEPARTMENT OF EDUCATION**

14 DE Admin. Code 707

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

**Emergency Regulatory Implementing Order****707 Salary Continuation: Operation Noble Eagle and Enduring Freedom****I. Summary Of The Evidence And Information Submitted**

The Secretary seeks emergency approval of the new regulation 707 Salary Continuation: Operation Noble Eagle and Enduring Freedom in order to comply with the 141<sup>st</sup> General Assembly Senate Bill 272 and Senate Amendment 1 entitled *An Act to Amend Title 14 and Title 29 Relating to Leave of Absence for Military Service*. The purpose of this bill is to assure that school district employees will continue to receive state compensation (less military service compensation) for time served on active duty in Operation Noble Eagle and Enduring Freedom.

Emergency approval is being sought under 29 *Del.C.* 10119 due to the fact that the Senate Bill 272 states that "claims shall be filled within 90 days of release from active duty or passage of this legislation, whichever is later" which means that the 90 days began running on August 12, 2002 when the legislation was signed by the Governor. The Department must have an approved regulation in place as eligible applicants were permitted to file for compensation as of August 12, 2002 and local school districts need directions as to how they must process these requests. The financial

welfare of the applicants is at risk if the emergency regulation is not in place. In order to assure that a permanent regulation will be in place the Department of Education is simultaneously submitting the regulation through the normal procedures mandated by the Administrative Procedures Act.

**II. Findings Of Facts**

The Secretary finds that it is appropriate to approve this new regulation 707 Salary Continuation: Operation Noble Eagle and Enduring Freedom on an emergency basis in order to comply with the 141<sup>st</sup> General Assembly Senate Bill 272 and Senate Amendment 1 entitled *An Act to Amend Title 14 and Title 29 Relating to Leave of Absence for Military Service*. The purpose of this bill is to assure that school district employees will continue to receive state compensation (less military service compensation) for time served on active duty in Operation Noble Eagle and Enduring Freedom. The time period for applying for the compensation began on August 12, 2002 when the Governor signed the bill and the school districts need guidance as to how to process the requests.

**III. Decision To Approve The Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to approve this emergency regulation. Therefore, pursuant to 14 *Del.C.* §1327(b) and to emergency conditions under 29 *Del.C.* §10119, the regulation attached hereto as Exhibit "A" is hereby approved. Pursuant to the provision of 29 *Del.C.* §10119(e), the regulation hereby approved shall be in effect for a period 120 days from the effective date of this order as set forth in Section V. below.

**IV. Text And Citation**

The text of the emergency regulation amended hereby shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 DE Admin. Code §707 in the *Regulations of the Department of Education*.

**V. Effective Date Of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del.C.* §1327(b) and to emergency conditions under 29 *Del.C.* §10119, on September 19, 2002. The order shall be effective immediately.

**IT IS SO ORDERED** the 19th day of September 2002.

**Department Of Education**

Valerie A. Woodruff, Secretary of Education

**707 Salary Continuation: Operation Noble Eagle and Enduring Freedom**

1.0 Principals, teachers and other employees of a school district called to active military service in connection with Operation Noble Eagle and/or Operation Enduring Freedom shall be eligible for continuation of their state share of salary, less any military compensation received during the initial period of active duty.

2.0 Employees receiving continuation of their state share of salary shall be placed either on a "Military Leave Without Pay" if they are to receive their pay when they return from active duty or on a "Military Leave With Pay" if they are to receive their biweekly pay while on active duty. They will not accumulate holidays, sick leave, or annual leave while in a leave status. In accordance with state and federal statutes, employees will be credited with state service for the amount of time on military leave upon their return to active employment.

3.0 The amount of salary continuation provided through this regulation shall apply to the state share of salary only. However, a local school district may elect to provide salary continuation for the local district portion of the employee's salary.

3.1 The state share of compensation shall be limited to the state share of the base salary as calculated from the appropriate salary schedule, administrative supplements and all other stipends as provided for in 14 **Del. C.** Chapter 13.

3.2 Military compensation shall include base salary, basic allowance for quarters (BAQ), basic allowance for subsistence (BAS), hazardous duty pay and all other supplemental compensation. The military compensation shall be multiplied by the ratio of state share of

compensation to total compensation in determining the state portion of the salary continuation.

3.3 Salary continuation checks shall be subject to applicable federal, state, and city of Wilmington taxes and FICA, if the employee is in a FICA eligible position. Pension contributions, if the employee is in a pension eligible position, and garnishments will also be made from the salary continuation checks. Other deductions from the salary continuation checks will be made in accordance with Department of Education guidelines.

4.0 Claims must be filed within 90 days of release from active duty or by Tuesday November 12, 2002, whichever is later.

4.1 Salary continuation shall be effective retroactive to September 11, 2001.

4.2 The request for continuation of salary shall be initiated by the employee. Employees must contact the school district personnel office for a copy of the forms and instructions for filing a claim.

4.3 Districts shall process claims in accordance with the procedures and forms developed by the Department of Education.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF FISH & WILDLIFE**

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

**ORDER**

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is adopting an amendment to **Shellfish Regulation S-63 Oyster Harvesting Seasons** without prior notice to delay the opening of the harvest season for oysters from the State's natural oyster from September 2, 2002 and instead open the season September 16, 2002 in response to a perceived threat to human health caused by the possible presence of *Vibrio parahaemolyticus* in Delaware Bay oysters. 7 **Del.C.** §2106 authorizes the Department to adopt regulations to establish the dates for annual open seasons to harvest oysters.

**Reason For Emergency Order**

Mr. Jack Pingree, Program Manager of the Shellfish and Recreational Water Branch of the Division of Water Resources, Department of Natural Resources and

Environmental Control, is recommending that the Division of Fish and Wildlife delay the opening of their fall 2002 oyster season two weeks because of concerns over the possible presence of the human pathogen, Vibrio parahaemolyticus, in oysters subject to harvest from Delaware's natural oyster beds in Delaware Bay. Mr. Pingree referenced 16 cases of human illness in June 2002 that occurred on the New Jersey side of Delaware Bay caused by this organism. According to Mr. Pingree and his counterpart Mr. Bob Connell in New Jersey, this pathogenic organism can become problematic during the warmest months of the year and was responsible for New Jersey closing their oyster grounds earlier in the summer of 2002 until just recently. New Jersey has the laboratory capability and an extensive testing program to check for the presence of this organism in their oysters, and because of this workload, will not be able to test any oysters from the Delaware portion of Delaware Bay until 2003. Therefore, Mr. Pingree feels that a two-week delay in opening our season is justified so that Delaware will be past the hottest portion of the year prior to resuming harvest of oysters from Delaware waters, thus minimizing the risk to consumers of Delaware oysters. In the meantime Mr. Pingree will attempt to locate another laboratory to test samples of Delaware oysters for Vibrio parahaemolyticus.

10, 2002 and ending at sunset on June 29, 2002 and beginning at sunrise on ~~September 2, 2002~~ September 16, 2002 and ending at sunset on December 31, 2002.”

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#### **Effective Date Of Order**

The Order shall take effect at sunrise September 2, 2002 and shall remain in effect until sunset September 15, 2002.

#### **Petitions For Recommendations**

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

#### **Order**

It is hereby ordered, the 15<sup>th</sup> day of August 2002, that an amendment to Shellfish Regulation S-63, a copy of which is hereby attached, is adopted pursuant to 29 **Del.C.** §10119.

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

#### **“S-63 Oyster Harvesting Seasons**

It shall be unlawful for any person to harvest or to attempt to harvest oysters from the State's natural oyster beds except during the seasons beginning at sunrise on May

**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****BOARD OF ARCHITECTS**

24 DE Admin. Code 300

Statutory Authority: 24 Delaware Code,  
Section 301 (24 **Del.C.** §301)**Notice of Public Hearing**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 Del. C. Chapter 3, Section 306 (1), the Delaware Board of Architects proposes to revise its Rules and Regulations. The proposed Rules and Regulations are a comprehensive revision to the existing Rules and Regulations of the Board of Architects. The purpose of these revisions is to update the rules and regulations, to conform with changes in practices and procedures of the examination and licensing of architects and changes in the applicable statutes.

A Public Hearing will be held on the proposed Rules and Regulations on Wednesday, November 6, 2002 at 2:00 p.m. in Conference Room A, second floor, 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 Gayle Melvin 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 make comments at the Public Hearing should notify Gayle Melvin at the above address or by calling (302) 744-4518.

**1.0 Scope: Definitions**

Purpose: Regulations of the Delaware Board of Architects are set forth for the purpose of ~~interpreting~~ clarifying and implementing 24 Del.C. Ch. 3 which establishes the Board and confers upon it responsibility for registration of architects and the regulation of the practice of architecture.

~~Citation: The regulations of the Board of Architects shall be known, and may be cited, as Board Regulations.~~

~~Board's Regulatory Authority: The Board's regulations are promulgated under authority of 24 Del.C. §301 and 29 Del.C. §10111.~~

Invalidity: Any provision found to be invalid shall not affect any other provision and the remaining provisions shall remain in full force and effect.

Terms Defined by Statute: Terms defined in 24 Del.C. Ch. 3 ~~(the "Act")~~ shall have the same meanings when used in these regulations, ~~unless the context or subject matter clearly requires a different interpretation~~ except where the context clearly indicates a different meaning.

Terms Defined Herein: As used in these regulations, the following terms shall have the following meanings ~~unless the context or subject matter clearly requires a different interpretation~~ except where the context clearly indicates a different meaning.

Administration of Construction Contracts: Shall comprise at least the following services: (i) visiting the construction site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the building permit was issued; (ii) processing shop drawings, samples, and other submittals required of the contractor by the terms of the construction

contract documents; and (iii) notifying an owner and the appropriate building official of any code violations, changes that affect code compliance, the use of any materials, assemblies, components, or equipment prohibited by a code, major or substantial changes between such technical submissions and the work in progress, or any deviation from the technical submissions that he or she identifies as constituting a hazard to the public, that he or she observes in the course of performing his or her duties.

**Applicant:** An individual who has submitted an application for registration to the Board.

**Architect:** Any person who is authorized to practice architecture as defined in Title 24, Chapter 3 and who ~~has received~~ holds a current ~~a~~ Certificate of Registration.

**A.R.E:** The current Architect Registration Examination, prepared by NCARB.

**Board:** Delaware Board of Architects, 861 Silver Lake Blvd. Cannon Building, Suite 203, Dover, De 19903.

**CACB:** Canadian Architectural Certification Board.

**Direct Supervision:** That degree of supervision by a person overseeing the work of another, whereby the supervisor has both control over and detailed professional knowledge of the work prepared under ~~his/her~~ the person's supervision. Direct supervision shall mean that the supervisor and the individual being supervised perform their work in the same office where personal contact is routine.

**Division:** Division of Professional Regulation, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, Delaware 19904.

**EESA:** Educational Evaluation Services for Architects. A program provider of architectural education evaluation services administered by Educational Evaluators, Inc., a private organization not affiliated with NCARB or any of its member boards. NAAB.

**Examination:** The current Architect Registration Examination (A.R.E.), as accepted by the Board.

**IDP Applicant:** An individual who has completed the IDP training requirements set forth ~~herein~~ 400.302 and has submitted an application for registration to the Board.

**Initial Registration:** Receiving for the first time a certificate of registration as an architect in any United States jurisdiction or Canadian province.

**Intern:** Any individual in the process of satisfying the Board's training requirements. This includes graduates from recognized architectural programs, architectural students who acquire acceptable training prior to graduation and other qualified individuals identified by the Board.

**NAAB:** The National Architectural Accrediting Board.

**NCARB:** The National Council of Architectural Registration Boards.

**Principal:** An individual who is a registered architect and in charge of an organization's architectural practice, either alone or with other registered architects.

**Safety:** Design characteristics of a building or its

~~surrounding site relating to, but not limited to, fire protection, means of egress, occupancy requirements, structural design and other elements of construction necessary to minimize potential harm from fire, smoke, fumes, structural failure or other hazardous conditions. compliance with occupancy classification requirements; compliance with construction classification requirements; means of egress; fire-rated construction assemblies; compliance with interior finish requirements; fire detection, alarm and suppression systems; and compliance with environmental health regulations and smoke control systems, compliance with the minimum requirements for heating and cooling; natural and artificial illumination; natural and artificial ventilation; physical hygiene; and accessibility from environmental barriers.~~

~~VU~~ TU: Value-Training unit, used to calculate the hours of training earned by IDP applicants

## 2.0 General Provisions

~~2.1 Board Meeting:~~ The Board shall hold a regularly scheduled business meeting at least once in each quarter of a calendar year and at such other times as the President may deem necessary, or at the request of a majority of Board members. A majority of members shall constitute a quorum; and no action shall be taken without the affirmative vote of at least 5 members.

~~2.2 Board Seal:~~ The outside circle of the seal measures 1-13/16" across the center. The center emblem is taken from the Great Seal of the State of Delaware. This seal shall be applied to all certificates of registrations issued by the Board.

~~2.3 Public Information:~~ The Board shall, at its offices, maintain a roster of duly registered architects, open to public inspection, which shall show each registered architect's name, registration number and last known mailing address.

~~2.4 Public Records:~~ The Board shall provide reasonable access to its public records in accordance with 29 Del.C. §10001 et. seq. The Board's administrative assistant will provide copies of public records, upon written request, at a copy fee of 25 cents per page. Records in active use or in storage will be made available in a reasonably expedient manner.

### 2.5 2.1 NCARB:

~~2.5.1~~ 2.1.1 The Board shall maintain membership in NCARB and pay the necessary costs thereof.

~~2.5.2~~ 2.1.2 The Board shall keep up-to-date information on the recommended policies adopted from time to time by NCARB.

~~2.5.3~~ 2.1.3 The Board shall cooperate with NCARB in establishing uniform standards of architectural registration throughout the United States.

~~2.6 Fees:~~ Fees shall be determined by the Division of Professional Regulation ("Division") under 24 Del.C. §310. Application and examination fees shall be non-refundable, in

accordance with section 6.4

2.7.2.2 Practice of Architecture:

2.7.1 2.2.1 Only architects shall engage in the practice of architecture as defined in Title 24, Chapter 3. The practice of architecture means the rendering or offering to render those services, hereinafter described, in connection with the design and construction, enlargement or alteration of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding structures; the services referred to include planning, preparing studies, designs, drawings, specifications and other technical submissions and furnishing administration of construction contracts.

2.7.1.1 activities associated with detached, single and two-family dwellings, or

2.7.1.2 routine maintenance and repair work which does not affect structural or other safety features of buildings, regardless of whether local authorities require a building permit for such work.

2.2.2 Services offered in connection with the "utilization of space within" such structures include space planning and programming, and interior design. Services offered in connection with the "space surrounding such structures" include site analysis and site design. These provisions shall not be construed to prevent or affect the practice of landscape architecture by a landscape architect or the practice of engineering by an engineer.

2.2.3 The seal of an architect shall not be required for

2.2.3.1 activities associated with detached, single and two-family dwellings, and any sheds, storage buildings and garages incidental to such dwellings or

2.2.3.2 farm buildings, including barns, silos, sheds or housing for farm equipment and livestock, provided such structures are designed to be occupied by no more than ten (10) persons; or

2.2.3.3 routine maintenance and repair work alteration, renovation or remodeling of a structure which does not affect structural or other safety features of buildings the structure, regardless of whether local authorities require a building permit for such work and when the work contemplated by the design does not require the issuance of a permit under applicable building codes.

### **3.0 Application for Registration:**

3.1 Submission of Application fee: Every individual seeking registration shall submit an application to the Board, accompanied by the filing fee established above. Such filing fee shall be determined in accordance with statutory criteria.

3.1.1 References from employers listed on an application for registration must be provided to substantiate the minimum experience required in support of education and training standards. It is the applicant's responsibility to

see that fees references are submitted to the Board. Such reference information shall be submitted on forms furnished by the Board.

3.1.2 Proof of self-employment must be substantiated with the following:

3.1.2.1 a copy of business ~~licenses~~ license(s) for those duration's claimed as part of the application or a letter from your accountant or local building official substantiating experience, or similar objective proof of self-employment.

~~3.2 Supplemental Material: Material submitted to supplement any previously filed application must include copies of the originally submitted application and all material filed with that application.~~

~~3.3 3.2 Applicants; General:~~

~~3.3.1 3.2.1 Applicants needing additional practical experience reference forms may use photostatic copies.~~

~~3.3.2 3.2.2 The Board will take no action to review an application until all references, transcripts and fees are received.~~

~~3.3.3 3.2.3 An applicant is not registered until so notified in writing by the Board.~~

~~3.3.4 3.2.4 Filing of an application, fees, etc., shall not be construed as completing the registration process; the board will register applicants at regular Board meetings only.~~

~~3.3.5 3.2.5 A license issued by the Division of Professional Regulation certifies that the individual named has met the qualifications of the Board to engage in practice.~~

~~3.3.6 Applicants shall use only residence addresses when corresponding with the Board; no correspondence will be maintained using business addresses.~~

~~3.4 3.3 Requirements of All Applicants. Applicants Must:~~

~~3.4.1 3.3.1 submit the required fees~~

~~3.4.2 3.3.2 answer all questions on the application form completely and legibly, using a typewriter for all items except signatures.~~

~~3.4.3 3.3.3 obtain the notarization of the application in the space provided. Applications shall contain a current affidavit that has been signed and notarized within the twelve (12) months immediately preceding presentation of the application to the Board.~~

~~3.5 3.4 Applicants for Registration by Examination (A.R.E.)~~

~~3.4.1 Must have filed a completed application with the Board, including the NCARB record showing completion of IDP training requirements.~~

~~3.5.1 must meet the education and training requirements adopted by the Board on January 14, 1993.~~

~~3.5.2 must have filed a completed application, including the IDP record, at least 60 days prior to the A.R.E for which the applicant wishes to sit.~~

3.5.3 must have completed the three years of training credits and five years of education credits at least 90 days prior to the date of the A.R.E.

3.5.4 must have submitted required fees and all transcripts, completed reference forms, etc., at least 45 days prior to the examination for which the applicant wishes to sit.

#### 4.0 Registration Standards:

4.1 Registration Standards: To be granted registration an applicant must:

4.1.1 Prior to July 9, 1997, hold a professional degree in architecture from a degree program that has been accredited by NAAB not later than two years after termination or have satisfied the education requirements as specified in the attached table A. Education requirements shall be those mandated by 24 Del.C. §307(a)(1) of the Act which requires an NAAB-accredited professional degree or other education which the Board deems to be equivalent as set forth in Table A. Petitions for equivalency determinations shall be filed with the board for a ruling. The Board shall evaluate the candidate's educational equivalency in accordance with the attached table A. Applicants filing for initial registration prior to July 9, 1997 may petition the Board to waive the requirements of 24 Del.C. §307(a)(1), but only if the applicant satisfies the Board's Education and Training Requirements, adopted January 14, 1993.

4.1.2 4.1.1 After July 9, 1997, hold a professional degree in architecture from a degree program that has been is accredited by NAAB at the time of graduation or not later than two years after termination of enrollment. Receipt of a professional degree in architecture from a degree program accredited by CACB will be accepted as equivalent to a NAAB accredited professional degree in architecture.

4.1.3 4.1.2 Prior to March 15, 1994, have at least three years of training credits in accordance with 5.1 or have satisfied the IDP training requirement in accordance with 5.1. Applicants who received their education outside of the United States shall obtain and provide to the Board an educational evaluation by EESA as directed through NAAB, and must provide evidence of training and degree equivalent to accredited programs. For purposes of 24 Del. C. § 307(a)(1), an evaluation by EESA of training and degree equivalent to accredited programs constitutes such other education as the Board deems equivalent.

4.1.3 Applicants for admittance to the A.R.E. after March 15, 1994 and all subsequent applicants for initial registration must submit proof of completion of an IDP record requirements through NCARB.

4.1.4 Have passed the examination. The examinee is permitted unlimited retakes of each part of the A.R.E. All parts of the exam must be successfully completed within a six year (6) duration from the date of his/her first

sitting. If all sections are not passed in the six (6) year period, the entire examination must be taken and passed again.

4.1.5 Have complied with all regulations of the Board and 24 Del.C. Ch. 3 of the Delaware Code.

4.1.6 Prior to July 9, 1997 an applicant meeting the above registration requirements except for 4.1.1 above may nonetheless be granted a registration if the applicant holds a high school diploma or equivalent and had accumulated at least five years of education credits as of June 30, 1984. The Board adopts the attached Table A as the education requirements for Delaware licensure.

4.1.7 In evaluation records, the Board shall apply the then current education and training standards, provided that an applicant who qualified under the standards current at the time of his/her application shall be evaluated by those standards.

4.1.8 In evaluating records, the Board may, prior to granting a registration, require substantiation of the quality and nature of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical registration requirements set forth above.

#### 5.0 Training Standard (Effective until March 15, 1994)

5.1 To satisfy the training standard, an applicant must have at least three years of training credits, or have satisfied the IDP training requirements in accordance with 5.1. The Board expects that an applicant who has satisfied these training standards will have been exposed to the comprehensive process of the practice of architecture. Accordingly, each applicant must demonstrate that his/her training has been sufficiently diverse as to include exposure to each of the training areas set forth in 5.1. An applicant with three years of training credits may nonetheless be denied registration if that training is not diversified. The following table sets forth the ways in which training credits can be acquired:

Credit Allowed

Description of Training Percent Maximum

5.1.1 Experience in architecture as an employee in the office of a registered architect. 100% No Limit

5.1.2 Experience in architecture as an employee of an organization (other than offices of a registered architect) when the experience is under the direct supervision of registered architect. 100% 2 years

5.1.3 Experience directly related to architecture when under the direct supervision of a professional engineer, landscape architect, planner or interior designer. 50% 1 year

5.1.4 Experience, other than 5.1.1 and 5.1.2 and 5.1.3 experience, directly related to on-site building construction operations or experience involving physical analyses

of existing buildings.50% 6 months

5.1.5 A post professional degree in architecture or teaching or research in an NAAB-accredited architectural program.100%1 year

**5.2 Explanation of Training Requirements**

5.2.1 No training credits may be earned prior to satisfactory completion of one of the following:

5.2.1.1 three years in an NAAB-accredited professional degree program;

5.2.1.2 the third year of a four-year pre-professional degree program in architecture accepted for direct entry to an NAAB-accredited professional Master's Degree Program;

5.2.1.3 one year in an NAAB-accredited professional Master's Degree Program;

5.2.1.4 96 semester credit hours as evaluated by EESA in accordance with NCARB Circular of Information No. 3, (1992-93 edition) of which no more than 60 hours can be in the general education category; or

5.2.1.5 5 education credits in the circumstances described in 100.301 (B).

Note: 32 semester credit hours or 48 quarter credit hours equal one year in an academic setting.

5.2.2 No experience used to meet education requirements may be used to earn training credits.

5.2.3 Every applicant must earn at least one year of training credits under 4.1.1 and must earn them after satisfying 4.1.2.

5.2.4 To earn credits under 5.1.1, 5.1.2, 5.1.3 and 5.1.4, an applicant must work at least 35 hours per week for a minimum period of 10 consecutive weeks under 5.1.1 or six consecutive months under 5.1.2, 5.1.3 or 5.1.4. An applicant may earn one-half of the credits specified under 5.1.1 for work of at least 20 hours per week in periods of six or more consecutive months. No credits will be given for part-time work in any category other than 5.1.1.

5.2.5 To earn credits under 5.1.5, an applicant's credit hours must be in subjects directly related to architecture. Twenty semester credit hours or 30 quarter credit hours of teaching or equivalent time in research will equal one year.

5.2.6 An organization will be considered to be an "office of an architect" if:

5.2.6.1 the architectural practice of the organization in which the applicant works is in the charge of a person practicing as a Principal and the applicant works under the direct supervision of a registered architect;

5.2.6.2 the organization is not engaged in construction;

5.2.6.3 the organization has no affiliate engaged in construction which has a substantial economic impact upon the person or persons in the organization practicing as a principal; and-

5.2.6.4 the architectural practice of the organization encompasses the comprehensive process of the practice of architecture including each of the categories composing such practice set forth in 5.3.

5.2.7 An organization (or an affiliate) is engaged in construction if it customarily engaged in construction or if it customarily engages in either of the following activities:

5.2.7.1 undertakes to provide labor and/or material for all or any construction project, whether on lump-sum, cost-plus or other basis of compensation; or

5.2.7.2 agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

5.2.8 In deciding if training represents "diversified experience in architecture," the Board will compare the training with the training requirements set forth in the IDP. See 5.3.

5.2.9 Applicants employed in settings described in 5.1.1 and 5.1.2, whose experience is not diversified, may obtain credit only under 5.1.3.

5.2.10 The maximum credit for training as an employee of a person practicing architecture who is not an architect registered in a United States or Canadian jurisdiction shall be one year. No credit will be granted for foreign training other than as an employee of a person practicing architecture.

**5.3 5.0 IDP Training Requirements**

5.3.1 5.1 After March 15, 1994, the The IDP will be considered is a requirement for the all applicants for initial registration in the State of Delaware. This regulation shall be in effect for those applicants seeking admittance to the A.R.E. after March 15, 1994 and all subsequent applicants for initial registration. Applicants holding a current registration in good standing in another United States jurisdiction or Canadian province and documenting five (5) or more years of practicing architecture immediately preceding the date of the application that is acceptable to the Board may obtain a waiver of the IDP requirement. A request for waiver shall be made on a form prescribed by the Board.

5.3.2 5.2 The IDP, which is administered by the National Council of Architectural Registration Boards (NCARB), will be initiated by completing an application for NCARB/IDP Council Record and submitting required application fees. This application may be obtained from NCARB, 1801 K Street NW, Suite 1100, Washington, D.C. 20006-1310 or www.ncarb.org. the National IDP Coordinating Committee, 1735 New York Avenue N.W., Suite 700, Washington D.C. 20006. Preparation of all components of the IDP record for references, transcripts, training, etc., will be done in accordance with current NCARB standards. The NCARB Council Record will be accepted as verification of education and training requirements for initial registration.



5.3.3 The initiation of IDP participation and accrual of value units may begin after satisfactory completion of:

5.3.3.1 three years in a NAAB-accredited professional degree program;

5.3.3.2 the third year of a four-year pre-professional degree program in architecture accepted for direct entry to a NAAB-accredited professional degree program;

5.3.3.3 one year in a NAAB-accredited Master of Architecture degree program for interns with non-professional undergraduate degrees;

5.3.3.4 96 semester credit hours as evaluated by Education Evaluation Services for Architects (EESA) of which no more than 60 hours can be in the general education subject area; or

5.3.3.5 "five years of equivalent education" in accordance with the Board's Regulations Table A. This option shall expire effective July 9, 1997.

5.3.4 The intern is responsible for initiating an NCARB Council Record within a time frame which will permit conformance with the Board's application deadline for examination.

5.3.5 The intern is responsible for obtaining applicable training credits which conform to the Board's rules and regulations.

5.3.6 The Intern is responsible for providing NCARB with written notification of his/her intent to take the examination 90 days prior to the Board's application deadline for examination in order to insure timely notification of the Board.

5.3.7 The Board will review the NCARB recommendation for admission to the examination and notify the candidate according to the schedule established by NCARB and the Board for the administration of the A.R.E.

5.3.8 Preparation of all components of the IDP record for references, transcripts, training, etc. will be done in accordance with NCARB standards. The NCARB Council Record will be accepted as verification of education and training requirements for initial registration.

#### 5.4 5.3 Reciprocity

5.4.1 Registration through reciprocity applications shall be governed by 24 Del.C. §309.

### 6.0 Examination

#### 6.1 Conditions of Examination

6.1.1 A proctor assigned by the Board will be present during each division of the examination.

6.1.2 Grading of the examination shall be in accordance with the national grading procedure administered by NCARB.

6.1.3 The Board shall adopt the scoring procedures recommended by NCARB.

6.1.4 No information pertaining to the subject

matter of the Examination will be given to applicants in advance, except as specifically authorized by the Board.

6.1.5 The Board, in its discretion, may approve transfer credits for parts of examinations passed prior to the 1983 A.R.E. in accordance with the transfer table on page 10A. Information as to transfer credits will be provided, when appropriate, to applicants requesting application forms. After 5 years of additional training credits in 100.302 (A) (1) or (2), the applicant will not be required to pass additional divisions of the A.R.E.

6.1.6 Effective in 1993, candidates for initial registration may be permitted to take those parts of the A.R.E. offered at times other than June, prior to sitting for the complete exam (offering the A.R.E. or portion thereof at times other than June, is subject to the discretion of the Board).

6.1.7 The examinee is permitted unlimited retakes of each part of the A.R.E. All parts of the exam must be successfully completed within a six-year duration from the date of his/her first sitting. If all sections are not passed in the 6 year period, the entire examination must be taken and passed again.

#### 6.2 Application Deadline

6.2.1 Each applicant deemed eligible to take the Examination shall be notified of the dates set for each division of the Examination, the location at which the Examination shall be held, the instruments and materials he/she shall supply and/or be permitted to bring to the Examination, the deadline for applying to take the Examination, and other necessary information.

6.3 Examination Fee- The fee for the examination shall be determined by the Division of Professional Regulation.

6.4 Refund of Fee- No refund of the application and/or examination fee shall be returned to any applicant.

6.5 Transfer of Scores from Other Boards- The Board in its discretion and upon proper application, may accept passing scores achieved on divisions of the A.R.E. administered and attested to by another NCARB member board.

6.6 Transfer of Scores to Other Boards- The Board, in its discretion and upon proper application, may forward the grades achieved by an applicant in the various divisions of the Examination given under the Board's jurisdiction to any other duly constituted architectural registration board and to NCARB for use in evaluating such applicant's eligibility for licensure.

### ~~7.0~~ 6.0 Registration

7.1 Issuance- When the Board has determined that an applicant for registration has satisfied the registration standards set forth herein, the Board shall issue a Certificate of Registration containing the registered applicant's name and registration number.

7.2 6.1 Duration- Each certificate of registration issued

by the Board shall be valid for two years, or the expiration of the current licensing period.

6.2 Continuing Education Requirement For Renewal - For license or registration periods beginning August 1, 2003, and thereafter, each holder of a Certificate of Registration shall complete twenty (20) hours of continuing education [Professional Development Units or PDUs] acceptable to the Board during each biennial licensing period. Completion of required continuing education is a condition for renewal of a Certificate of Registration. Each Registered Architect shall be exempt from the continuing education requirement in his or her initial biennial licensing period, or any portion thereof, in which he or she is licensed or registered to practice. Each Registered Architect shall be required to complete and submit forms prescribed by the Board certifying compliance with the continuing education requirement for renewal of registration. Required documentation may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity, as well as proof of attendance. The Board reserves the right to require additional information or documentation regarding continuing education compliance from a Registered Architect.

6.3 Content: All continuing education shall be obtained in the areas of Health, Safety and Welfare. The following are deemed acceptable continuing education: a) NCARB monograph programs; b) health safety and welfare programs approved by AIA.

6.4 Hardship Extension: The Board may, in its discretion, grant an extension of time within which the continuing education requirement must be completed for reasons, including, but not limited to, illness, disability, military service, and exceptional family responsibilities. The period of hardship extension granted shall be determined by the Board. Requests for a hardship extension must be in writing and submitted to the Board prior to the expiration of the licensing period.

6.5 Late Renewal - A licensee that has failed to renew on or before the renewal date may apply to renew their expired certificate of registration within twelve (12) months following the renewal date. Such late renewal application must be accompanied by payment of the renewal fee, payment of a late fee, and documentation of compliance with the continuing education requirement.

7.3 6.6 Not Transferable - A certificate of registration shall not be transferable.

7.4 6.7 Revocation, Suspension, Cancellation or Non-renewal of Registration - In the event of revocation, cancellation, suspension or non renewal of any registration, the registered architect shall be required immediately to return his/her Certificate of Registration, seal and license to the Board.

**8.0 7.0 Rules of Professional Conduct - All architects**

**shall abide by these Rules of Professional Conduct.**

~~8.1~~ 7.1 Competence

~~8.1.1~~ 7.1.1 In engaging in the practice When practicing ~~of~~ architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which are ordinarily applied by architects of good standing, practicing in the same locality.

~~8.1.2~~ 7.1.2 In designing a project, an architect shall take into account applicable building laws and regulations. While a registered architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulation.

~~8.1.3~~ 7.1.3 An architect shall undertake to perform professional services only when her or she, together with those whom the architect may engage as consultants, is qualified by education, training and experience in the specific technical areas involved.

~~8.1.4~~ 7.1.4 No individual shall be permitted to engage in the practice of architecture if, in the Board's judgment, such individual's professional competence is substantially impaired by physical or mental disabilities.

~~8.2~~ 7.2 Conflict of Interest

~~8.2.1~~ 7.2.1 An architect shall not accept compensation for his/her services from more than one party on a project unless the circumstances are fully disclosed to and agreed to by (such disclosure and agreement to be in writing) all interested parties.

~~8.2.2~~ 7.2.2 If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his/her judgment in connection with the performance of professional services, the architect shall fully disclose in writing to his/her client or employee the nature of the business association or financial interest. If the client or employee objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

~~8.2.3~~ 7.2.3 An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

~~8.2.4~~ 7.2.4 When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

~~8.3~~ 7.3 Full Disclosure

~~8.3.1~~ 7.3.1 An architect, making public statements on architectural questions, shall disclose when he/she is being compensated for making such statements.

~~8.3.2~~ 7.3.2 An architect shall accurately represent to prospective or existing client or employee his/her

responsibility in connection with work for which he/she is claiming credit.

~~8.3.3~~ 7.3.3 If, in the course of his/her work on a project, an architect becomes aware of a decision taken by his/her employer or client, against such registered architect's advice, which violates applicable state or municipal building laws and regulations which will, in the registered architect's judgment, materially and adversely affect the safety to the public of the finished project, the architect shall:

~~8.3.3.1~~ 7.3.3.1 report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations; and

~~8.3.3.2~~ 7.3.3.2 refuse to consent to the decision; and

~~8.3.3.3~~ 7.3.3.3 in circumstances where the architect reasonably believes that other such decisions will be taken, notwithstanding his/her objection, terminate his/her services with respect to the project. In the case of a termination in accordance with clause 3, the architect shall have no liability to his/her client or employer on account of such termination.

~~8.3.4~~ 7.3.4 An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his/her application for a registration or renewal thereof.

~~8.3.5~~ 7.3.5 An architect possessing knowledge of a violation of the provisions set forth in ~~400.806~~ 7.0 by another architect shall report such knowledge to the Board.

#### ~~8.4~~ 7.4 Compliance with Laws

~~8.4.1~~ 7.4.1 An architect shall not, in the conduct of his or her practice, knowingly violate any state, federal or local law, rule or regulation.

~~8.4.2~~ 7.4.2 An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

~~8.4.3~~ 7.4.3 An architect shall comply with the registration laws and regulations governing his/her professional practice in any United States jurisdiction.

#### ~~8.5~~ 7.5 Professional Conduct

~~8.5.1~~ 7.5.1 Each office in Delaware ~~maintained for the preparation of drawing, specifications, reports or other professional work~~ offering architectural services shall have an architect resident and regularly employed in that office having direct supervision of such work.

~~8.5.2~~ 7.5.2 ~~An architect shall not sign or seal technical submissions unless they were prepared under his/her direct supervision; provided, however, that in the case of the portions of such technical submission prepared under the direct supervision of another architect employed by the first registered (or by his/her firm), he or she may sign or seal those portions of the professional work if the architect has~~

~~reviewed such portions and has coordinated their preparation. An architect may sign and seal technical submissions only if the technical submissions were: (i) prepared by the architect; (ii) prepared by persons under the architect's responsible control; or (iii) prepared by another architect registered in this State if the signing and sealing architect has reviewed the other architect's work and either has coordinated the preparation of the work or has integrated the work into his or her own technical submissions. "Responsible control" shall be that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident, shall maintain and make available to the Board upon request for at least five (5) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. "Technical submissions" are designs, drawings, specifications, studies, and other technical reports prepared in the course of practicing architecture."~~

~~8.5.3~~ 7.5.3 An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

~~8.5.4~~ 7.5.4 ~~An architect shall no engage in conduct involving fraud or wanton disregard of the rights of others.~~

#### ~~8.6~~ 7.6 Design and Use of Architect's Seal

~~8.6.1~~ 7.6.1 Pursuant to 24 **Del.C.** §313, and subject to 6.7 and 7.5, each architect shall procure a seal, which shall contain the name of the architect; his/her registration number and the phrase REGISTERED ARCHITECT--STATE OF DELAWARE. This seal shall comply in all respects, including size and format, with the specimen shown below. The architect shall use his/her legal name on the Certificate of Registration, the seal and the license.

~~8.6.2~~ 7.6.2 As required by 24 **Del.C.** §313, the seal shall be imprinted on all technical submissions, as follows: On each design and each drawing; on the cover or each set of specifications and on the cover page of all other technical submissions. The original signature of the

individual named on the seal shall appear across the face of each original seal imprint.

~~8.6.3~~ **7.6.3** The seal appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the direct supervision of the individual named on said submission.

~~8.6.4~~ **7.6.4** All technical submissions prepared by an architect shall contain the following legend wherever the architect's seal appears: "The professional services of the architect are undertaken for and are performed in the interest of [name of person employing architect]. No contractual obligation is assumed by the architect for the benefit of any other person involved in the project."

## **9.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

9.1 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.

9.2 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.

9.3 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).

9.4 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.

9.5 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.

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

9.6.1 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.

9.6.2 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.

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

9.6.4 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.

9.6.5 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.

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

9.7 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.

9.8 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.

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

9.10 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.

9.11 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.

9.12 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.

~~Delaware Board of Architects Examination Transition Rule  
Adopted January 14, 1993~~

~~Any Delaware applicant who has taken any section of the~~

~~NCARB examination prior to 1983, but who has not passed one or more of the NCARB exams listed in Column A below, must take the ARE Division listed in Column B to complete the Delaware examination requirements.~~

<del>Column A</del>	<del>Column B</del>
<del>Qualifying Test + Professional Exam</del>	<del>Architect Registration Exam</del>

<del>Sections Prior to 1983</del>	<del>Divisions</del>
<del>Qualif. Test Section A</del>	<del>Arch. Theory &amp; History*</del>
<del>OR</del>	

<del>Prof Exam Section B-I</del>	<del>Env. AnalysisA—PRE-DESIGN</del>
<del>OR</del>	

~~Prof Exam Sect B-II~~ Programming

<del>Prof Exam Section A</del>	<del>Site Plan/DesignB—SITE DESIGN</del>
<del>C—BLDG. DESIGN</del>	

<del>Prof Exam Section B-III</del>	<del>Design Tech#BUILDING SYSTEMS</del>
<del>D—STRUCT GEN'L</del>	

<del>Qualif Test, Section B</del>	<del>Structural TechE—STRUCTURAL</del>
	<del>LAT. FORCES</del>
	<del>F-STRUCTURAL</del>
	<del>LONG SPAN</del>

<del>Qualif Test Section D</del>	<del>Env Control SystemsG—MECH/PLBG, etc.</del>
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<del>Qualif Test Section C</del>	<del>M of ConstructionH—MTRLS/METHODS</del>
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~~Prof. Exam Sect B-IV~~ ConstructionI—CNSTR DOC/SVCS

~~\*Candidates who have not passed either Part I or Part II of the Professional Exam, Section B or Section A of the Qualifying Exam must pass Division A—Pre-Design of the A.R.E. \*Candidates who have not passed part III of the Professional Exam, Section B Design Technology, must pass Division H—Materials & Methods of the A.R.E.~~

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## DIVISION OF PROFESSIONAL REGULATION BOARD OF OCCUPATIONAL THERAPY

24 DE Admin. Code 2000

Statutory Authority: 24 Delaware Code  
Section 2006(a)(1) (24 **Del. C.** 2006(a)(1))

The **Delaware Board of Occupational Therapy** in accordance with 24 **Del.C.** §2006(a)(1) proposes changes to its rules and regulations. The changes in Rules 2.0 and 5.0

institute continuing education as a refresher for applicants who delay licensure after passing the NBCOT exam and clarify the continuing education requirements for licensees.

A public hearing will be held at 4:00 p.m. on November 20, 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 Occupational Therapy, c/o Vicki Gingrich, 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 Supervision/consultation Requirements for Occupational Therapy Assistants**

1.1 "Occupational therapy assistant" shall mean a person licensed to assist in the practice of occupational therapy **under the supervision of an occupational therapist. 24 Del.C. §2002(4).(emphasis added)**

"Under the supervision of an occupational therapist" means the interactive process between the licensed occupational therapist and the occupational therapy assistant. It shall be more than a paper review or co-signature. The supervising occupational therapist is responsible for insuring the extent, kind, and quality of the services rendered by the occupational therapy assistant.

The phrase, "Under the supervision of an occupational therapist," as used in the definition of occupational therapist assistant includes, but is not limited to the following requirements:

1.1.1 Communicating to the occupational therapy assistant the results of patient/client evaluation and discussing the goals and program plan for the patient/client;

1.1.2 In accordance with supervision level and applicable health care, educational, professional and institutional regulations, reevaluating the patient/client, reviewing the documentation, modifying the program plan if necessary and co-signing the plan.

1.1.3 Case management;

1.1.4 Determining program termination;

1.1.5 Providing information, instruction and assistance as needed;

1.1.6 Observing the occupational therapy assistant periodically; and

1.1.7 Preparing on a regular basis, but at least annually, a written appraisal of the occupational therapy assistant's performance and discussion of that appraisal with the assistant.

The supervisor may assign to a competent

occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations and other elements of patient/client evaluation and reevaluation that do not require the professional judgment and skill of an occupational therapist.

1.2 Supervision for Occupational Therapy Assistants is defined as follows:

1.2.1 Direct Supervision requires the supervising occupational therapist to be on the premises and immediately available to provide aid, direction, and instruction while treatment is performed in any setting including home care. Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.

1.2.2 Routine Supervision requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as telephonic or written communication.

1.2.3 General Supervision requires at least monthly direct contact, with supervision available as needed by other methods.

1.3 Minimum supervision requirements:

1.3.1 Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.

Occupational therapy assistants with experience greater than one (1) full year must be supervised under either direct, routine or general supervision based upon skill and experience in the field as determined by the supervising OT.

1.3.2 Supervising occupational therapists must have at least one (1) year clinical experience after they have received permanent licensure.

1.3.3 An occupational therapist may supervise up to three (3) occupational therapy assistants but never more than two (2) occupational therapy assistants who are under direct supervision at the same time.

1.3.4 Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness.

1.3.5 The supervising occupational therapist, in collaboration with the occupational therapy assistant, shall maintain a written supervisory plan specifying the level of supervision and shall document the supervision of each occupational therapy assistant. Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness. This plan shall be reviewed at least every six months or more frequently as demands of service changes.

1.3.6 A supervisor who is temporarily unable to

provide supervision shall arrange for substitute supervision by an occupational therapist licensed by the Board with at least one (1) year of clinical experience, as defined above, to provide supervision as specified by Rule 1.0 of these rules and regulations.

**See 2 DE Reg. 2040 (5/1/99)**

## 2.0 Licensure Procedures:

2.1 To apply for an initial license, including re-licensure after expiration, an applicant shall submit to the Board:

2.1.1 A completed notarized application on the form approved by the Board;

2.1.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;

2.1.2.1 If the date of application for licensure is more than three years following the successful completion of the NBCOT exam, the applicant shall submit proof of twenty (20) hours of continuing education in the two years preceding the application in accordance with Rule 5.0 of these rules and regulations.

2.1.3 Official transcript and proof of successful completion of field work submitted by the school directly to the Board office;

2.1.4 Fee payable to the State of Delaware.

2.2 To apply for a reciprocal license, in addition to the requirements listed in 24 Del.C. §2011, an applicant shall submit the following to the Board:

2.2.1 A completed notarized application on the form approved by the Board;

2.2.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;

2.2.3 Letter of verification from any state in which the applicant has been licensed (the applicant is responsible for forwarding the blank verification form to all states where they are now or ever have been licensed);

2.2.4 Fee payable to the State of Delaware.

2.3 To apply for renewal, an applicant shall submit:

2.3.1 A completed renewal application on the form approved by the Board;

2.3.2 Evidence of meeting continuing education requirements as designated by the Board in Rule 5;

2.3.3 Renewal fee payable to the State of Delaware.

2.4 To apply for inactive status:

A licensee may, upon written request to the Board, have his/her license placed on inactive status if he/she is not actively engaged in the practice of occupational therapy in the State.

2.5 To apply for reactivation of an inactive license, a licensee shall submit:

2.5.1 A letter requesting reactivation;

2.5.2 A completed application for renewal

2.5.3 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule 5.0 of these rules and regulations;

2.5.4 Fee payable to the State of Delaware.

2.6 To apply for reinstatement of an expired license, an applicant shall submit (within three (3) years of the expiration date):

2.6.1 A completed application for renewal;

2.6.2 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule 5.0 of these rules and regulations;

2.6.3 Licensure and late fee payable to the State of Delaware.

## 3.0 Temporary Licensure/Examination Eligible OT:

3.1 To apply for a temporary license, an applicant shall submit to the Board:

3.1.1 A completed, notarized application on the form approved by the Board;

3.1.2 Official transcript and proof of successful completion of field work submitted by the school directly to the Board office;

3.1.3 A letter indicating the date on which the applicant proposes to take the NBCOT examination;

3.1.4 A signed agreement from an occupational therapist currently licensed by the state of Delaware certifying that the applicant will be supervised while practicing, in accordance with the definitions for supervision as stated herein, in 3.3;

3.1.5 Fee payable to the State of Delaware.

3.2 Following the examination, the temporary licensee shall submit to the Board a notarized copy of the verification of exam scores, if the Board has not directly received the results of the examination. If the temporary licensee has not successfully passed the examination the temporary license will be surrendered to the Board immediately upon notification of exam results.

3.3 Supervision of the exam-eligible occupational therapist with a temporary license shall be defined as follows:

3.3.1 The supervising occupational therapist must hold a current license to practice in the state of Delaware;

3.3.2 Must have completed a minimum of one year of practice from the date of their permanent licensure status;

3.3.3 Supervision must consist of daily face to face contact between the supervisor and the temporary licensee;

3.3.4 The supervising occupational therapist shall at no time supervise more than four (4) temporarily

licensed occupational therapists. In the event that the temporary licensees should be working at separate sites, the supervising therapist shall supervise no more than two (2) temporarily-licensed therapists. A supervising therapist can assume responsibility for no more than five (5) including temporarily licensed OTs and OTAs and licensed OTAs.

#### **4.0 Temporary Licensure/Examination Eligible OTA:**

4.1 To apply for a temporary license, an applicant shall submit to the Board:

4.1.1 A completed, notarized, application on the form provided by the Board;

4.1.2 Official transcript and proof of successful completion of field work submitted by the school directly to the Board Office;

4.1.3 A letter indicating the date on which the applicant proposes to take the NBCOT examination;

4.1.4 A signed agreement from an occupational therapist currently licensed by the state of Delaware certifying that the applicant will be supervised while practicing, in accordance with the definitions for supervision as stated herein, in 4.3;

4.1.5 Fee payable to the State of Delaware.

4.2 Following the examination, if the Board has not directly received the results of the examination, the temporary licensee shall submit to the Board a notarized copy of the verification of exam scores. If the temporary licensee has not successfully passed the examination, the temporary license will be surrendered to the Board immediately upon notification of exam results.

4.3 Supervision for the examination-eligible occupational therapy assistant with a temporary license shall be defined as follows:

4.3.1 The supervising occupational therapist must hold a current license to practice in the state of Delaware;

4.3.2 Must have completed a minimum of one year of practice from the date of their permanent licensure status;

4.3.3 Direct Supervision as defined in Rule 1 shall be required of all temporarily licensed occupational therapy assistants;

4.3.4 The supervising occupational therapist shall at no time supervise more than three (3) temporarily licensed occupational therapy assistants. A supervising therapist can assume responsibility for no more than five (5) including temporarily licensed OT, OTAs and licensed OTAs).

#### **5.0 Continuing Education:**

5.1 Continuing Education Units (CEUs):

5.1.1 Proof of continuing education (CE) is required for license renewal and shall be submitted by May

31 of each renewal year. A licensee who submits continuing education that is not approved by the Board will be notified so that he or she may obtain additional CEU's to substitute before the license expiration date of July 31.

5.1.2 A log of CE on a form approved by the Board shall be maintained and submitted. Documentation of the CE should not be routinely sent with the log but must be retained during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirement. Licensees selected for the random audit shall submit attendance verification.

5.1.3 Contact hours shall be prorated for new licensees in accordance with the following schedule:

~~5.1.1~~ 5.1.3.1\*\* 21 months up to and including 24 months remaining in the licensing cycle requires 20 hours

~~5.1.2~~ 5.1.3.2\*\* 16 months up to and including 20 months remaining in the licensing cycle requires 15 hours

~~5.1.3~~ 5.1.3.3\*\* 11 months up to and including 15 months remaining in the licensing cycle requires 10 hours

~~5.1.4~~ 5.1.3.4\*\* 10 months or less remaining in the licensing cycle exempt

5.2 Definition of Acceptable Continuing Education Credits:

Activities must be earned in two (2) or more of the ~~seven (7)~~ six (6) categories for continuing education beginning in section 5.5.

5.3 Continuing Education Content:

5.3.1 Activities must be a structured educational experience beyond entry-level academic degree level in a field of health and social services related to occupational therapy, must be related to a licensee's current or anticipated roles and responsibilities in occupational therapy, and must directly or indirectly serve to protect the public by enhancing the licensee's continuing competence.

5.3.2 Approval will be at the discretion of the Board. A licensee or continuing education provider may request prior approval by the Board by submitting an outline of the activity at least six weeks before it is scheduled.

5.3.3 CEUs earned in excess of the required credits for the two (2) year period may not be carried over to the next biennial period.

5.4 Definition of Contact Hours:

5.4.1 Academic course work, correspondence courses, or seminar/workshop shall be equivalent to one (1) contact hour.

5.4.2 One (1) academic semester hour shall be equal to fifteen (15) contact hours.

5.4.3 One (1) academic quarter hour shall be equal to ten (10) contact hours.

~~5.4.4 The preparing of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) contact hour for~~



~~preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only. Credit is given for substantive content only and not for breaks~~

## 5.5 Categories for Continuing Education Activities:

5.5.1 Courses: The maximum ~~credit number of hours~~ for course work ~~which shall not exceed nineteen(19) hours, (1.9 CEUs). are hour for hour program content only, courses from~~ Extension courses, refresher courses, workshops, seminars, lectures, conferences, and non patient-specific in-service training qualify under this provision as long as they satisfy the criteria in 5.3.1. in-services, as long as they enhance occupational therapy services. Excluded are any job related duties in the workplace such a fire safety, OSHA or CPR. Also excluded are courses covering documentation for reimbursement or other business matters.

5.5.1.1 Course work involving alternative therapies shall be limited to five(5) hours, (5.0 CEUs).

5.5.1.2 Course work by homestudy/ correspondence shall be limited to ten (10) hours, (1.0 CEU)

5.5.2 Professional Meetings & Activities: The maximum number of credit hours shall not exceed ten (10) hours, (1.0 CEU). Approved credit includes attendance at: DOTA business meetings, AOTA business meetings, AOTA Representative Assembly meetings, NBCOT meetings, OT Licensure Board meetings and AOTA National Round Table discussions. Credit will be given for participation as an elected or appointed member/officer on a board, committee or council in the field of health and social service related to occupational therapy. Seminars or other training related to management or administration are considered professional activities. Excluded are any job related meetings such a department meetings, supervision of students and business meetings within the work setting.

5.5.3 Publications: The maximum number of credit hours shall not exceed fifteen (15) hours, (1.5CEUs). These include writing chapters, books, abstracts, book reviews accepted for publication and media/video for professional development in any venue. ~~Prior approval by the Board for individual credit is mandatory for the licensee. Publications submitted at the close of the licensure period, which have not been previously reviewed and approved by the Board, will not be considered for continuing education credits.~~

5.5.4 Presentations: The maximum number of credit hours shall not exceed fifteen (15) hours, (1.5 CEUs). This includes workshops and community service organizations presentations that the licensee presents. Credit will not be given for the presentation of information that the licensee has already been given credit for under another category. Excluded are presentations that are part of a licensee's job duties. The preparation of original lectures,

seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) hour (0.1 CEU) for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

5.5.5 Research/Grants: May be used one time for CEUs per study/topic regardless of length of project, not to exceed ten (10) hours, (1.0 CEU). CEUs accumulated under this category may not be used under the publication category. Licensees must submit documentation of authorship or letters from authorizing entity to receive continuing education credit. ~~Documentation must be presented for prior Board approval to determine the number of CEU hours.~~

5.5.6 Specialty Certification: Approval of credit hours for specialty certification, requiring successful completion of courses and exams attained during the current licensure period will be at the discretion of the Board. Examples include Certified Hand Therapist (CHT) and Certified Pediatric Occupational Therapist (BCP).

~~5.5.7 Home Study Courses: The maximum number of credit hours shall not exceed ten (10) hours, (1.0 CEUs). These include distance learning and correspondence courses. Documentation must be presented for prior Board approval for home study courses~~

5.6 The Board may waive or postpone all or part of the continuing education activity requirements of these regulations if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the Board of an illness, injury, financial hardship, family hardship, or other similar extenuating circumstance which precluded the individual's completion of the requirements.

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

6.1 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.

6.2 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.

6.3 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).

6.4 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.

6.5 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.

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

6.6.1 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.

6.6.2 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.

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

6.6.4 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.

6.6.5 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.

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

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

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

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

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

proceedings as appropriate.

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

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

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## DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

The **Harness Racing Commission** issues these proposed rules pursuant to 3 **Del.C.** §10005 and 29 **Del.C.** §10115. The Commission will accept written comments from October 1, 2002 through October 30, 2002. The Commission will hold a public hearing on the proposed amendments on October 21, 2002 at 12:00 p.m. at Harrington Raceway, Harrington, DE. Written comments should be submitted to John Wayne, Administrator of Racing, Delaware Harness Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901.

The Commission proposes to amend the Rules as follows: 1) amend Rule 6.2.9 to prohibit trailing horses on a half-mile track; 2) amend Rule 8.3.6 to further clarify that the use of phenylbutazone in two year old horses is prohibited and the penalty for violations; 3) enact a new Rule 8.7 to prohibit the possession or use of drugs or substances for which there is no analytical method to detect such as erythropoietin, darbepoietin, and perfluorocarbon, and prohibit the possession or use of any drug or substance not approved by the FDA; 4) amend Rule 10.2.7.4 to require written notice to licensees of license and disciplinary decisions.

### 6.2 Overnight Events

#### 6.2.1 General Provisions

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

6.2.1.2 At extended meetings, condition sheets must be available to participants at least 18 hours

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

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

6.2.1.4 Substitute races may be provided for each race program and shall be so designated in condition books sheets. A substitute race may be used when a regularly scheduled race fails to fill.

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

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

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

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

### 6.2.2 Conditions

6.2.2.1 Conditions may be based only on:

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

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

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

6.2.2.1.4 sex;

6.2.2.1.5 number of starts during a specified period of time;

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

6.2.2.1.7 the exclusion of schooling races; or

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

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

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

6.2.2.3 The Commission may, upon application from the racing secretary, approve conditions other than those listed above for special events.

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

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

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

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

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

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

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

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

6.2.2.9 In overnight events, ~~not more than one trailer shall be permitted, regardless of the size of the track except with the approval of the Commission on a half mile racetrack there shall be no trailing horses. On a bigger racetrack there shall be no more than one trailing horse.~~ At least eight feet per horse must be provided the starters in the front tier.

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

## 8.0 Veterinary Practices, Equine Health Medication

### 8.1 General Provisions

The purpose of this Rule is to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

### 8.2 Veterinary Practices

#### 8.2.1 Veterinarians Under Authority of Commission Veterinarian

Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are subject to these Rules, which shall be enforced under the authority of the Commission Veterinarian and the State Steward. Without limiting the authority of the State Steward to enforce these Rules, the Commission Veterinarian may recommend to the State Steward or the Commission the discipline which may be imposed upon a veterinarian who violates the rules.

#### 8.2.2 Treatment Restrictions

8.2.2.1 Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the Commission.

8.2.2.2 This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

8.2.2.2.1 a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

8.2.2.2.2 a non-injectable substance on the direction or by prescription of a licensed veterinarian; or

8.2.2.2.3 a non-injectable non-prescription medication or substance.

8.2.2.3 No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the State Steward, judges and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the State Steward, judges and/or the Commission.

### 8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The State Steward may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

#### 8.3.1 Uniform Classification Guidelines

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the Commission Veterinarian and the racing secretary.

##### 8.3.1.1 Class 1

Opiates, opium derivatives, synthetic opiates, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

##### 8.3.1.2 Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class:

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

8.3.1.2.4 Drugs with prominent CNS depressant action;

8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;

8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

##### 8.3.1.3 Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class:

8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

8.3.1.3.4 Primary vasodilating/hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

##### 8.3.1.4 Class 4

This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;

8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects

8.3.1.4.2.1 Drugs used solely as

topical vasoconstrictors or decongestants  
8.3.1.4.2.2 Drugs used as  
gastrointestinal antispasmodics  
8.3.1.4.2.3 Drugs used to void the  
urinary bladder  
8.3.1.4.2.4 Drugs with a major  
effect on CNS vasculature or smooth muscle of visceral  
organs.  
8.3.1.4.3 Antihistamines which do not  
have a significant CNS depressant effect (This does not  
include H1 blocking agents, which are listed in Class 5);  
8.3.1.4.4 Mineralocorticoid drugs;  
8.3.1.4.5 Skeletal muscle relaxants;  
8.3.1.4.6 Anti-inflammatory  
drugs--those that may reduce pain as a consequence of their  
anti-inflammatory actions, which include:  
8.3.1.4.6.1 Non-Steroidal  
Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;  
8.3.1.4.6.2 Corticosteroids  
(glucocorticoids); and  
8.3.1.4.6.3 Miscellaneous  
anti-inflammatory agents.  
8.3.1.4.7 Anabolic and/or androgenic  
steroids and other drugs;  
8.3.1.4.8 Less potent diuretics;  
8.3.1.4.9 Cardiac glycosides and  
antiarrhythmics including:  
8.3.1.4.9.1 Cardiac glycosides;  
8.3.1.4.9.2 Antiarrhythmic agents  
(exclusive of lidocaine, bretylium and propranolol); and  
8.3.1.4.9.3 Miscellaneous  
cardiotonic drugs.  
8.3.1.4.10 Topical Anesthetics--agents  
not available in injectable formulations;  
8.3.1.4.11 Antidiarrheal agents; and  
8.3.1.4.12 Miscellaneous drugs  
including:  
8.3.1.4.12.1 Expectorants with little  
or no other pharmacologic action;  
8.3.1.4.12.2 Stomachics; and  
8.3.1.4.12.3 Mucolytic agents.

#### 8.3.1.5 Class 5

Drugs in this category are therapeutic  
medications for which concentration limits have been  
established as well as certain miscellaneous agents.  
Included specifically are agents which have very localized  
action only, such as anti-ulcer drugs and certain antiallergic  
drugs. The anticoagulant drugs are also included.

#### 8.3.2 Penalty Recommendations

The following penalties and disciplinary  
measures may be imposed for violations of these medication  
and prohibited substances rules:

8.3.2.1 Class 1- in the absence of  
extraordinary circumstances, a minimum license revocation

of eighteen months and a minimum fine of \$5,000, and a  
maximum fine up to the amount of the purse money for the  
race in which the infraction occurred, forfeiture of the purse  
money, and assessment for cost of the drug testing.

8.3.2.2 Class 2- in the absence of  
extraordinary circumstances, a minimum license revocation  
of nine months and a minimum fine of \$3,000, and a  
maximum fine of up to the amount of the purse money for  
the race in which the violation occurred, forfeiture of the  
purse money, and assessment for cost of the drug testing.

8.3.2.3 Class 3- in the absence of  
extraordinary circumstances, a minimum license revocation  
of ninety days, and a minimum fine of \$3,000, and a  
maximum fine of up to the amount of the purse money for  
the race in which the violation occurred, forfeiture of the  
purse money, and assessment for cost of the drug testing.

8.3.2.4 Class 4 - in the absence of  
extraordinary circumstances, a minimum license revocation  
of thirty days, and a minimum fine of \$2,000, and a  
maximum fine of up to the amount of the purse money for  
the race in which the violation occurred, forfeiture of the  
purse money, and assessment for the cost of the drug testing.

8.3.2.5 Class 5 - Zero to 15 days suspension  
with a possible loss of purse and/or fine and assessment for  
the cost of the drug testing.

8.3.2.6 In determining the appropriate penalty  
with respect to a medication rule violation, the State Steward  
or other designee of the Commission may use his discretion  
in the application of the foregoing penalty recommendations,  
and shall consult with the State Veterinarian, the  
Commission veterinarian and/or the Commission chemist to  
determine the seriousness of the laboratory finding or the  
medication violation. Aggravating or mitigating  
circumstances in any case should be considered and greater  
or lesser penalties and/or disciplinary measures may be  
imposed than those set forth above. Specifically, if the State  
Steward or other designee of the Commission determine that  
mitigating circumstances warrant imposition of a lesser  
penalty than the recommendations suggest, he may impose a  
lesser penalty. If the State Steward or other designee of the  
Commission determines that aggravating circumstances  
require imposition of a greater penalty, however, he may  
only impose up to the maximum recommended penalty, and  
must refer the case to the Commission for its review, with a  
recommendation for specific action. Without limitation, the  
presence of the following aggravating circumstances may  
warrant imposition of greater penalties than those  
recommended, up to and including a lifetime suspension:

8.3.2.6.1 Repeated violations of these  
medication and prohibited substances rules by the same  
trainer or with respect to the same horse;

8.3.2.6.2 Prior violations of similar  
rules in other racing jurisdictions by the same trainer or with  
respect to the same horse; or

8.3.2.6.3 Violations which endanger the life or health of the horse.

8.3.2.6.4 Violations that mislead the wagering public and those desiring to claim a horse as to the condition and ability of the horse;

8.3.2.6.5 Violations that undermine or corrupt the integrity of the sport of harness racing.

8.3.2.7 Any person whose license is reinstated after a prior violation involving class 1 or class 2 drugs and who commits a subsequent violation within five years of the prior violation, shall absent extraordinary circumstances, be subject to a minimum revocation of license for five years, and a minimum fine in the amount of the purse money of the race in which the infraction occurred, along with any other penalty just and reasonable under the circumstances.

8.3.2.7.1 With respect to Class 1, 2 and 3 drugs detect in a urine sample but not in a blood sample, and in addition to the foregoing factors, in determining the length of a suspension and/or the amount of a fine, or both, the State Steward or judges may take in consideration, without limitation, whether the drug has any equine therapeutic use, the time and method of administration, if determined, whether more than one foreign substance was detected in the sample, and any other appropriate aggravating or mitigating factors.

8.3.2.8 Whenever a trainer is suspended more than once within a two-year period for a violation of this chapter regarding medication rules, any suspension imposed on the trainer for any such subsequent violation also shall apply to the horse involved in such violation. The State Steward or judges may impose a shorter suspension on the horse than on the trainer.

8.3.2.9 At the discretion of the State Steward or other designee of the Commission, a horse as to which an initial finding of a prohibited substance has been made by the Commission chemist may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may, with the consent of the State Steward or other designee of the Commission be released to the care of another trainer, and may race.

### 8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

8.3.3.1.1 the drug or medication is listed by the Association of Racing Commissioners International's Drug Testing and Quality Assurance Program; and

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the limit established in these Rules or otherwise approved and published by the Commission.

8.3.3.2 Except as otherwise provided by this

chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter during the 24-hour period before post time for the race in which the horse is entered. Such administration shall result in the horse being scratched from the race and may result in disciplinary actions being taken.

8.3.3.3 A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

8.3.3.3.1 drugs or medications for which no acceptable levels have been established in these Rules or otherwise approved and published by the Commission.

8.3.3.3.2 therapeutic medications in excess of acceptable limits established in these rules or otherwise approved and published by the Commission.

8.3.3.3.3 Substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules, provided that a licensee has the right, pursuant to such procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels; and provided, further, that an excess total carbon dioxide level shall be penalized in accordance with the penalty recommendation applicable to a Class 2 substance.

8.3.3.3.4 substances foreign to a horse at levels that cause interference with testing procedures. The detection of any such substance is a violation, regardless of the classification or definition of the substance or its properties under the Uniform Classification Guidelines for Foreign Substances.

8.3.3.4 The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian, in which case the horse shall be scratched. The practice of administration of any substance via a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation or license.

### 8.3.4 Medical Labeling

8.3.4.1 No person on association grounds

where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labelled in accordance with this subsection.

8.3.4.2 Any drug or medication which is used or kept on association grounds and which, by federal or Delaware law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable federal and state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

### 8.3.5 Furosemide (Lasix)

#### 8.3.5.1 General

Furosemide (Lasix) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Except under the instructions of the Commission Veterinarian for the purpose of removing a horse from the Steward's List or to facilitate the collection of a post-race urine sample, furosemide (Lasix) shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List.

#### 8.3.5.2 Method of Administration

Lasix shall be administered intravenously by a licensed practicing veterinarian, unless the Commission Veterinarian determines that a horse cannot receive an intravenous administration of Lasix and gives permission for an intramuscular administration; provided, however, that once Lasix is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

#### 8.3.5.3 Dosage

Lasix shall be administered to horses on the Bleeder List only by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 If less than 500 milligrams is administered, and subsequent laboratory findings are inconsistent with such dosage or with the time of

administration, then the trainer shall be subject to a fine or other disciplinary action;

8.3.5.3.2 Not more than 750 milligrams may be administered if (1) the State veterinarian grants permission for a dosage greater than 500 milligrams, and (2) after the administration of such greater dosage, the horse remains in a detention area under the supervision of a Commission representative until it races; and

8.3.5.3.3 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

#### 8.3.5.4 Timing of Administration

Horses must be presented at the Lasix stall in the paddock, and the Lasix administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined.

#### 8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed practicing veterinarian at the rate approved by the Commission. No credit shall be given.

#### 8.3.5.6 Restrictions

No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (Lasix) in oral form.

#### 8.3.5.7 Post-Race Quantification

8.3.5.7.1 As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of Lasix per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, unless the dosage of Lasix:

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.2.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.3.2 or exceeded 500 milligrams as provided in 8.3.5.3.2, then a penalty shall be imposed as follows:

8.3.5.7.2.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.5.7.2.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.5.7.2.3 If such overage is the



third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.5.7.2.4 If in the opinion of the official chemist any such overage caused interference with testing procedures, then for each such overage a penalty of up to a \$1,000 fine and a suspension of from 15 to 50 days may be imposed.

### 8.3.5.8 Reports

8.3.5.8.1 The licensed practicing veterinarian who administers Lasix to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the State Steward at least one (1) hour before the horse is scheduled to race.

8.3.5.8.3 The State Steward or judges shall order a horse scratched if the written certification is not received in a timely manner.

### 8.3.5.9 Bleeder List

8.3.5.9.1 The Commission Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

8.3.5.9.1.1 visual examination wherein blood is noted in one or both nostrils either:

8.3.5.9.1.1.1 during a race;

8.3.5.9.1.1.2 immediately post-race or post-exercise on track; or

8.3.5.9.1.1.3 within one hour post-race or post-exercise in paddock and/or stable area, confirmed by endoscopic examination; or

8.3.5.9.1.2 endoscopic examination, which may be requested by the owner or trainer who feels his or her horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the Commission Veterinarian or Lasix veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

8.3.5.9.1.3 presentation to the Commission Veterinarian, at least 48 hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the identification of bleeders are satisfactory to the Commission Veterinarian.

8.3.5.9.2 The confirmation of a bleeder horse must be certified in writing by the Commission Veterinarian or the Lasix veterinarian and entered on the

Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

8.3.5.9.3 Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List, and Lasix must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.5.9.4 A horse which bleeds based on the criteria set forth in 8.3.5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.5.9.4.1 1st time - 10 days;

8.3.5.9.4.2 2nd time - 30 days, provided that the horse must be added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.5.9.4.3 3rd time - 30 days, and the horse shall be added to the Steward's List, to be removed at the discretion of the Commission Veterinarian following a satisfactory qualifying race after the mandatory 30-day rest period; and

8.3.5.9.4.4 4th time - barred for life.

8.3.5.9.5 An owner or trainer must notify the Commission Veterinarian immediately of evidence that a horse is bleeding following exercise or racing.

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies.

8.3.5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Lasix symbol in the program shall appropriately reflect that the horse did not receive Lasix its last time out. Such an election by the owner or trainer shall not preclude the Commission Veterinarian, State Steward or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

8.3.5.9.8 Any horse on the Bleeder List which races without Lasix in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the

horse shall be suspended from racing in accordance with the provisions of 8.3.6.4 above.

8.3.5.9.9 The State Steward or Presiding Judge, in consultation with the State veterinarian, will rule on any questions relating to the Bleeder List.

8.3.5.10 Medication Program Entries

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the Commission Veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses three years of age and older in such dosage amount that the official test sample shall contain not more than 2.0 micrograms per milliliter of blood plasma. Phenylbutazone or oxyphenbutazone is not permissible at any level in horses two years of age and if phenylbutazone or oxyphenbutazone is present in any post-race sample from a two year old horse, said horse shall be disqualified, shall forfeit any purse money, and the trainer shall be subject to penalties including up to a \$1,000 fine and up to a fifty day suspension.

8.3.6.1.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.0 but not more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then warnings shall be issued to the trainer.

8.3.6.1.3 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then a penalty shall be imposed as follows:

8.3.6.1.3.1 For an average between 2.6 and less than 5.0 micrograms per milliliter:

8.3.6.1.3.1.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.6.1.3.1.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.6.1.3.1.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.6.1.3.1.4 For an overage of 5.0 micrograms or more per milliliter: Up to a \$1,000 fine and up to a 5-day suspension and loss of purse.

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or

oxyphenbutazone, and also carried in its body at the time of the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and meclufenamic acid, then such presence of phenylbutazone or oxyphenbutazone, shall constitute a violation of this rule and shall be subject to a penalty of up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8.4 Testing

8.4.1 Reporting to the Test Barn

8.4.1.1 Horses shall be selected for post-racing testing according to the following protocol:

8.4.1.1.1 At least one horse in each race, selected by the judges from among the horses finishing in the first four positions in each race, shall be tested.

8.4.1.1.2 Horses selected for testing shall be taken to the Test Barn or Test Stall to have a blood, urine and/or other specimen sample taken at the direction of the State veterinarian.

8.4.1.2 Random or extra testing, including pre-race testing, may be required by the State Steward or judges, or by the Commission, at any time on any horse on association grounds.

8.4.1.3 Unless otherwise directed by the State Steward, judges or the Commission Veterinarian, a horse that is selected for testing must be taken directly to the Test Barn.

8.4.2 Sample Collection

8.4.2.1 Sample collection shall be done in accordance with the RCI Drug Testing and Quality Assurance Program External Chain of Custody Guidelines, or other guidelines and instructions provided by the Commission Veterinarian.

8.4.2.2 The Commission veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be approved by the Commission.

8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission Veterinarian. Only the owner, trainer, groom, or hot walker of horses to be tested shall be admitted to the detention area without permission of the Commission Veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission Veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission Veterinarian.

8.4.3.2.3 A licensed veterinarian shall

attend a horse in the detention area only in the presence of the Commission Veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission Veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The "secondary" sample shall remain in the custody of the Commission Veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission Veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

8.4.3.5.6 When the Commission

chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission Veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission Veterinarian.

8.4.3.5.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

8.4.3.5.9 Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the "primary" and one for the "secondary" sample.

8.4.3.5.10 In the event of an initial finding of a prohibited substance or in violation of these Rules and Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample; provided, however, that with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the "secondary sample" unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstance a "secondary sample" shall be transported to the Commission laboratory on an anonymous basis for confirmatory testing.

8.4.3.5.10.1 If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

8.4.3.5.10.2 Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.12 The Commission Veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

#### 8.5 Trainer Responsibility

The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

8.5.1 The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his or her inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive; provided further that, except as otherwise provided herein, the trainer of record (programmed trainer) shall be any individual who receives any compensation for training the horse.

8.5.2 A trainer shall prevent the administration of any drug or medication or other foreign substance that

may cause a violation of these rules.

8.5.3 A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

8.5.4 The trainer is responsible for:

8.5.4.1 maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

8.5.4.2 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5 Additionally, with respect to horses in his/her care or custody, the trainer is responsible for:

8.5.5.1 the proper identity, custody, care, health, condition and safety of horses;

8.5.5.2 ensuring that at the time of arrival at locations under the jurisdiction of the Commission a valid health certificate and a valid negative Equine Infectious Anemia (EIA) test certificate accompany each horse and which, where applicable, shall be filed with the racing secretary;

8.5.5.3 having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary;

8.5.5.4 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5.5 immediately reporting the alteration of the sex of a horse to the clerk of the course, the United States Trotting Association and the racing secretary;

8.5.5.6 promptly reporting to the racing secretary and the Commission Veterinarian when a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration;

8.5.5.7 promptly notifying the Commission Veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

8.5.5.8 promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the Commission to the State Stewards and judges, the Commission Veterinarian, and the United States Trotting Association;

8.5.5.9 maintaining a knowledge of the medication record and status;

8.5.5.10 immediately reporting to the State Steward, judges and the Commission Veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

8.5.5.11 ensuring the fitness to perform creditably at the distance entered;

8.5.5.12 ensuring that every horse he/she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this chapter;

8.5.5.13 ensuring proper bandages, equipment and shoes;

8.5.5.14 presence in the paddock at least one hour before post time or at a time otherwise appointed before the race in which the horse is entered;

8.5.5.15 personally attending in the paddock and supervising the harnessing thereof, unless excused by the Paddock Judge;

8.5.5.16 attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and

8.5.5.17 immediately reporting to the State Steward or other Commission designee, or to the State Veterinarian or Commission Veterinarian if the State Steward or other Commission designee is unavailable, the death of any horse drawn in to start in a race in this jurisdiction provided that the death occurred within 60 days of the date of the draw.

## 8.6 Physical Inspection of Horses

### 8.6.1 Veterinarian's List

8.6.1.1 The Commission Veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

8.6.1.2 A horse may be removed from the Veterinarian's List when, in the opinion of the Commission Veterinarian, the horse has satisfactorily recovered the capability of competing in a race.

### 8.6.2 Postmortem Examination

8.6.2.1 The Commission may conduct a postmortem examination of any horse that is injured in this jurisdiction while in training or in competition and that subsequently expires or is destroyed. In proceeding with a postmortem examination the Commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

8.6.2.2 The Commission may conduct a postmortem examination of any horse that expires while housed on association grounds or at recognized training facilities within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

8.6.2.3 The Commission may take possession of the horse upon death for postmortem examination. The Commission may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for testing by the Commission-selected laboratory or its designee. Upon completion of the postmortem examination, the carcass may be returned to the owner or disposed of at the owner's option.

8.6.2.4 The presence of a prohibited

substance in a horse, found by the official laboratory or its designee in a bodily fluid specimen collected during the postmortem examination of a horse, which breaks down during a race constitutes a violation of these rules.

8.6.2.5 The cost of Commission-ordered postmortem examinations, testing and disposal shall be borne by the Commission.

**See 1 DE Reg. 505 (11/01/97)**

**See 1 DE Reg. 923 (1/1/98)**

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

**See 4 DE Reg. 6 (7/1/00)**

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

**See 5 DE Reg. 832 (10/1/01)**

**See 5 DE Reg. 1691 (3/1/02)**

## 8.7 Prohibited Practices

8.7.1 The following conduct shall be prohibited for all licensees:

8.7.1.1 The possession and/or use of a drug, substance, or medication, specified below 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.

8.7.1.2 The possession and/or use of a drug, substance, or medication that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States

## 10. Due Process and Disciplinary Action

### 10.2 Proceedings by State Steward or Judges

#### 10.2.1 Rights of the Licensee

A person who is the subject of the disciplinary hearing conducted by the State Steward or judges is entitled to:

10.2.1.1 Proper notice of all charges;

10.2.1.2 Confront the evidence presented, including:

10.2.1.2.1 the right to counsel at the person's expense;

10.2.1.2.2 the right to examine all evidence to be presented against him/her;

10.2.1.2.3 the right to present a defense;

10.2.1.2.4 the right to call witnesses;

and

10.2.1.2.5 the right to cross examine witnesses.

10.2.1.3 Waive any of the above rights.

#### 10.2.2 Complaints

10.2.2.1 A complaint must be in writing and filed with the State Steward or judges within 30 days after

the action that is the subject of the complaint.

10.2.2.2 On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the State Steward or judges may conduct an inquiry and disciplinary hearing regarding a licensee's actions.

#### 10.2.3 Summary Suspension

10.2.3.1 If the State Steward or judges determine that a licensee's actions, other than those of a licensed association, constitute an immediate danger to the public health, safety or welfare, the State Steward or judges the Commission Investigator, may summarily suspend the license pending a hearing.

10.2.3.2 A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third racing day after the license was summarily suspended. The licensee may waive his/her right to a hearing on the summary suspension within the three-day limit.

10.2.3.3 The State Steward or judges shall conduct a hearing on a summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

#### 10.2.4 Notice

10.2.4.1 Except as provided by these rules regarding summary suspensions, the State Steward or judges shall provide written notice at least 24 hours before the hearing to a person who is the subject of a disciplinary hearing. The person may waive his/her right to 24-hour notice by executing a written waiver.

10.2.4.2 Notice given under this section must include:

10.2.4.2.1 a statement of the time, place and nature of the hearing;

10.2.4.2.2 a reference to the particular sections of the statutes or rules involved; and

10.2.4.2.3 a short, plain description of the alleged conduct that has given rise to the disciplinary hearing.

10.2.4.3 If possible, the State Steward or his designee, or the judges or their designee, shall hand deliver the written notice of the disciplinary hearing to the person who is the subject of the hearing. If hand delivery is not possible, the State Steward or judges shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested. If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse, the State Steward shall provide written or oral notice of the hearing to the owner, managing owner or lessee of the horse. Oral notice of any hearing shall suffice upon attestation by the State

Steward that such notice was given the person who is the subject of the hearing.

10.2.4.4 Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the State Steward or judges. The State Steward or judges may suspend the license of a person who fails to appear at a disciplinary hearing after written or oral notice of the hearing has been sent or delivered in compliance with this subsection.

#### 10.2.5 Continuances

10.2.5.1 Upon receipt of a notice, a person may request a continuance of the hearing.

10.2.5.2 The State Steward or judges may grant a continuance of any hearing for good cause shown.

10.2.5.3 The State Steward or judges may at any time order a continuance on their own motion.

#### 10.2.6 Evidence

10.2.6.1 Each witness at a disciplinary hearing conducted by the State Steward or judges must be sworn by the State Steward or presiding judge.

10.2.6.2 The State Steward or judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the State Steward or judges may disallow evidence that is irrelevant or unduly repetitive of other evidence. The State Steward or judges shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The State Steward or judges may admit hearsay evidence if the State Steward or judges determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by Delaware law apply in hearings before the State Steward or judges.

10.2.6.3 The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Commission rule.

10.2.6.4 The State Steward or judges shall make a tape recording of a disciplinary hearing. A copy or a transcript of the recording may be made available at the expense of the requesting person.

#### 10.2.7 Ruling

10.2.7.1 The issues at a disciplinary hearing shall be decided by the State Steward or by a majority vote of the judges.

10.2.7.2 A ruling by the State Steward or judges must be on a form prescribed by the Commission and include:

10.2.7.2.1 the full name, social security number, date of birth, last record address, license type and license number of the person who is the subject of the hearing;

10.2.7.2.2 a statement of the charges against the person, including a reference to the specific section of the Act or rules of the Commission that the

licensee is found to have violated;

10.2.7.2.3 the date of the hearing and the date the ruling was issued;

10.2.7.2.4 the penalty imposed;

10.2.7.2.5 any changes in the order of finish or purse distribution;

10.2.7.2.6 other information required by the Commission; and

10.2.7.2.7 the right to appeal to the Commission.

10.2.7.3 A ruling must be signed by the State Steward or by a majority of the judges, as the case may be.

10.2.7.4 ~~Upon request~~, The State Steward or his designee, or the judges or their designee, shall hand deliver or mail a copy of the ruling to the person who is the subject of the ruling. If hand delivery is not possible, the State Steward or judges shall mail the ruling to the person's last known address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested. A copy of the ruling shall be sent to the Association of Racing Commissioners International, and if the ruling includes the disqualification of a horse, the State Steward or judges shall provide a copy of the ruling to the horsemen's bookkeeper, breed registry(ies) and other regulatory agencies, and shall notify the United States Trotting Association, in the manner provided by this subsection.

10.2.7.5 At the time the State Steward or judges inform a person who is the subject of the proceeding of the ruling, the State Steward or judges shall inform the person of the person's right to appeal the ruling to the Commission.

10.2.7.6 All fines imposed by the State Steward or judges shall be paid to the Commission within ten (10) days after the ruling is issued, unless otherwise ordered.

#### 10.2.8 Effect of Rulings

10.2.8.1 Rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee.

10.2.8.2 The transfer of a horse to avoid application of a Commission rule or ruling is prohibited.

#### 10.2.9 Appeals

10.2.9.1 A person aggrieved by a ruling of the State Steward, judges, or the Administrator of the Breeder's Program may appeal to the Commission except as provided in subdivision 10.2.9.6 of this subsection. A person who fails to file an appeal by the deadline in the form required by this section waives the right to appeal. Appeals of decisions to deny or suspend registrations by the Administrator of the Breeder's Program may be appealed to the Delaware Harness Racing Commission within thirty days of the action

by the Administrator of the Breeder's Program, subject to the same rules and procedures for handling appeals under these Rules. For purposes of appeals from decisions of the Administrator of the Breeder's Program, the Commission will take official notice of the rules and regulations enacted by the Delaware Standardbred Breeders' Fund.

10.2.9.2 An appeal under this section must be filed with the State Steward not later than 48 hours after the ruling. The appeal must be accompanied by a deposit in the amount of \$250, plus an amount to be determined from time to time by the Commission for the cost of the court reporter's attendance. Unless the Commission determines the appeal to be meritorious, either by reversing the decision of the State Steward or judges or by reducing the penalty imposed, the appeal deposit shall not be repaid to the appellant. In no event shall the advance payment of the court reporters fee be refunded.

10.2.9.3 An appeal must be in writing on a form prescribed by the Commission. The appeal must include:

10.2.9.3.1 the name, address, telephone number and signature of the person making the appeal; and

10.2.9.3.2 a statement of the basis for the appeal.

10.2.9.4 On notification by the Commission that an appeal has been filed, the State Steward or judges shall forward to the Commission the record of the proceeding on which the appeal is based.

10.2.9.5 If a person against whom a fine has been assessed timely files an appeal of the ruling that assesses the fine, the person need not immediately pay the fine in accordance with these rules.

10.2.9.6 A notice of appeal filed with the Commission pursuant to these rules may be accompanied by a request for a stay pending a final decision by the Commission. In his discretion the State Steward may approve such stay requests unless he determines that granting the stay would be adverse to the best interests of racing or inimical to the integrity of the sport. If the State Steward denies a stay request, the appellant may submit a written request to the Commission, in which case the Chairman of the Commission in his discretion may grant or deny the request.

#### 10.3 Proceedings by the Commission

##### 10.3.1 Party Designations

10.3.1.1 A person who is the subject of a disciplinary hearing, who filed an appeal from a State Steward's or judges' ruling, or who otherwise seeks relief from the Commission, is a party to that proceeding.

10.3.1.2 A party to a proceeding has the right to present a direct case, cross-examine each witness, submit legal arguments and otherwise participate fully in the proceeding.

10.3.1.3 A party summoned to appear at a

hearing must appear unless he/she is excused by the Commission presiding officer. Parties may appear with counsel licensed to practice law in Delaware, or, with the Commission's approval, counsel licensed to practice law in another jurisdiction provided that such out-of-state counsel associates with a Delaware attorney.

10.3.1.4 A non-party to a proceeding who wishes to appear in a contested case pending before the Commission must prove that he/she has an effected interest sufficient to create standing in the case. The burden of proof is on the party asserting standing in such a contested case.

#### 10.3.2 Notice

10.3.2.1 Not less than seven (7) days before the date set for a hearing, the Commission shall serve written or oral notice on each party of record to the proceeding. The person may waive his/her right to said notice by executing a written waiver. Oral notice shall suffice upon attestation by the State Steward that he personally gave such notice to the person who is the subject of the hearing.

10.3.2.2 If hand delivery or oral notice by the State Steward is not possible, the Commission shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by personal service or certified mail, return receipt requested.

10.3.2.3 A notice of the hearing must include:

10.3.2.3.1 a statement of time, place and nature of the hearing;

10.3.2.3.2 a reference to the particular sections of the statutes and rules involved; and

10.3.2.3.3 a short, plain statement of the matters asserted.

10.3.2.4 If the Commission determines that a material error has been made in a notice of hearing, or that a material change has been made in the nature of a proceeding after notice has been issued, the Commission shall issue a revised notice.

10.3.2.5 A party to a proceeding may move to postpone the proceeding. Unless waived by the Commission, the motion must be in writing, set forth the specific grounds on which it is sought and be filed with the Commission before the date set for hearing. If the person presiding over the proceeding grants the motion for postponement, the Commission shall cause new notice to be issued.

10.3.2.6 After a hearing has begun, the presiding officer may grant a continuance on oral or written motion, without issuing new notice, by announcing the date, time and place for reconvening the hearing before recessing the hearing.

#### 10.3.3 Subpoenas

10.3.3.1 A member of the Commission, the Director of Poultry and Animal Health, the State Steward or judges, the Commission Investigator the presiding officer of a Commission proceeding or other person authorized to perform duties under the Act may require by subpoena the

attendance of witnesses and the reproduction of books, records, papers, correspondence and other documents.

10.3.3.2 The presiding officer of a Commission proceeding or other person authorized by the Commission may administer an oath or affirmation to a witness appearing before the Commission or a person authorized by the Commission.

10.3.3.3 Each party is responsible for proper service of any subpoenas it requests and for the payment of witness fees and expenses as provided by Delaware law.

10.3.3.4 On written request by a party, the presiding officer may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses and the production of books, records, papers or other objects as may be necessary and proper for the purposes of a proceeding. A motion for a subpoena to compel the production of books, records, papers or other objects shall be addressed to the appropriate person, shall be verified and shall specify the books, records, papers or other objects desired and the relevant and material facts to be proved by them.

#### 10.3.4 Conferences

10.3.4.1 On written notice, the presiding officer may, on the officer's own motion or on the motion of a party, direct each party to appear at a specified time and place for a prehearing conference to formulate issues and consider any of the following:

10.3.4.1.1 simplifying issues;

10.3.4.1.2 amending the pleadings;

10.3.4.1.3 making admissions of fact or stipulations to avoid the unnecessary introduction of proof;

10.3.4.1.4 designating parties;

10.3.4.1.5 setting the order of procedure at a hearing;

10.3.4.1.6 identifying and limiting the number of witnesses;

10.3.4.1.7 resolving other matters that may expedite or simplify the disposition of the controversy, including settling issues in dispute; and

10.3.4.1.8 identifying provisions and mandates of statute or rules relating to the issues.

10.3.4.2 The presiding officer shall record the action taken at the prehearing conference unless the parties enter into a written agreement as to the action. The presiding officer may enter appropriate orders concerning prehearing discovery, stipulations of uncontested matters, presentation of evidence and scope of inquiry.

10.3.4.3 During a hearing, on written notice or notice stated into the record, the presiding officer may direct each party or the representative of each party to appear for a conference to consider any matter that may expedite the hearing and serve the interests of justice. The presiding officer shall prepare a written statement regarding the action taken at the conference and the statement must be signed by



each party and made a part of the record.

### 10.3.5 Reporters and Transcripts

10.3.5.1 If necessary, the Commission shall engage a court reporter to make a stenographic record of a hearing. The Commission may allocate the cost of the reporter and transcript among the parties.

10.3.5.2 If a person requests a transcript of the stenographic record, the Commission may assess the cost of preparing the transcript to the person.

10.3.5.3 A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than 10 days after the date the transcript is filed with the Commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter and the presiding officer. If proposed corrections are not objected to before the tenth day after the date the corrections were filed with the Commission, the presiding officer may direct that the suggested corrections be made and the manner of making them. If the parties disagree on the suggested corrections, the presiding officer shall determine whether to change the record.

### 10.3.6 Nature of Hearings

10.3.6.1 An appeal from a decision of the State Steward or judges shall be de novo.

10.3.6.2 A hearing in a Commission proceeding is open to the public, provided, however, that witnesses may be sequestered.

10.3.6.3 Unless precluded by law or objected to by a party, the Commission may allow informal disposition of a proceeding without a hearing. Informal disposition includes disposition by stipulation, agreed settlement, consent order and default.

### 10.3.7 Presiding Officers

10.3.7.1 A member of the Commission, the Director of Poultry and Animal Health or a Commission appointee may serve as the presiding officer for a Commission proceeding.

10.3.7.2 The presiding officer may:

10.3.7.2.1 issue subpoenas to compel the attendance of witnesses and the production of papers and documents;

10.3.7.2.2 administer oaths;

10.3.7.2.3 receive evidence;

10.3.7.2.4 rule on the admissibility of evidence;

10.3.7.2.5 examine witnesses;

10.3.7.2.6 set reasonable times within which a party may present evidence and within which a witness may testify;

10.3.7.2.7 permit and limit oral argument;

10.3.7.2.8 issue interim orders;

10.3.7.2.9 recess a hearing from day to

day and place to place;

10.3.7.2.10 request briefs before or after the presiding officer files a report or proposal for decision;

10.3.7.2.11 propose findings of fact and conclusions of law;

10.3.7.2.12 propose orders and decisions; and

10.3.7.2.13 perform other duties necessary to a fair and proper hearing.

10.3.7.3 A person serving as the presiding officer of a proceeding must be a disinterested party to the proceeding.

### 10.3.8 Order of Hearing

10.3.8.1 The presiding officer shall open the hearing, make a concise statement of its scope and purposes and announce that a record of the hearing is being made.

10.3.8.2 When a hearing has begun, a party or a party's representative may make statements off the record only as permitted by the presiding officer. If a discussion off the record is pertinent, the presiding officer shall summarize the discussion for the record.

10.3.8.3 Each appearance by a party, a party's representative or a person who may testify must be entered on the record.

10.3.8.4 The presiding officer shall receive motions and afford each party of record an opportunity to make an opening statement.

10.3.8.5 Except as otherwise provided by this subsection, the party with the burden of proof is entitled to open and close. The presiding officer shall designate who may open and close in a hearing on a proceeding if the proceeding was initiated by the Commission or if several proceedings are heard on a consolidated record.

10.3.8.6 After opening statements, the party with the burden of proof may proceed with the party's direct case. Each party may cross examine each witness.

10.3.8.7 After the conclusion of the direct case of the party having the burden of proof, each other party may present their direct case and their witnesses will be subject to cross examination.

10.3.8.8 The members of the Commission and/or the presiding officer may examine any witnesses.

10.3.8.9 At the conclusion of all evidence and cross examination, the presiding officer shall allow closing statements.

10.3.8.10 Before issuing a decision, the Commission or the presiding officer may call on a party for further relevant and material evidence on an issue. The Commission or the presiding officer may not consider the evidence or allow it into the record without giving each party an opportunity to inspect and rebut the evidence.

### 10.3.9 Behavior

10.3.9.1 Each party, witness, attorney or other representative shall behave in all Commission proceedings

with dignity, courtesy and respect for the Commission, the presiding officer and all other parties and participants.

10.3.9.2 An individual who violates this section may be excluded from a hearing by the presiding officer.

#### 10.3.10 Evidence

10.3.10.1 All testimony must be given under oath administered by the presiding officer. The presiding officer may limit the number of witnesses and shall exclude all irrelevant, immaterial or unduly repetitious evidence.

10.3.10.2 The presiding officer is not bound by the Rules of Evidence, but the rules of privilege recognized by law in Delaware apply in Commission proceedings.

10.3.10.3 A party may object to offered evidence and the objection shall be noted in the record. A party, at the time an objection is made or sought, shall make known to the presiding officer the action the party desires. Formal exceptions to rulings by the presiding officer during a hearing are unnecessary.

10.3.10.4 When the presiding officer rules to exclude evidence, the party offering the evidence may make an offer of proof by dictating or submitting in writing the substance of the proposed evidence, before the closing of the hearing. The offer of proof preserves the point for review. The presiding officer may ask a witness or offered witness questions necessary to indicate that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross examination is preserved without making an offer of proof.

10.3.10.5 The presiding officer may take official notice of judicially cognizable facts and of facts generally recognized within the area of the Commission's specialized knowledge. The Commission shall notify each party of record before the final decision in a proceeding of each specific fact officially noticed, including any facts or other data in staff memoranda. A party must be given an opportunity to rebut the facts to be noticed.

10.3.10.6 The special skills and knowledge of the Commission, the Commission staff, and the officials of the Commission may be used in evaluating the evidence.

10.3.10.7 The presiding officer may receive documentary evidence in the form of copies or excerpts if the original is not readily available. On request, the presiding officer shall allow a party to compare the copy with the original. If many similar documents are offered in evidence, the presiding officer may limit the documents admitted to a number which are representative of the total number, or may require that the relevant data be abstracted from the documents and presented as an exhibit. If the presiding officer requires an abstract, the presiding officer shall allow each party or the party's representative to examine the documents from which the abstracts are made.

10.3.10.8 The presiding officer may require prepared testimony in a hearing if the presiding officer determines that it will expedite the hearing without substantially prejudicing the interests of a party. Prepared testimony consists of any document that is intended to be offered as evidence and adopted as sworn testimony by a witness who prepared the document or supervised its preparation. A person who intends to offer prepared testimony at a hearing shall prefile the testimony with the Commission on the date set by the presiding officer and shall serve a copy of the prepared testimony on each party of record. The presiding officer may authorize the late filing of prepared testimony on a showing of extenuating circumstances. The prepared testimony of a witness may be incorporated into the record as if read or received as an exhibit, on the witness being sworn and identifying the writing as a true and accurate record of what the testimony would be if the witness were to testify orally. The witness is subject to clarifying questions and to cross examination and the prepared testimony is subject to a motion to strike either in whole or in part.

10.3.10.9 The party offering an exhibit shall tender the original of the exhibit to the presiding officer for identification. The party shall furnish one copy to the presiding officer and one copy to each party of record. A document received in evidence may not be withdrawn except with the permission of the presiding officer. If an exhibit has been offered, objected to and excluded and the party offering the exhibit withdraws the offer, the presiding officer shall return the exhibit to the party. If the party does not withdraw the offered exhibit, the exhibit shall be numbered for identification, endorsed by the presiding officer with the ruling on the exhibit and included in the record to preserve the exception.

10.3.10.10 The presiding officer may allow a party to offer an exhibit in evidence after the close of the hearing only on a showing of extenuating circumstances and a certificate of service on each party of record.

#### 10.3.11 Findings of Fact and Conclusions of Law

10.3.11.1 The presiding officer may direct any party to draft and submit proposed findings of fact and conclusions of law or a proposal for decision. The presiding officer may limit the request for proposed findings to a particular issue of fact.

10.3.11.2 Proposed findings of fact submitted under this section must be supported by concise and explicit statements of underlying facts developed from the record with specific reference to where in the record the facts appear.

10.3.11.3 Only if the presiding officer requires the filing of proposed findings of fact or a proposal for decision is the Commission required to rule on the proposed findings of fact. If a party is permitted but not required to submit proposed findings or a proposal for

decision, the Commission is not required to rule on the party's proposed findings.

#### 10.3.12 Dismissal

On its own motion or a motion by a party, the presiding officer may dismiss a proceeding, with or without prejudice, under conditions and for reasons that are just and reasonable, including:

- 10.3.12.1 failure to timely pay all required fees to the Commission;
- 10.3.12.2 unnecessary duplication of proceedings;
- 10.3.12.3 withdrawal;
- 10.3.12.4 moot questions or obsolete petitions; and
- 10.3.12.5 lack of jurisdiction.

#### 10.3.13 Orders

10.3.13.1 Except as otherwise provided by these rules, the Commission shall issue a final order not later than thirty days after the conclusion of the hearing. A final order of the Commission must be in writing and be signed by a majority of the members of the Commission who voted in favor of the action taken by the Commission. A final order must comply with the requirements of §10128 of the Administrative Procedures Act, and include a brief summary of the evidence, findings of fact based upon the evidence, conclusions of law, and other conclusions required by the Act or by these Rules, and a concise statement of the Commission's determination or action on the matter.

10.3.13.2 The Commission staff shall mail or deliver a copy of the order to each party or the party's representative.

10.3.13.3 A final order of the Commission takes effect on the date the order is issued, unless otherwise stated in the order.

10.3.13.4 If the Commission finds that an imminent peril to the public health, safety or welfare requires an immediate final order in a proceeding, the Commission shall recite that finding in the order in addition to reciting that the order is final from the date issued. An order issued under this subsection is final and appealable from the date issued and a motion for rehearing is not a prerequisite to appeal.

#### 10.3.14 Ex Parte Communications

10.3.14.1 No Commission member may discuss the merits of a matter which is pending before the Commission prior to a formal hearing, or between the hearing and announcement of the Commission's final decision.

10.3.14.2 The Administrative Procedure Act, Title 29 of the Delaware Code, Section 10129, pertaining to ex parte communications, is hereby incorporated by reference.

#### 10.3.15 Appeals

Within fifteen (15) days after service of a final

adjudication or order of the Commission, or the imposing of a monetary fine, or of an order of the Commission refusing a petition for rehearing or reconsideration, or of an order following a rehearing or reconsideration, any party shall have the right to appeal therefrom to the Superior Court of the State of Delaware, in the manner provided by law and the Rules of that Court.

#### 10.4 Rulings in Other Jurisdictions

##### 10.4.1 Reciprocity

The State Steward and judges shall honor rulings from other pari-mutuel jurisdictions regarding license suspensions, revocation or eligibility of horses.

##### 10.4.2 Appeals of Reciprocal Rulings

10.4.2.1 Persons subject to rulings in other jurisdictions shall have the right to request a hearing before the Commission to show cause why such ruling should not be enforced in Delaware.

10.4.2.2 Any request for such hearing must clearly set forth in writing the reasons for the appeal.

**See 1 DE Reg. 507 (11/01/97)**

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

**See 5 DE Reg. 1903 (4/1/02)**

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## DEPARTMENT OF EDUCATION

14 DE Admin. Code 540

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

### Educational Impact Analysis

#### 540 Driver Education

#### A. Type Of Regulatory Action Required

Amendment to Existing Regulation

#### B. Synopsis Of Subject Matter Of The Regulation

The Secretary seeks the approval of the State Board of Education to amend regulation 540 Driver Education. The regulation has been renumbered for clarity by clustering like issues together. Amendments have also been made to renumbered sections 1.1, 1.2, 1.3, 4.0 and 5.0 for the purpose of clarity. A new section 6.0 states that all high schools with twenty-five or more students shall provide instruction in driver education. Proposed amendments to regulation 540 Driver Education were previously published in the *Delaware Register of Regulations* in August 2002, (Volume 6 page 133) and due to substantive changes in the amendments it is being re-published.

#### C. Impact Criteria

1. Will the amended regulation help improve student

achievement as measured against state achievement standards? The amended regulation only addresses instruction in driver education.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps insure that all students receive driver education instruction.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses health and safety issues as part of the driver education instruction.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses students' legal rights as part of the driver education instruction.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The regulation must be amended in the process proscribed.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no cost to cost to the state and to the local school boards for compliance with the amended regulation.

### 540 Driver Education

1.0 Delaware residents are entitled to free driver education one time only. Students who are not successful in their initial driver education course may register in any of the adult driver education programs for a fee.

~~1.1 2.0~~ The Individualized Education Program Team, in consultation with the Driver Education teacher, may make accommodations to the Driver Education program and offer specialized instruction for special education students through the ~~students'~~student's Individual Education Program (I.E.P.).

1.2 Nothing in this regulation shall alter a school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a school from providing driver education to such students.

~~1.3 3.0~~ Delaware residents attending school out of state as sophomores, students in excess of the September 30<sup>th</sup> unit allotment, students attending private and parochial academies in state with sophomore enrollments of less than twenty-five, home schooled students and any student approved by the Secretary as an exceptional case are entitled to attend summer driver education without charge. Districts shall notify all nonpublic and public high schools in their district by ~~April~~ May 1<sup>st</sup> annually as to the location of the nearest summer driver education program. Summer Driver Education shall be offered between June 1 - August 31 and each request for free tuition must be approved by the Secretary of Education through the Office of the Education Associate for Driver Education, Safety and Physical Education.

~~1.4 4.0~~ Adult Driver Education programs, when offered, shall follow the same regulations established for the high school and the summer programs. The adult programs are available to any individual for a fee through a local school district in each county. ~~The costs~~ cost per student for adult driver education will be determined by the Department of Education.

~~2.0 5.0~~ The driver education course shall include a minimum of forty-four (44) class hours of instruction consisting of thirty (30) class hours of classroom instruction, seven (7) class hours of in-the-car behind-the-wheel laboratory instruction and seven (7) hours of actual observation in-the-car. The class hours must not be less than forty-five (45) minutes each. For those schools with varying class schedules the minimum classroom instruction must be no less than one thousand three hundred fifty (1350) minutes and behind-the-wheel laboratory instruction no less than three hundred fifteen (315) minutes.

~~2.1 5.1~~ Driving simulators may be substituted for the

required hours of behind-the-wheel laboratory instruction but only up to three (3) hours of time at the ratio of four (4) hours of driving simulation to one (1) hour of actual behind-the-wheel laboratory instruction.

~~2.2 5.2~~ Off-the-street driving ranges or multiple driving ranges that are off the street may be substituted for actual behind-the-wheel laboratory instruction up to three (3) hours time at the ratio of two (2) hours of range instruction time to one (1) hour of actual behind-the-wheel laboratory instruction time.

~~2.3 5.3~~ Driving simulation and off-the-street driving range time shall not be taken from or cause a reduction of classroom instruction time.

~~2.4 5.4~~ Driving simulation and off-the-street driving range time shall not be substituted for more than one-half (½) of the total required seven (7) hours of actual behind-the-wheel laboratory instruction and only at the ratios defined in the above items. This includes individually or in any combination.

~~3.0 6.0~~ The Driver Education teachers shall use the "Teachers' Guide for Driver Education" developed by the Department of Education for classroom instruction and behind-the-wheel laboratory instruction time. Teachers should include student activities requiring reading, writing and research as part of the Driver Education curriculum.

~~4.0 7.0~~ ~~Beginning with the 1998-99 school year, grades for the Driver Education Program~~ Final grades for the forty-four hour driver education course shall be either pass or fail. Districts Schools may grant one-fourth (1/4) credit for successful completion of the minimum hours in both the classroom and the behind-the-wheel laboratory experience. The one fourth credit for driver education may be included as part of the elective credits counted toward graduation.

~~4.1 7.1~~ ~~Pass/Fail grades for publication in the Department of Education "Report of Educational Statistics"~~ must be received by the Department of Education no later than June 30<sup>th</sup> for Regular Driver Education Programs and August 31<sup>st</sup> for Summer Driver Education Programs. Final grades will be maintained by the Department for a seven-year period.

~~8.0~~ ~~During the school day, automobiles purchased by a district or leased from Fleet Services or leased directly from a dealership using state funds allocated for Driver Education shall be used solely for the instruction of students enrolled in Driver Education.~~

5.0 Automobiles purchased, leased from Fleet Services or leased directly from a dealership using state funds allocated for driver education shall be used solely for the instruction of students enrolled in Driver Education; except that a school

district or charter school may permit a driver education teacher to drive such automobile to and from the teacher's place of residence when the school district or charter school determines that it would be unsafe to store the automobile overnight at the school; and further provided that in the case of a private school driver education teacher, the Education Associate for Driver Education and Physical Education at the Department of Education may permit the teacher to drive the automobile to and from school from the teacher's place of residence when it appears that it would be unsafe to store the automobile overnight at the school.

6.0 All public and non-public high schools with enrollments of twenty-five or more sophomore students shall offer driver education as an integral part of the curriculum.

**See 1 DE Reg. 964 (1/1/98)**

## Educational Impact Analysis

### 601 School/Police Relations

#### A. Type Of Regulatory Action Required

Amendment to Existing Regulation

#### B. Synopsis Of Subject Matter Of The Regulation

The Secretary seeks to amend regulation 601 School Police Relations in order to include charter schools and alternative schools in the requirements of the regulation and to clarify the list of school crimes that must be reported to the Department of Education, in addition to those required to be reported by law, to reflect current conditions. Some incidents of student misconduct have been removed from the list and bomb threats, alcohol possession and use and bullying have been added to the list. A definition of bullying has been added in 5.0. The requirement in 2.0 for DOE approved training was removed since the training is done locally with technical assistance from DOE if requested.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not directly address student achievement. However, continued coordination between school and police agencies is expected to improve overall school climate, thereby leading to improved student performance and increased equity and fairness among students.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not directly address student achievement. However, continued coordination between school and police agencies is expected to improve overall school climate, thereby leading to improved student performance and

increased equity and fairness among students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses processes and procedures that contribute to student safety in the schools.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses processes and procedures that contribute to ensuring that all students' legal rights are respected.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the amended regulation? There is minimal additional cost.

### **601 School/Police Relations**

~~1.0 All local school districts shall establish a policy on school/police relations. Each school district shall develop a Memorandum of Agreement (MOA) between the district board of education and each police department which provides police coverage to the district. Each district's MOA shall be in a form substantially similar to the Model Memorandum of Agreement (MMO) Between Board(s) of Education and Law Enforcement Agencies in the State of~~

~~Delaware as approved by the Secretary of the Department of Education. Section 6 of the MMO must be included in each district's MOA verbatim. Districts shall submit a signed copy of its current MOA and be submitted to the Department of Education.~~

1.0 All local school districts, charter schools and alternative schools or consortia shall establish a policy on school/police relations. Each school district, charter school and alternative school or consortium shall develop a Memorandum of Agreement (MOA) with each police department which provides services to it. Each MOA shall be in a form substantially similar to a Model MOA as developed, approved and from time to time revised by the Department of Education.

~~2.0 Each school administrator involved in the student disciplinary process shall complete DOE approved training in school/police relations and in student disciplinary matters in general and, thereafter, such additional training in those areas as the Department of Education may from time to time prescribe.~~

~~2.0 3.0~~ Each school district, charter school and alternative school or consortium shall, at the time of hiring and at the beginning of each school year thereafter, advise each school employee (as that term is defined in 14 Dolc §4112) of his/her duty to report school crimes and the penalty for failure to so report.

~~3.0 4.0~~ The Superintendent of each school district and program administrator for each charter school and alternative school, or his/her designee, shall report to the ~~DOE~~ Department of Education all school crimes required to be reported pursuant to 14 Dolc §4112, and any subsequent amendment thereto. Such reports shall be made on ~~the Student Conduct Report (SCR) form to be provided by forms as designated~~ by the Department of Education and filed with the Department of Education within the time prescribed by statute.

~~5.0 In addition to those school crimes required to be reported pursuant to statute, the Superintendent of each school district shall report to the Department of Education the following incidents of misconduct.~~

4.0 In addition to those school crimes required to be reported pursuant to statute, the Superintendent of each school district and program administrator for each charter school and alternative school or consortia shall report to the Department of Education incidents of misconduct 4.1 through 4.7. Such reports shall be made on forms as designated by the Department of Education and filed with the Department of Education not later than five working

days following the incident of student misconduct.

- 5.1 Pornography, exhibitionism, peeping
- 5.2 Criminal mischief
- 5.3 Evidence of organized gambling offenses
- 5.4 Offenses involving school property
- 5.5 Felony theft offenses
- 5.6 Forgery offenses
- 5.7 Fraud offenses
- 5.8 Tampering with public records
- 5.9 Computer/recorded sounds
- 5.10 Disorderly conduct/fighting
- 5.11 Offensive touching (non-employee)
- 5.12 Terroristic threatening (non-employee)

- 4.1 Pornography, possession and production
- 4.2 Bomb threats
- 4.3 Criminal mischief (vandalism)
- 4.4 Tampering with public records
- 4.5 Alcohol, possession and use
- 4.6 Felony theft (\$1,000 or more)
- 4.7 Bullying

5.0 For purposes of the reporting required pursuant to 4.7 of this regulation, "Bullying" is defined as when one person, or a group of persons, targets another person with repeated direct or indirect negative actions over a period of time which are harmful to the victim either emotionally or physically. A negative action occurs when a person knowingly inflicts, or attempts to inflict, physical or emotional injury or discomfort upon another person.

~~6.0 Such reports shall be made on the SCR form to be provided by the Department of Education and filed with the Department of Education not later than five working days following the incident of student misconduct.~~

**See 1 DE Reg. 511 (11/1/97)**

### Educational Impact Analysis

#### **707 Salary Continuation:operation Noble Eagle And Enduring Freedom**

#### **A. Type Of Regulatory Action Required**

New Regulation

#### **B. Synopsis Of Subject Matter Of The Regulation**

The secretary seeks approval of the new regulation 707 Salary Continuation: Operation Noble Eagle and Enduring Freedom in order to comply with the 141<sup>st</sup> General Assembly Senate Bill 272 and Senate Amendment 1 entitled An Act to Amend Title 14 and Title 29 Relating to Leave of

Absence for Military Service. The purpose of this bill is to assure that school district employees will continue to receive state compensation (less military service compensation) for time served on active duty in Operation Noble Eagle and Enduring Freedom.

#### **C. Impact Criteria**

1. Will the regulation help improve student achievement as measured against state achievement standards? The new regulation addresses salary compensation not achievement standards.

2. Will the regulation help ensure that all students receive an equitable education? The new regulation addresses salary compensation not equity issues.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses salary compensation not health and safety issues.

4. Will the regulation help to ensure that all students' legal rights are respected? The new regulation addresses salary compensation not students' legal rights.

5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The 141<sup>st</sup> General Assembly, Senate Bill 272 requires the Department of Education to make regulations on this issue.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no

additional cost to the State and to the local school boards for compliance with the regulation?

**707 Salary Continuation: Operation Noble Eagle and Enduring Freedom**

1.0 Principals, teachers and other employees of a school district called to active military service in connection with Operation Noble Eagle and/or Operation Enduring Freedom shall be eligible for continuation of their state share of salary, less any military compensation received during the initial period of active duty.

2.0 Employees receiving continuation of their state share of salary shall be placed either on a "Military Leave Without Pay" if they are to receive their pay when they return from active duty or on a "Military Leave With Pay" if they are to receive their biweekly pay while on active duty. They will not accumulate holidays, sick leave, or annual leave while in a leave status. In accordance with state and federal statutes, employees will be credited with state service for the amount of time on military leave upon their return to active employment.

3.0 The amount of salary continuation provided through this regulation shall apply to the state share of salary only. However, a local school district may elect to provide salary continuation for the local district portion of the employee's salary.

3.1 The state share of compensation shall be limited to the state share of the base salary as calculated from the appropriate salary schedule, administrative supplements and all other stipends as provided for in 14 Del.C. Chapter 13.

3.2 Military compensation shall include base salary, basic allowance for quarters (BAQ), basic allowance for subsistence (BAS), hazardous duty pay and all other supplemental compensation. The military compensation shall be multiplied by the ratio of state share of compensation to total compensation in determining the state portion of the salary continuation.

3.3 Salary continuation checks shall be subject to applicable federal, state, and city of Wilmington taxes and FICA, if the employee is in a FICA eligible position. Pension contributions, if the employee is in a pension eligible position, and garnishments will also be made from the salary continuation checks. Other deductions from the salary continuation checks will be made in accordance with Department of Education guidelines.

4.0 Claims must be filed within 90 days of release from active duty or by Tuesday November 12, 2002 whichever is later.

4.1 Salary continuation shall be effective retroactive to September 11, 2001.

4.2 The request for continuation of salary shall be initiated by the employee. Employees must contact the school district personnel office for a copy of the forms and instructions for filing a claim.

4.3 Claims shall be processed in accordance with the procedures and forms developed by the Department of Education.

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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)

**PUBLIC NOTICE**

**Delaware Medicaid/Medical Assistance Programs**

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, the 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 establish a client co-pay amount for non-emergency medical transportation services.

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 October 31, 2002.

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

**Summary of Proposed Regulation - Non-Emergency Transportation Co-Pay Policy**

Non-emergency transportation is provided to all eligible Medicaid clients under the Medicaid State Plan as an "Administrative" activity and cost. Non-emergency transportation is also provided to non-Medicaid clients participating in the DSS Chronic Renal Disease Program. Clients eligible for the Delaware Healthy Children Program are not covered for non-emergency transportation services. Non-emergency transportation services (NET) are provided under an Administrative contract with a transportation broker.



Under the Transportation Broker contract, non-emergency transportation is provided free-of-charge to all eligible Medicaid and CRDP clients who use public bus passes or paratransit services through the Delaware Transit Corporation.

All other means of transportation require a standard co-payment of \$1.00 per trip. A trip is defined as transportation "to" or "from" a medical service. A round-trip would incur a \$2.00 co-payment on the part of the eligible client.

All eligible clients other than those excluded above, are liable for the applicable co-pay amount. 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 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:

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**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE**  
**Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, the Delaware Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement policy changes to Section 9060 of the Division of Social Services Manual. The purpose of this regulatory action is to mandate the use of utility standards.

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 October 31, 2002.

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

**Summary of Proposed Change: DSSM 9060 - Income Deductions**

**Authority:** 7 CFR 273.9 and Section 4104 of Public Law 107-171

**Purpose:** Households with utility expenses will be required to use the appropriate mandatory utility standard regardless of the actual costs of their expenses. The intent is to stop prorating the allowances when more than one family shares expenses.

**Reason:** Mandating the use of utility standards will

reduce food stamp errors and reduce the number of verifications currently needed. Eligible clients that have the allowances currently prorated may get an increase in food stamps.

**9060 Income Deductions**

F. Shelter Costs - Monthly shelter costs in excess of 50% of the household's income after all other deductions in A, B, and C above have been allowed. The shelter deduction must not exceed the maximum excess shelter deduction limit. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the maximum excess shelter deduction.) This is applicable unless the household contains a member who is age sixty (60) or over, or disabled per DSSM 9013.1. Such households will receive an excess shelter deduction for the monthly costs that exceeds 50% of the household's monthly income after all other applicable deductions.

Shelter costs will include only the following:

1) Continuing charges for the shelter occupied by the household, including rent, mortgages, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments. A mortgage is defined as any loan, which uses the house as collateral.

Households required to pay the "last month's rent" along with the first month's rent before they can move into the dwelling can claim both amounts in the month that the household is billed.

For example, a client rents an apartment in January and must pay January's and the next December's rent in January. Both rental amounts can be used for January's food stamp budget. A rent deduction would not be allowed in December since it was paid in January.

Households required to pay a security deposit before they move into a dwelling cannot claim the deposit as a shelter cost.

For example, a client rents a home and must pay a \$450 security deposit and the first month's rent before she moves in. The security deposit will be refunded when she moves out if the home is in good condition. She cannot claim the deposit as a shelter cost for food stamp purposes.

2) Property taxes, State and local assessments and insurance on the structure itself, but no separate costs for insuring furniture or personal belongings. If separate insurance costs for furniture or personal belongings are not identified, use the total.

3) ~~The costs of:~~

- ~~fuel for heating or air conditioning costs for cooling;~~
- ~~electricity or fuel used for purposes other than heating or cooling;~~
- ~~water;~~

- sewerage;
- well installation and maintenance;
- septic tank system installation and maintenance;
- garbage and trash collection;
- all service fees for one telephone, including, but not limited to basic service fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and
- fees charged by the utility provider for initial installation of the utility.

One time deposits cannot be included.

4) There are two standard utility allowances.

The two annualized utility allowances available:

a. The limited utility allowance (LUA) is available to households that do not pay for heat or air conditioning cooling, but incur costs that include electricity and fuel for purposes other than heating or cooling, water sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. To get the LUA, the household must incur expenses for at least two utilities, like phone and electric, phone and water, gas cooking and non-heat or cooling electric, or water and trash collection. A household living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs can receive the LUA.

b. The heating and cooling utility allowance (HCSUA) is available to households with heating or air conditioning costs separate from their rent or mortgage. Other households eligible for the HCSUA include:

- Residents of private rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual usage or who are charged a flat rate;
- Households receiving energy payments under the Low Income Home Energy Assistance (LIHEA);
- Households receiving direct or indirect energy assistance payments, other than LIHEA, that is excluded as income and who continue to incur any out-of-pocket heating or cooling expenses during any month in the certification or recertification period.

Heating costs must be verified to use the HCSUA. For cooling costs, you must verify the utility, like electricity, that provides the air conditioning. Accept the household's statement that they pay for cooling unless it is questionable.

Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility allowances.

Qualifying households not opting to itemize actual utility costs will be assigned the appropriate standard utility allowance.

If the household is billed separately for only telephone, the household is not entitled to claim either standard utility allowance.

The standard telephone allowance will be used (for households billed only for a telephone regardless of their actual cost). (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the telephone allowance.)

If a household is billed only for one utility, not heating/cooling or telephone, the household is allowed the actual cost for that utility.

Prorating the SUA

When households live with and share utility expenses with other individuals or households, whether they are participating in the Food Stamp Program or not, the agency will prorate the standard utility allowances based on the number of households sharing the utility costs.

The following are examples of prorating the SUA:

Two (2) households share a residence. They both contribute towards the utility costs. The food stamp household pays \$50 towards the costs each month. The food stamp household is entitled to one-half of the SUA.

A food stamp household shares an apartment and utilities with another individual. The food stamp household pays two-thirds of the utility costs. The household is entitled to one-half of the SUA.

Three (3) households share a residence and utility expenses. The food stamp household pays a different amount each month based on the amount of the costs. The food stamp household is entitled to a one-third proration of the SUA.

3. Mandatory Utility and Phone Allowances

A. Heating and Cooling Standard Utility Allowance (HCSUA) – The HCSUA is mandatory for:

- households that incur heating or cooling costs separate and apart from their rent or mortgage payments;
- residents of private rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual usage or who are charged a flat rate;
- households receiving energy payments under the Low Income Home Energy Assistance (LIHEA); and
- households receiving direct or indirect energy assistance payments like HUD utility reimbursements, other than LIHEA, that is excluded as income and who continue to incur any out-of-pocket heating or cooling expenses during any month in the certification or recertification period.

Heating costs must be verified to use the HCSUA. For cooling costs, you must verify the utility, like electricity, that provides the air conditioning. Accept the household's statement that they pay for cooling unless it is questionable.

B. Limited Utility Allowance (LUA) – The LUA is mandatory for:

- households that incur costs for two nonheat or noncooling utilities like electric, gas cooking, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection; and
- households living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs.

C. One-utility Standard – The one-utility standard is mandatory for households that incur only one non-heat, non-cooling, or non-phone utility.

D. Telephone Allowance – The standard telephone allowance will be used for households billed only for a telephone regardless of their actual cost.

Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility and phone allowance amounts.

There is no proration of the utility or phone allowances when more than one household shares living quarters. This means when two or more household share living costs each household may receive the full utility or phone allowance.

5) The shelter costs of the home if not occupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

A household that has both an occupied home and an unoccupied home is only entitled to one standard utility allowance.

6) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

## **DIVISION OF SOCIAL SERVICES**

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

### **PUBLIC NOTICE Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement policy changes to Section 9085 of the Division of Social Services Manual. This regulatory action is related to the six-month reporting requirements for certified food stamp households.

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 October 31, 2002.

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

### **Summary of Proposed Change: DSSM 9085 - Reporting Changes**

**Authority:** Section 4104 of the Farm Security and Rural Investment Act of 2002

**Purpose:** To have all households under the six-month reporting requirements, with certain exceptions, report only when their income increases above 130% of the Federal Poverty Level.

**Reason:** This option will decrease client caused errors from failing to report changes.

### **9085 Reporting Changes**

[273.12]

Certified food stamp households are required to report the following changes in circumstances:

#### Six-Month Reporting Requirements

The following rReporting requirements are for all households with countable earned income and six-month certification periods except those households where all members are elderly or disabled without earned income.

homeless, or migrant or seasonal farmworkers:

- Households are required to only report income changes when the monthly income exceeds 130 percent of the poverty income guideline for the household size that existed at the time of certification or recertification.
- When a household's monthly income exceeds the 130 percent of the poverty income guideline, the household is required to report that change within ten days after the end of the month that the household determines the income is over the 130 percent amount.
- Households will not have to report any changes in the household composition, residence and resulting changes in shelter costs, acquisition of non-excluded licensed vehicles, when liquid resources exceed \$2000 and changes in the legal child support obligation.

Additional reporting requirement for ABAWD individuals:

- Adults living in a home without any minor children, who are getting food stamps because they are working over 20 hours a week, must report when they start working less than 20 hours per week.

Reporting requirements for households not eligible for the six-month reporting requirements above without countable earned income:

- Changes in the sources of or in the amount of gross unearned income of more than \$25, except changes in the public assistance grants. Since DSS has prior knowledge of all changes in the public assistance grants, action shall be taken on the DSS information. Changes reported in person or by telephone are to be acted upon in the same manner as those reported on the change report form;
- All changes in household composition, such as the addition or loss of a household member;
- Changes in residence and the resulting changes in shelter costs;
- The acquisition of a licensed vehicle not fully excludable under DSSM 9051 (for non-categorically eligible households);
- When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of \$2,000 (for non-categorically eligible households);
- Changes in the legal obligation to pay child support; and
- Changes in work hours that bring an ABAWD individual below 20 hours per week, averaged monthly.

Certified households must report changes within ten (10) days of the date the change becomes known to the

household.

An applying household must report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, as provided in this Section, which occur after the interview but before the date of the notice of eligibility, must be reported by the household within ten (10) days of the date of the notice.

Only the reporting requirements in this Section and no other reporting requirements can be imposed by the Division.

## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Division of Social Services Temporary Assistance for Needy Families

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 is proposing to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193). The entire plan and all attachments are available upon request via mail or fax.

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 October 31, 2002.

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

#### Renewal: Delaware State Plan For TANF

This new State Plan is submitted to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193).

Delaware has been operating its TANF program under Section 1115 waivers from the Social Security Act, as approved on December 12, 1995, and amended on September 27, 1996. Delaware received approval to continue its waiver program based on the Waiver Inconsistency Certification submitted by the Governor on September 27, 1999. Complete information about the waivers we are continuing is contained in the Waiver Inconsistency Certification.

Five years have passed since the enactment of PRWORA, and the current authorization of the TANF program is scheduled to end on September 30, 2002, which is coincidentally the last day as the Delaware waiver is scheduled to terminate. With reauthorization legislation still pending federal action, Delaware has prepared this State Plan renewal with much unknown information. Enactment of either the House or Senate Finance Committee Reauthorization Bill would make many changes in TANF, but Delaware cannot build such changes into this Plan without knowing which of the many conflicting provisions will prevail. In addition, one provision that Delaware has reviewed with particular interest is the authority provided to states by Section 711 of the Senate Finance Bill, to continue to operate TANF using section 1115 waiver provisions. Enactment of this proposal would permit Delaware to continue to operate TANF using the Delaware provisions that DHHS agreed were inconsistent with TANF based on our 1999 Waiver Inconsistency Certification.

Delaware's TANF program has been extremely successful. From January 1997, when our waiver was implemented statewide, through December, 2001, we achieved a caseload reduction of 46 percent. Although our rate of caseload decline has flattened somewhat recently due to the economic downturn, we are certain that this temporary slow-down will be short-lived. Delaware's TANF program requires immediate work from caretakers in time-limited families; those who cannot secure unsubsidized employment immediately are placed in a Work for Your Welfare component.

Since the Senate Bill would permit our waivers to continue, and Delaware is unable at this time to plan what alternative provisions might be required by enactment of reauthorization legislation, we have opted to continue operating Delaware's TANF program using our current waiver provisions. In making this decision, Delaware has carefully considered any potential risks to our ability to be in compliance with TANF rules, in the event that the waivers are not extended: We have formulated contingency plans that will ensure that the State remains in compliance with whatever TANF requirements are enacted. Delaware's contingency plans include the potential for temporary movement of some families who are performing work services that would not count as participation under current TANF rules, into segregated or separate state programs using

maintenance of effort (MOE) funding.

Delaware plans to closely watch the progress of federal TANF reauthorization and to submit any needed Amendments to this State Plan as quickly as possible after new legislative requirements become known.

### **Goals, Results And Public Involvement**

#### **Goals**

The goal of Delaware's TANF Program is to provide a welfare system based on a philosophy of mutual responsibility. In working toward that goal, the State will strive to place individuals in private or public sector unsubsidized employment that enables them to enter and maintain meaningful jobs and interrupts the intergenerational welfare dependency cycle. To that end, TANF creates positive incentives for families to become employed, and expects families to accept responsibility to become self-supporting.

Five key principles form the foundation of TANF:

1. Work should pay more than welfare.
2. Welfare recipients must exercise personal responsibility in exchange for benefits.
3. Welfare should be transitional, not a way of life.
4. Both parents are responsible for supporting their children; and
5. The formation and maintenance of two-parent families should be encouraged, and teenage pregnancy and unwed motherhood should be discouraged.

#### **Involvement of Local Governments, the Public, and Private Sector Organizations**

Welfare Reform in Delaware has a long history of active involvement and partnership between and among state and local governments and the private sector. Over a multi-year period, Delaware has engaged government, the public and the private sector in dialog about the welfare system and ways to change it.

Since its introduction in January of 1995, in the form of a waiver request, all sectors have had the opportunity to influence Delaware's welfare reform program in a series of public meetings and forums.

A collaborative partnership among the Department of Health and Social Services (DHSS), Department of Labor (DOL), and the Delaware Economic Development Office (DEDO) worked to develop Delaware's original TANF program; and the Delaware Transit Corp (DTC) has joined these components in planning any changes required.

From 1995 to the present, the TANF collaborative team has involved other stakeholders in a number of ways. Community partner involvement runs the gambit from

support letters for TANF-related grants, to participating in the resultant project planning and implementation, to membership on an initiative's advisory/oversight council. Partnerships include the City of Wilmington's HOPE VI subsidized housing project; the Delaware Ecumenical Council on Children and Families' rural outreach project; the Division of Vocational Rehabilitation's employment efforts with people with disabilities; the National Corps/VISTA welfare-to-work mentoring program; and the Division of Substance Abuse and Mental Health's Youth Offender Re-entry initiative. Presentations on TANF are ongoing by request to the various Section 8 and

Public Housing entities; to non-profits such as the First State Community Action Agency and the Latin American Community Center; and to local churches, healthcare centers, childcare providers, schools and youth centers (e.g., Boys & Girls Club).

The Social Services Advisory Council, consisting of educators, health professionals, religious leaders, representatives of community-based organizations, advocates, and government leaders, all appointed by the Governor, continues to provide advice on improving the delivery of Delaware's social programs. In addition, the Division of Social Services has regularly conducted focus groups with clients in all counties of the States, most recently in 2000 and 2001.

The requirement for a 45-day public comment period was accomplished by making the plan available for public review and comment through the following means:

- The State Plan was published in the Delaware Register on October 1, 2002;
- The State Plan was published on the Delaware web site at <http://www.state.de.us/dhss/dhss.htm> on September 15, 2002; and
- Stakeholder groups as represented by the Social Services Advisory Council, the TANF Employer Committee, and TANF program contractors were provided with individual copies of the Plan.

Delaware is proud to say that the administration addressed and continues to build on the themes the public identified not only in TANF but in many other areas of public policy that support low income families, including the Administration's economic development, education, and family policies. A brief summary of where public policies intersect with welfare system change include:

- easing transition from welfare to work by:
  - passing through to TANF recipients a portion of the child support collected
  - enhancing child support collection strategies and achieving record child support collections
  - changing the way the welfare system budgets income so that families go off assistance only after

achieving income at 75 percent of the federal poverty level

- increasing Delaware's investment in child care so that there is no subsidized child care waiting list for eligible working families with income up to 200% of the federal poverty level
- increasing the income threshold below which individuals are not required to file personal income tax returns to \$15,449 for married couples and \$9,399 for single individuals; increasing the personal credit from \$100 to \$110; and reducing the tax rate for all individuals, other than the top tax bracket, by .4 percentage points
- increasing the State minimum wage to \$6.15 an hour as of September, 2000.
- ensuring access to health care for Delaware families through:
  - providing Medicaid coverage to uninsured adults as well as all children in families with income at or below 100 percent of the federal poverty level
  - providing medical coverage for uninsured children in families with income up to 200% of the federal poverty level, through the Delaware Healthy Children Program (DHCP)
  - providing transitional Medicaid for two years for families with children who exit welfare, at incomes up to 185% of poverty.
- improving education for children by:
  - expanding access to the Early Childhood Education Program (ECAP)
  - providing extra instructional time for low-achieving students
  - operating the Parents as Teachers program statewide
  - operating the Mentoring for Students program for students who need an adult role model
  - implementing a comprehensive program to ensure safe, disciplined schools
  - raising academic standards and graduation requirements and pushing for school choice and charter schools
- recruiting, through the Delaware Economic Development Office (DEDO), new companies and maintaining existing employers with good jobs that provide career opportunities
- strengthening Delaware's families by:
  - helping many thousands of welfare recipients go to work, and providing continuing supports to working families
  - initiating voluntary paternity establishment
  - providing transportation support for job seekers and new workers
  - establishing more effective welfare to work

programs with a work first approach to employment and training services, while providing opportunities for educational advancement

- enabling families with both parents to receive benefits and services
- participating with community-based organizations and the faith community to support targeted, fragile populations.
- discouraging teen pregnancy through the Alliance on Adolescent Pregnancy Prevention
- extending home visits to all first time parents following a child's birth
- cracking down on domestic violence to protect vulnerable women and children
- enforcing the Sexual Predator Act to protect vulnerable youth and prevent teen pregnancy.

### **Results to be Measured and Methods for Measuring Progress**

Delaware has committed to evaluate its welfare system. The State has a multi-year contract with Abt Associates to evaluate TANF. We continued to measure:

- the number of individuals working;
- the number of individuals sanctioned;
- the caseload size; and
- the number of months of receipt of TANF.

Recent reports by the evaluator include:

- *The ABC Evaluation - A Better Chance for Welfare Recipients? What the Public Thinks*, March, 1999;
- *The ABC Evaluation - Enrollment of Families in Delaware's A Better Chance Program: A Report on the First Three Years*, March, 1999
  - *The ABC Evaluation - Carrying and Using the Stick: Financial Sanctions in Delaware's A Better Chance Program*, May, 1999.
  - *Will Welfare Reform Influence Marriage and Fertility? Early Evidence from the ABC Demonstration*, June, 1999.
  - *The ABC Evaluation - Verifying School Attendance of Welfare Recipients' Children*, June 2000
- *The ABC Evaluation - Impacts of Welfare Reform on Child Maltreatment*, August 2000
  - A report, *Turning the Corner -- ABC at 4 Years*, November 2000
  - *The DABC Evaluation How Have They Fared? Outcomes After Four Years for the Earliest DABC Clients*, August 2001
  - *The DABC Evaluation Institutional Aspects of Welfare Reform in Delaware*, August 2001

These reports can be located at <http://www.abtassoc.com/reports/welfare-download.html>.

Note that at one time, Delaware's TANF program was

known as A Better Chance or ABC.

Delaware is also one of four states participating in a Welfare Reform and Family Formation research project designed to provide an increased understanding of how changes in welfare policies have affected childbearing, marriage, and other family structure factors. Abt Associates is teaming with a University of California research team in analyzing random assignment data collected in Delaware.

### **Ensuring Accountability**

TANF is administered by the Division of Social Services (DSS), State of Delaware Department of Health and Social Services. While DHSS is the lead agency, program administration is accomplished through a partnership of DSS, Department of Labor (DOL), Delaware Economic Development Office (DEDO), and the Delaware Transit Corp (DTC).

Delaware completed a massive automation enhancement effort, to incorporate new technology in a complete redesign of DCIS. DCIS II is a large-scale, client/server, interactive eligibility determination and benefit issuance system. DCIS II automates: client registration, application entry, eligibility determination, benefit calculation, benefit issuance and work programs for more than 100 variations of cash, Medicaid and food stamp programs, administered by the Delaware Division of Social Services. DCIS II provides automated program support and supports the information needs at the state and local office level. DCIS II also incorporates program changes required by P.L. 104-193.

The most recent enhancements to DCIS II provide for on-line real-time communications between DSS workers and Employment Connection contractors. DSS now provides automated referral of non-exempted individuals to contractors, contractor staff are now able to send automated alerts to DSS workers, and contractors and DSS workers are able to share case notes about participants. In addition, contractors now directly enter hours of work participation into the system, facilitating the computation of grants for Work for Your Welfare participants.

Delaware is participating in the income and eligibility verification system (IEVS) required by section 1137 of the Social Security Act.

In addition, the State operates a fraud control program and will disqualify individuals found to have committed an intentional program violation based on findings of administrative disqualification hearings and findings of prosecution or court actions. Delaware has adopted the penalties for intentional program violations used by the Food Stamp Program; 12 months for the first offense and 24 months for a second instance. An individual committing a third offense is permanently disqualified.



## NEEDY FAMILIES

### Definition of Needy Families

For program purposes, needy families are a child and or child(ren) and caretaker relatives whose combined income and financial resources are not equal to or higher than the standards established by the State. The following sections describe these standards and how they are applied to applicants and recipients.

### Income and Resource Rules for Determining Need

For purposes of determining need Delaware will continue to utilize the already established income and resource rules of the TANF program. The following specific features of Delaware's TANF program shall continue to apply:

- The equity value of a primary automobile up to \$4,650 is excluded in determining the household resources.
- The cash value of a life insurance policy will be excluded.
- In addition to the current resource limit, families will be allowed to establish Special Education and Business Investment Accounts (SEBIA) of up to \$5,000.00, including interest.
  - Families will contribute directly to their SEBIAs.
  - Funds in such accounts will not be considered as a resource. Withdrawals from such accounts must be for approved purposes, as defined in TANF. If funds are withdrawn for non-approved purposes, the money will be counted as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include, but are not limited to: dependent care expenses, security deposit for an apartment or house, or vehicle repair costs.
- Financial Assistance received from school grants, scholarships, vocational rehabilitation payments, JTPA payments, educational loans, and other loans that are expected to be repaid will not be counted as income for TANF program purposes. Also, other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses will be excluded.
  - Earnings of dependent children, regardless of student status, will be disregarded in determining the family's eligibility and the amount of TANF benefits.
  - A one-time bonus payment of \$50.00 will be paid from TANF funds to eligible teens who graduate from high school by age 19. This bonus, which will be paid directly to the high school graduate, will be disregarded as income.

### Income Tests to Determine Eligibility

There are two income tests to determine financial eligibility. The first test is a gross income test, and the second is a net income test.

- Comparing the family's income to 185% of the applicable standard of need is the gross income test. Both applicants and recipients must pass this income test.
- The other income test compares a family's income, after applying certain disregards, to the applicable standard. This is a net income test.
  - For applicants, defined as families who have not received assistance in at least one of the four months immediately preceding the application, the net income is compared to the payment standard.
  - For recipients, defined as families who have received assistance in at least one of the four months preceding the application or are current recipients, the net income is compared to the standard of need.
  - A family's income must be less than the gross and net income limits to be financially eligible for TANF. Once eligibility is established, the grant amount is determined.
  - Gross income is the total of the earned and unearned income.
  - Wages and self-employment income are examples of earned income.
  - Social Security benefits, child support, and stepparent income are examples of unearned income. Stepparent income will be included if the child's natural parent lives in the home.

Exhibit 1 contains the calculation steps for TANF applicants.

### Exhibit 1: Determining Applicant Eligibility for TANF Benefits

Step 1) The gross income will be compared to 185% of the applicable TANF standard of need. Assistance will be denied if the income exceeds 185% of the applicable TANF standard of need.

Step 2) the standard work deduction (\$90.00) and child care expenses will be subtracted from each wage earner's earnings. The applicant's net earned income will be added to unearned income to determine the net family income. The net income will be compared to the payment standard. Assistance will be denied if the income exceeds the payment standard.

If the income is less than the payment standard;

Step 3) The standard work deduction (\$90.00), child care, and the 30 plus 1/3 disregard (if applicable) will be subtracted from each earner's earned income. This net

earned income will be added to the unearned income to calculate the family's net income. The net income will be subtracted from the applicable standard of need to obtain the deficit. The deficit will be multiplied by 50%; the number calculated is the remainder. The grant is either the remainder or the payment standard whichever is less.

Exhibit 2 provides the calculations for TANF recipients.

#### **Exhibit 2: Determining Recipient Eligibility for TANF Benefits**

Step 1) The gross income will be compared to 185% of the applicable TANF standard of need. Assistance will be denied if the income exceeds 185% of the applicable TANF standard of need;

Step 2) The standard work deduction (\$90.00), child care, and the 30 plus 1/3 disregard (if applicable) will be subtracted from each earner's earned income. The net earned income will be added to unearned income to calculate the family's net income. Assistance will be denied if the income exceeds the standard of need.

If the income is less than the standard of need;

Step 3) The net income will be subtracted from the applicable standard of need; the number calculated is the deficit. The deficit will be multiplied by 50%; the number calculated is the remainder. The grant is either the remainder or the payment standard whichever is less.

The TANF standards apply to all benefits and services provided to needy families except for Emergency Assistance, discussed on page twelve (12) and **Attachment A**; child care, described on pages three (3), twelve (12), and twenty-four (24). Delaware has established separate need standards for these programs.

#### **Fill-the-Gap Budgeting**

Fill the Gap budgeting will be used for recipient families to determine continued eligibility and the amount of TANF benefits, so that families can retain more of their income. By having a standard of need which is greater than the payment standard a "gap" is created. The difference between the family's income and the need standard is called the deficit. The state pays a percentage of the deficit up to a maximum benefit level or payment standard.

- Three standards will be used in financial eligibility calculations: 185% of the standard of need, the need standard and the payment standard. 185% of the standard of need will be used in the gross income test.

- The standard of need used is 75% of the Federal Poverty level. This includes allowances for food, clothes, utilities, personal items, and household supplies.

#### **Diversion Assistance Program**

Delaware operates a Diversion Assistance program intended to help a family through a financial problem that jeopardizes employment and which, if not solved, could result in the family needing regular ongoing assistance. The Diversion Assistance payment will not exceed \$1,500 or the financial need resulting from the crisis, whichever is less. Diversion Assistance, which is available to both applicant and recipient families, is not a supplement to regular assistance but is in place of it.

Eligibility requirements for Diversion Assistance are as follows:

- the parent must be living with his/her natural or adopted children;
- the family has not received a Diversion Assistance payment in the past 12 months;
- the Diversion Assistance amount will alleviate the crisis;
- the parent is currently employed but having a problem which jeopardizes the employment or has been promised a job but needs help in order to accept the job;
- the family's income would qualify the family for TANF as a recipient household. (When calculating eligibility for Diversion Assistance the family is given the \$30 plus 1/3 disregard, if applicable and the family's net income is compared to the Standard of Need.);
- the family's resources would qualify for TANF.

The Diversion Assistance payment may be used for items and/or services such as but not limited to:

- transportation (such as vehicle repairs, tires, insurance, driver's license fee, gas);
- clothing such as uniforms or other specialized clothing and footwear or other employment-related apparel;
- tools and equipment;
- medical expenses not covered by Medicaid (e.g. eye glasses);
- union dues, special fees, licenses or certificates;
- up-front costs of employment such as agency fees and testing fees;
- unpaid child care expenses which, if they remain unpaid, preclude the provision of future child care;
- relocation expenses for verified employment in another county or state. These expenses may include moving equipment rental, gas, and lodging for the days of the move and the first month's rent, rental and utility deposit.

Diversion Assistance payments will be made to a third party vendor, not the parent. When the parent receives Diversion assistance (s)he agrees to forego TANF cash assistance as follows:

- \$0 through \$500.99 for 1 month;
- \$501 through \$1,000.99 for 2 months;
- \$1,001 through \$1,500 for 3 months.

The once a year limitation on Diversion Assistance and the period of ineligibility can be eliminated when good cause exists. Good cause exists when circumstances beyond the client's control make re-application for Diversion Assistance for TANF necessary. Examples of good cause are the employer lays off the parent or a serious illness forces the parent to stop working.

The family is eligible for TANF related Medicaid in the month in which the Diversion Assistance payment is made. The family would remain eligible for Section 1931 Medicaid (TANF related Medicaid) until the family's income exceeds the Standard of Need. If the family's income exceeds the standard of need because of increased earnings or loss of the \$30 plus 1/3 disregard and the parent is working, the family may be eligible for Transitional Medicaid.

Diversion Assistance does not count as income in the child care programs, and families receiving Diversion Assistance may also be eligible to receive child care under Delaware's working poor child care program if their income does not exceed 200 percent of the federal poverty level. Receipt of Diversion Assistance would not bar receipt of Food Stamp benefits, and Food Stamp applications will be actively solicited from individuals requesting diversion assistance.

Diversion Assistance does not count against the time limit on receipt of assistance.

The family will not have to assign child support to the state. Child support received by the parent or the Division of Child Support Enforcement (DCSE) will belong to the family. DCSE will not use child support to offset or reimburse the Diversion Assistance.

Diversion Assistance is not intended to replace TANF's Emergency Assistance Program or Supportive Services payments, which will continue. The TANF Emergency Assistance Program provides identical benefits that were provided under Delaware's State Plan in effect on August 21, 1996. (See Attachment A) Rather, Diversion Assistance expands the opportunities to access as well as the value of services to support employment.

### **Eligibility For Assistance Under The Tanf Program**

#### **Conditions of Eligibility**

If the income tests described above are met, a family will be eligible to receive TANF assistance subject to the following conditions.

#### *Relationship/Living Arrangements*

A child must be living in the home of any relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child or of the spouse of any person named in the above group even though the marriage is terminated by death or divorce.

The caretaker of a teen parent who is not a parent must

demonstrate valid circumstances why the teen is not living with a parent and must agree to be a party to the Contract of Mutual Responsibility and fulfill the same responsibilities thereunder as a parent.

#### *Fugitive Felons; Individuals Convicted of Drug Related Felonies*

Fugitive felons and parole violators are ineligible for TANF assistance. In addition, as of August 22, 1996, individuals convicted of drug related felonies are permanently barred from the date of conviction.

#### *Family Cap Provision*

No additional cash benefits will be issued due to the birth of a child, if the birth occurs more than ten (10) calendar months after the date of application for benefits under TANF.

The family cap will not apply:

- when the additional child was conceived as a result of incest or sexual assault,
- to children who do not reside with their parents
- to children born prior to the period identified above who return or enter the household
- to a child that was conceived in a month the assistance unit (i.e. the entire family) was not receiving TANF, but this does not apply in cases that close due to being sanctioned.

The family cap will apply to children who are the firstborn of minors included in a TANF grant, except that the family cap does not apply to firstborn children of minors where the child was born prior to March 1997, the date that Delaware began its TANF program.

The additional child(ren) is included in the standard of need for purposes of determining eligibility; and the income and resources of the child, including child support, is included in determining the family's income and resources. However, the child(ren) is not included in determining the payment standard for the family.

- The additional child(ren) is considered a recipient for all other purposes, including categorical Medicaid coverage, TANF child care, and Food Stamp benefits.
- Child support received for capped children is passed directly through to the family.

#### *Denial of Benefits to Babies Born and Residing with Unmarried Teen Parents.*

Cash assistance is not provided to babies born on and after January 1, 1999 to unmarried minor teen parents. This applies to both applicants and recipients. For all other purposes, these babies will be considered TANF recipients. They may also be eligible to receive Food Stamps, Medicaid and child care as well as vouchers for the baby's needs. This provision applies as long as the teen parent resides in the home with the baby, is unmarried or less than eighteen (18)

years of age.

*Denial of Benefits for Fraudulent Misrepresentation to Obtain Assistance in Two States*

Any individual who misrepresents residence to receive TANF, Medicaid, or Food Stamp benefits in two states shall be subject to a ten-year bar if convicted in a state or federal court.

*Treatment of Eligible Non-Citizens*

Qualified non-citizens who enter the United States before August 22, 1996 shall be eligible to receive the same benefits and services and shall be subject to the same conditions and requirements as all other applicants and recipients.

Qualified aliens entering the United States on or after August 22, 1996, who are exempt from benefit restrictions as specified in Federal law, are eligible to receive the same benefits and services and shall be subject to the same conditions and requirements as all other applicants and recipients.

Qualified non-citizens who enter the United States on or after August 22, 1996 are, after five years, eligible to receive the same benefits and services and shall be subject to the same conditions and requirements as all other applicants and recipients.

**Program Type**

Depending on circumstances, families are placed in either the Time-Limited TANF program or the Non Time-limited TANF program.

Delaware's Time-Limited TANF Program has a work first approach. Participants are expected to meet immediate work requirements in order to receive benefits.

Effective October 1, 1998, Delaware began funding its two- parent program with state only funds. The eligibility requirements, services and benefits for this state funded two-parent program are the same as the single parent Time-Limited program

Time-limits for Delaware's Time-Limited TANF Program and the interactions between time-limits and work requirements are described in the sections entitled, Work: Time Limits and Work, and TANF Benefits to Needy Families: Time Limits.

Families with the following status will receive benefits in the Non Time-limited program:

- Families that the agency has determined are unemployable, either because a parent is too physically or mentally disabled to work in an unsubsidized work setting or because the parent is needed in the home to care for a child or another adult disabled to that extent;
- Families headed by a non-needy, non-parent caretaker;
- Families headed by a non-eligible non-citizen

parent who is not eligible to receive TANF benefits.

- Families where the agency has determined that the adult caretaker is temporarily unemployable, and
- Families in which the adult files a claim or has a claim being adjudicated for SSI or disability insurance under OASDI. In this case, the family must sign an agreement to repay cash benefits received under the Non Time-limited TANF program from the proceeds of the first SSI/DI check received. The amount repaid will not exceed the amount of the retroactive SSI/DI benefit.

Contract of Mutual Responsibility requirements and sanctions for noncompliance apply to families in the Non Time-limited TANF program.

**Contract of Mutual Responsibility**

The caretaker of children in the TANF program enters into a Contract of Mutual Responsibility with the Division of Social Services (DSS) of the Department of Health and Social Services (DHSS). Applicants and recipients have a face-to-face interview. During this interview, the DSS worker explains to the recipient the Contract of Mutual Responsibility (CMR) and those elements specific to the client.

The Contract lists the responsibilities of the family and the supports the State will provide. The family's responsibilities include, but are not limited to: employment-related activities, school attendance and immunization requirements for children, family planning, parenting education classes, and substance abuse treatment requirements. The State provides supports to families including but not limited to: employment-related activities, training activities, child care, Medicaid, and other services identified during the development of the Contract of Mutual Responsibility.

The Contract is designed to be individualized to the specific needs and situation of each family. Therefore, the exact requirements within the Contract may vary from family to family. This document can be revised as the needs and the situation of the family evolve.

Services related to these CMR requirements will be available to the participant. If the services specified in the CMR are not reasonably available to the individual, the participant will not be sanctioned for failure to comply and the Contract will be modified to reflect that the service is currently unavailable.

It is mandatory that all caretakers enter into a Contract of Mutual Responsibility. Contracts are completed for families in the Time Limited TANF Program and the Non Time-limited TANF program as well as for teen parents. Both caretakers in an assistance unit and non-needy caretaker payees are required to develop and comply with CMRs. Other family members within the assistance unit may be required to comply with provisions of the Contract, and are subject to sanction for non-compliance.

If the caretaker is a non-needy caretaker relative, the individual would not be required to participate in employment-related activities but will be required to participate in other Contract activities.

If a caretaker objects to certain aspects of the Contract, the caretaker needs to present these objections up front, at the time of the initial Contract. If good cause can be demonstrated, the Contract can be amended to rectify the objections.

When staff has reason to believe that the family needs other services to become employed or to increase work hours and wages, these services will be identified and specified in the Contract of Mutual responsibility.

The fiscal sanction for not cooperating, without good cause, in development of the Contract will be an initial \$50.00 reduction in benefits. This reduction will increase each month by \$50.00, either until there is compliance or the case is closed. The sanction will end with demonstrated compliance.

### Individuals from Another State

All families meeting the status eligibility requirements set forth above shall be eligible for TANF benefits using Delaware rules, regardless of how long they have been residents of the State.

### Statewideness

All definitions and determinations of need shall be applied on a statewide basis.

### Protection of Privacy of Assisted Families

31 Delaware Code, Chapter 11, Section 1101 provides that public assistance information and records may be used only for purposes directly connected with the administration of public assistance programs. Thus, all information gathered regarding individuals for public assistance purposes is considered confidential and will be safeguarded by DSS. By safeguarding public assistance information, DSS protects its clients from being identified as a special group based on financial needs and protects their right to privacy.

General information regarding expenditures, numbers of clients served, and other statistical information is a matter of public record and may be made available to any interested party. Other than the exceptions noted below, DSS will not release any information regarding a particular individual without the individual's written consent.

• DSS Financial Services Regional Operations Managers have the authority to disclose the address of a recipient to a Federal, State or local law enforcement officer at the officer's request if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient:

- is fleeing to avoid prosecution; or
- is a fleeing felon (or in the case of New Jersey

is fleeing from conviction of a high misdemeanor); or

- is violating a condition of probation or parole; or;
- has information that is necessary for the officer to conduct his or her official duties; and
- the location or apprehension of the recipient is within such official duties.

• If a law enforcement officer requests information that does not meet the guidelines indicated above, a subpoena from a court of law is required before the information can be released.

• DSS is required to report to the Division of Family Services in situations where it believes a home is unsuitable because of neglect, abuse or exploitation of a child.

• A Court Appointed Special Advocate (CASA) is given permission to inspect and/or copy any records relating to the child and his or her family guardian without their consent. The CASA has the authority to interview all parties having significant information relating to the child. The CASA must also be notified of any staffing, investigations or proceedings regarding the child, so that they may participate and represent the child.

• If information is released under the procedures applying to CASA, pertinent details of the reasons for the release shall be documented and written notification of this release shall be sent to the last known address of the individual to whom the record refers.

• DSS has the authority to disclose information concerning applicants and recipients provided it pertains to: an investigation, prosecution, or criminal or civil proceeding conducted in connection with public assistance programs. the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need. The agency must assure DSS that such information will remain confidential and will be used only to pursue services for the individual. Other means tested programs include the Supplemental Security Income Program, School Lunch and Breakfast Program, the Energy Assistance Program, and the Low Income Housing Program.

• Other agencies (such as Family and Children Services of Delaware, Inc. Catholic Social Services, Legal Aid, etc.) must provide written permission from the recipient before public assistance information may be released.

• Other governmental agencies may obtain lists of recipients from DSS if the information will be used to perform services for DSS, and the agency can assure DSS that the lists will remain confidential.

### Appeals Process

DSS will provide timely and adequate notice for actions taken which affect eligibility or benefit level. Adequate notice means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request a fair hearing, and the circumstances under which assistance may be continued if a hearing is requested.

Timely notice means a notice which is mailed no later than 10 days before the date of action (i.e. 10 days before the intended change would be effective). When DSS learns of facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through secondary sources, notice of a grant adjustment is timely if mailed at least five days before the action would become effective.

An opportunity for a hearing will be granted to any applicant who requests a hearing because his/her claim for assistance is denied or is not acted upon with reasonable promptness and to any applicant or recipient who is aggrieved by any Agency action.

To be considered by the Agency, a request for a hearing must be a clear expression in writing by the appellant or his/her representative to the effect that (s)he wants the opportunity to present his/her case to higher authority. The freedom to make such a request will not be limited or interfered with in any way and the Division will assist the appellant in submitting and processing his/her request. A hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

### Work

#### Goals For Work

Delaware's TANF program is based on the belief that assistance provided is transitional and should not become a way of life. The State maintains that the way for persons to avoid dependency on welfare is for them to find and maintain employment. Thus the primary goal of TANF is to help recipients find private sector work and to help them keep such work by providing them with necessary supports.

To assist families in attaining and maintaining employment, the State will engage the efforts of the Departments of Health and Social Services, Labor and Economic Development and Delaware's private sector to provide job readiness and placement opportunities, health and child care, the EITC, and family services. In turn, TANF recipients who have the capacity to work will be required to accept work, to keep their children in school, to cooperate

with child support, to bear the costs of additional children they conceive while on welfare, and to leave the welfare rolls after a defined time period.

### State Agencies Involved

Delaware Health & Social Services, Labor, and Economic Development have a unique partnership. All three agencies are responsible for moving welfare clients to work. These three agencies have collaborated in developing Delaware's TANF program, in public information, in implementation, and continue to collaborate in managing the initiative.

The Delaware Transit Corporation (DTC) in the Department of Transportation has joined the TANF collaborative team, and has assisted to develop a statewide transportation system plan for TANF, using vans and other vehicle sources.

Minutes for the TANF collaboration team for the previous six months are included as **Attachment B**.

In May 2001, the Business Planning Committee, a subcommittee of the TANF collaborative team that deals with transportation initiatives, sponsored a transportation forum in each of the three counties. The purpose of the forums was to bring together businessmen, community leaders and other stake holders to develop and advance innovative, non-traditional solutions to varying transportation problems faced by each county.

Transportation forum highlights were a panel discussion by the lead agencies that shared some "points of pride" in the program and gaps and needs in transportation, Best Practices Ideas and Transportation Information, Employer Recognition of Innovative Success Solutions and brainstorming sessions to identify transportation issues and to gather ideas for further development. Each forum was designed to highlight transportation problems that were county specific. Sussex County Government, represented by the Sussex County Administrator, was particularly effective in explaining the population growth, the economic growth and the problems created by their largely rural area.

As a result of the forums, the Business Planning Committee has been able to identify some cross-cutting themes statewide as well as county specific. They have also been able to identify ideas that need further development and which will be used as the Committee continues to find innovative solutions to transportation problems. One overriding theme from the forums was the lack of knowledge of the current transportation options available. This has led to the production of a transportation video which highlights all the options available to assist individuals as they move from dependency to self-sufficiency.

Another special partnership is that between the Division of Social Services and the Division of Child Support Enforcement. Both agencies are part of Delaware Health

and Social Services. This close linkage has enabled them to partner throughout TANF development and implementation.

### **Involvement of Community, Education, Business, Religious, Local Government and Non-Profit Organizations to Provide Work**

As noted in the discussion on page 2, every sector has been actively involved in the development of Delaware's TANF program and continues to be involved.

A TANF Employer Committee, consisting of representatives of both the public and private sector, assists in placing welfare recipients in unsubsidized jobs and provides advice on direction, policy, and implementation of welfare-to-work efforts. This committee was established through HB 251. A major accomplishment of the Employer Committee in conjunction with DEDO and the Department of Education was the development of a program, Career Soft Skills Essentials for employers, which is now posted on the internet at [www.delawareworkforce.com](http://www.delawareworkforce.com). The committee regularly advises the collaborative team about TANF employment issues. Minutes of committee meetings for the prior year are included as **Attachment C**.

To further promote employer interest in hiring TANF recipients, the Departments of Labor and Economic Development meet with members of the business community at regularly scheduled events like monthly Chamber of Commerce meetings as well as at special events. For example, to roll out Career Soft Skills Essentials, DEDO hosted two conferences to link employers with trainers.

The Social Services Advisory Council is established by executive order. The Governor appoints council members to advise the directors of both the Division of Social Services and the Division of Child Support Enforcement on matters related to public assistance and child support services. Council members represent the community, advocates, non-profit providers, educators, and interested citizens.

DSS and DCSE management regularly meets with the Social Services Advisory Council to discuss TANF and other Social Services and Child Support programs. Minutes of Social Services Advisory Council meetings for February, March, and April, 2002, along with information on current Council members, are attached. The Council and DSS will resume regular monthly meetings after the summer. (**Attachment D**)

Client specific focus groups were also conducted by the Director of DSS in 2000 and 2001. The 2000 focus groups, held in different locations throughout the state from May through November, asked recipients a series of questions about the TANF program, to ascertain their knowledge of various program requirements, and their experiences obtaining assistance from DSS workers and contractors. The 2001 client focus groups were held from June through October. They asked a series of questions about client work and sanction experiences, and ascertained information about

specific services that had been of assistance and obstacles that clients had to overcome to obtain and retain employment. (**Attachment E**)

Based on these focus groups, there seemed to be a solid majority opinion that people understood the rules, that sanctions are appropriate, and that some people do need a push to get motivated to get back into the job market. However, clients did wish for more flexibility for individual circumstances, and requested more assistance with transportation and in juggling schedules so that program requirements could be met.

Special interest groups such as One Church, One Family and New Pathways have chosen to focus their resources on welfare families and provided mentoring support to welfare families.

### **Role Of Public And Private Contractors In Delivery Of Services**

Delaware has contracted with private for-profit and non-profit providers and the local community college network to provide job readiness, job placement and retention services to welfare clients since 1986. These contractual arrangements continue under TANF. Contractors include community and faith-based social services agencies and organizations offering specialized services.

A number of community providers across the state provide academic remediation to TANF recipients.

### **Who Must Participate**

All adult caretakers and other adults in the time-limited assistance unit who are not exempt must participate in TANF employment and training related activities. The two exemptions are: 1) a parent caring for a child under 13 weeks of age; and 2) an individual determined unemployable by a health care professional.

Teen parents are required to attend elementary, secondary, post-secondary, vocational, or training school, participate in a GED program or work.

### **Services to Move Families to Work**

Delaware's goal is to place the adult recipient in unsubsidized employment as quickly as possible. To accomplish this goal, the current menu of services includes:

- Work readiness/Life skills
- Job search/Job placement
- Job retention
- Work Experience/OJT
- Education, including vocational education, as

described in SB 101, effective July 2, 1999

Non-exempt TANF participants will participate in the job search program, consisting of job readiness classes and supervised job search activity. Unsuccessful job search participants can be placed in another job search sequence or another work-related activity such as an alternative work

experience, OJT, remediation or a skills training program.

Clients must keep appointments with Employment and Training staff, cooperate in the development of the employment activities included in their Contract of Mutual Responsibility, and participate in employment and training activities. The penalty for non-compliance with any of the above client responsibilities will be subject to sanctions as described in "Sanctions: Failure to Comply with the Contract and Imposition of Sanctions" on page 29.

### **Work**

Until January 1, 2000, one-parent families in the Time-Limited Temporary Program were required to immediately engage in meaningful job search and comply with conditions set forth in their Contract of Mutual Responsibility including work, education, and training activities. Failure to comply with the work requirements resulted in the imposition of an employment and training sanction. Recipients who were unable to locate private sector jobs despite good faith efforts to do so, were eligible to receive Work For Your Welfare payments, for participating in a workfare job, for a maximum of two more years.

Effective January 1, 2000, families initially applying for or reapplying for benefits can only receive benefits if they are employed or immediately participate in a Work For Your Welfare position. Failure to comply with the work requirements contained in their Contract of Mutual Responsibility results in the imposition of an employment and training sanction.

Single parent households are required to participate in Work for Your Welfare up to 30 hours per week, determined by dividing TANF and Food Stamp benefits by the minimum wage. If the hours determined by dividing the grants by the minimum wage exceed 30 hours per week, participants are to complete no more than 30 hours maximum participation hours. In addition to participating in Work For Your Welfare, individuals must participate in 10 hours of job search, education or a vocational activity per week.

Participants who fail to complete the hours required by dividing their grant by the minimum wage will have their grant adjusted. For each hour not worked, participants will have the grant adjusted downward by the amount of the minimum hourly wage. Participants who fail to complete the 10 hours of job search, education or a vocational activity per week are subject to employment and training sanctions.

In two parent households, one parent must participate in Work For Your Welfare and the second parent must participate in a work-related activity, including child care. The requirements for parents in two-parent households are unchanged.

The January 1, 2000 change in the work requirements for one-parent families means that, to receive Time-Limited TANF benefits in Delaware, both one-parent and two-parent families must either be employed or participate in a Work

For Your Welfare position with supplementary activities as required. Delaware's requirement for immediate work activities exceeds the federal TANF mandate.

An individual enrolled in the TANF Time-Limited Program who, in accordance with the requirements in their Contract of Mutual Responsibility, participates in unsubsidized employment of at least twenty hours per week is not required to participate in Work for Your Welfare. Individuals participating in a combination of such employment and education of at least twenty (20) hours per week are also not required to participate in Work For Your Welfare. TANF Contracts of Mutual Responsibility are designed to fit individual circumstances. It is possible for an individual enrolled in the TANF Time-Limited Program who is engaged in at least twenty (20) hours of combined work and allowable education activities to meet work requirements, if their Contract of Mutual Responsibility contains such an activity agreement.

Time limits for Delaware's Time-Limited TANF Program are described in the section entitled, TANF Benefits to Needy Families: Time Limits.

### **Protecting Current Workers from Displacement**

Regarding the Work for Your Welfare program, DSS conforms to Section (a)(5) of the Federal Unemployment Tax Act which requires that a job offered cannot be available as a result of a strike or labor dispute, that the job cannot require the employee to join or prohibit the employee from joining a labor organization, and that program participants are not used to displace regular workers.

In addition DSS ensures that no participants, including but not limited to those placed in either a Work For Your Welfare placement or a community work experience program, displace regular paid employees of any of the organizations providing either the placement or the community work experience. Such assurance complies with State law contained in 31 Delaware Code, Chapter 9, Section 905(b). This assurance also complies with Section 407(f) of TANF, which requires that DSS will not use federal funds under TANF to place individuals in a work activity when:

- any individual is on a layoff from the same or a substantially equivalent job;
- the employer has terminated any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy created with an adult receiving TANF benefits.

In addition, DSS has established a grievance procedure, in conformance with Section 407(f)(3) of TANF, for resolving complaints for any alleged violation of nondisplacement requirements. Employees or their representatives who believe that their jobs are being displaced or infringed upon shall present their complaint to the employment contractor with authority over the placement. If the contractor is unable to resolve the



problem within 15 days, the employee or representative may file a formal grievance in writing to the DSS Director's Office, who will hear a formal grievance. The employee will have an opportunity to: present their grievance on the record; present evidence; bring witnesses and cross examine witnesses; be represented by counsel; and receive a written decision.

Grievance hearings will be scheduled within thirty calendar days of receipt of the formal grievance, and a written decision will be issued within 30 days of the hearing. If either party is dissatisfied with the State's written decision, they may appeal the decision to the U.S. Department of Labor within 20 days of receipt of the written decision. The procedures for appeal, which must be sent to the Office of Administrative Law Judges, in the U.S. Department of Labor, will be provided in writing with the decision.

### Supportive Services

Delaware recognizes the importance of available child care in helping recipients participate in work-related activities, and securing and retaining unsubsidized employment. To that end, the financial resources provided for child care have been significantly increased from the FY95 child care funding level to the current request for funding.

Supportive Services, such as child care, and TANF provided assistance with other work-related expenses, such as eye examinations and corrective lenses, dental, and physicals not covered by Medicaid, transportation, fees, training, and work-related equipment, uniforms, shoes, and supplies will be available where possible. Services are provided by voucher or directly. In addition, TANF will, on a case by case basis, pay fees to purchase certificates, licenses, or testing needed to obtain employment. Medical services are not part of these supportive services. DSS will determine when such services are necessary for a TANF recipient to participate. The services shall include:

- Support provided by contractors to retain employment for one (1) year
- Health care for Delaware citizens through:
  - providing Medicaid coverage to uninsured adults with income at or below 100 percent of the federal poverty level
  - providing medical coverage for uninsured children in families with income up to 200% of the federal poverty level, through the Delaware Healthy Children program
  - providing transitional Medicaid for two years for families with children who exit welfare, at incomes up to 185% of poverty.
- Subsidized child care for families who leave TANF to go to work for a period of two years, as long as family income remains below 200 percent of the federal poverty level. In addition, to help individuals retain unsubsidized

employment beyond two (2) years, Delaware also provides subsidized child care to other low income working families until the family's income exceeds 200 percent of the federal poverty level.

- Job search programs and other assistance from the Department of Labor to find a job; and
- ongoing job retention assistance.

### Additional Targeted Support

#### *Family Development Profile*

The Family Development Profile is used by Delaware to identify possible social, familial, and emotional barriers to self-sufficiency, insofar as they impact an individual's ability to obtain and retain employment. Participants who complete the Profile answer questions about their self-esteem and health, and relationships with family members and other individuals. The Profile is currently being enhanced to provide the capacity to identify mental health problems.

DSS workers report that the Profile frequently surfaces major domestic issues which participants need to resolve. By utilizing the Profile, workers are able to refer participants for assistance in resolving domestic violence and other abuse situations. Further efforts to assist individuals to resolve domestic violence and other abuse situations are described in a later section: PARENTAL RESPONSIBILITY: Addressing Problems of Statutory Rape and Domestic Violence.

#### *Substance Abuse*

As part of the application and redetermination processes, workers ask clients a series of questions, called the CAGE questions, to identify substance abusers for referral to appropriate services. Through the Bridge Program and referrals to DSAMH, Delaware's TANF program offers assessment and non-medical treatment services for all substance abusers identified through this and other methods. DSAMH and Medicaid will ensure that if medical treatment services are needed they are paid from other than TANF funds.

#### *Supporting Teens*

Delaware is targeting youth by providing special services. Through the Department of Education, Delaware provides a family literacy program which includes parenting skills training and other services to teen parents and their children to prevent repeat pregnancies.

Beginning with FY 1999 funds were allocated for Delaware's Teen Pregnancy Prevention Initiative, Teen Hope, to support activities for at-risk teens in six School Based Health Centers (SBHCs) and one community site. The program, utilizing the Transtheoretical Behavior Change Model, helps youth develop skills to make better sexual and health related decisions. Initial programs have been very

successful. In addition, wellness centers located in 27 high schools provide medical, health and counseling services to high school students.

Several other initiatives are being operated. The AmeriCorp Grant partnership grant with DHSS as lead was awarded in 1999. Under this grant, Planned Parenthood is managing an effort to have AmeriCorp members provide a responsible adult presence and a structured environment for youth to learn, as a strategy to prevent teen pregnancy, in the lives of at-risk teens in selected target areas. The Abstinence Education Grant currently provides mini-grants to agencies providing skills building community programs for teens.

Delaware has undertaken, through an Alliance on Adolescent Pregnancy Prevention (AAPP), a grassroots community and media outreach campaign to convince teenagers to postpone sexual activity and to avoid becoming or making someone else pregnant. AAPP works directly with parents in this initiative to improve communication between parents and children around sexuality and pregnancy prevention. In addition, AAPP provides preventive education and distributes information on preventing teen pregnancy, utilizing a number of kinds of interventions. For example, two full-time community educators visit schools, community centers, churches, and camps; and provide workshops/training to parents and children around sexuality and teen pregnancy prevention. AAPP also maintains a resource center for the community and lends or gives away brochures, videos, curriculum, posters, books, and other communications about teen pregnancy prevention and sexuality.

The Wise Guys initiative is an adolescent male responsibility program that uses an established Wise Guys curriculum over a ten-week period. The program, operating in six high school based health centers, promotes character development and prevention of adolescent pregnancy by teaching young males self-responsibility in several areas.

Delaware's teen pregnancy prevention campaign also uses billboards to convey the message, and statewide conferences to provide assistance implementing prevention activities.

Delaware's TANF program provides a positive incentive to teenagers to graduate high school by age 19 by awarding a one-time \$50 bonus. Additionally, TANF requires teenage mothers currently on welfare to live with their parent(s) or a responsible adult, stay in school, immunize their children and participate in parenting education.

Services to teens are also discussed in the Section entitled Parental Responsibility Efforts to Reduce Out-Of-Wedlock Births.

#### ***Delivery of Services Across State***

Delivery of services will be consistent across the State.

### **Tanf Benefits To Needy Families**

#### **Computing the Benefit**

Eligibility will be determined prospectively. After establishing eligibility, benefits will be computed prospectively. Income per time period will be converted to a monthly income figure by utilizing the following conversion factors:

Weekly 4.33

Bi-weekly 2.16

Semi-monthly 2.00

Example: Given a weekly income of \$85, multiply by 4.33 to arrive at a monthly income of \$368.05.

The benefit amount will be determined by using prospective budgeting and the best estimate of earned and unearned income for the assistance unit. The payment will not be changed until the next eligibility determination, unless the recipient reports a change that would result in an increase in the benefit or there is a significant change in circumstances as defined below.

A significant change is defined as any of the following:

- change in household size;
- new source of employment;
- loss of unsubsidized employment or a change in employment status from full time to part time which was beyond the recipient's control;
- an increase of forty (40) hours or more in unsubsidized employment per month;
- receipt of a new source of unearned income; or
- increases or decreases in existing sources of unearned income totaling \$50.00 or more per month.

The recipient needs to verify all changes in circumstances.

Example: An applicant applies in May. The applicant is employed. The applicant is working 20 hours per week and earns \$5.65 per hour. The best estimate of wages is calculated by multiplying 20 hours times \$5.65 (\$113.00 per week), then multiplying the weekly figure by 4.33 to determine the monthly income of \$485.90.

#### **Redeterminations**

At least one redetermination is required every six (6) months. TANF emphasizes work and work related activity. Mandating face-to-face redeterminations might undermine that goal. Therefore, mail-in redeterminations, with a telephone interview are used as an option to encourage recipients to continue participating in employment and training activities or to keep working.

When a redetermination is due, the recipient must complete a new DSS application form (FORM 100). A redetermination is complete when all eligibility factors are examined and a decision regarding continuing eligibility is reached.

The assistance case will be closed if a recipient fails,

without good cause, to complete the redetermination review. Likewise, the assistance case of a recipient who fails, without good cause, to provide requested information necessary to establish continued eligibility will be closed.

As part of the verification process for continuing eligibility, the person will provide verification that s/he has carried out the elements of the individual Contract of Mutual Responsibility.

#### **Time Limits**

Under TANF, cash benefits are time-limited for households headed by employable adults age 18 or older who are included in the grant. Prior to January 1, 2000, Delaware limited receipt of TANF, for families in the Time-Limited Program, to twenty-four (24) cumulative months. During the time-limited period, employable adults received full benefits if they met the requirements of their Contract of Mutual Responsibility, including employment-related activities.

After the first 24 month cumulative period ended, families headed by employable adults could continue to receive cash benefits for an additional 24 cumulative months only as long as the adults participated in a Work For Your Welfare work experience program or they were working and family income was below the need standard of 75 percent of the Federal Poverty Level.

Effective January 1, 2000 the time limit for receipt of TANF cash benefits is thirty-six (36) cumulative months.

During the time-limited period, employable adult recipients receive full cash benefits only as long as they meet the requirements of their Contract of Mutual Responsibility, including participation in employment-related activities. The ultimate goal of this time-limited period is to support the employable adult's search for and placement in an unsubsidized job. Time limits will not apply when Delaware's unemployment rate substantially exceeds the national average or is greater than 7.5 percent.

Individuals found eligible for TANF prior to January 1, 2000 will still have a forty-eight (48) month time limit even if they reapply for benefits on or after January 1, 2000.

DSS will track the time remaining before a family's time limits expire and notify families on a quarterly basis of the time they have remaining before the time limits expire. At least two (2) months prior to the end of the 36 or 48 cumulative months in which a family has received assistance, DSS will remind the family that assistance will end and notify the family of the right to apply for an extension.

Extensions will be provided only to those families who can demonstrate that:

- the agency substantially failed to provide the services specified in the individual's Contract of Mutual Responsibility; the related extension will correspond to the time period for which services were not provided; or

- despite their best efforts to find and keep employment, no suitable unsubsidized employment was available in the local economy to the employable adult caretaker; the maximum extension under such circumstances will be 12 months.

Extensions may also be granted where other unique circumstances exist. Extensions will not be granted if the adult caretaker received and rejected offers of employment, quit a job without good cause, or was fired for cause or if the adult caretaker did not make a good faith effort to comply with the terms of the Contract of Mutual Responsibility.

Retroactively, starting October 1, 1995, Delaware exempted months in which a person worked twenty hours or more per from counting toward the Delaware lifetime time limit when the countable income of the family is below the need standard. So that families who have not reached the State's 36/48 month time limit won't reach the Federal 60 month time limit, benefits for these families are provided under a segregated program using State MOE funding, beginning October 1, 1999. However, both the federal and Delaware time clocks continue to run for individuals who meet their work participation requirements by participating, as permitted under the waiver, in a combination of employment and education for at least twenty (20) hours a week; and for individuals who meet their work participation requirements by participating in education for at least twenty (20) hours a week.

After the time limit has been reached, benefits will be provided to families who have been granted an extension only for a maximum period of 12 months and only in the Work For Your Welfare component. Thus, for Time-Limited families, unless the caretaker is employed at least twenty (20) hours per week, the maximum period for receipt of benefits to families enrolled in the Time-Limited TANF Program will be sixty (60) cumulative months for families with a forty-eight (48) cumulative time limit and forty-eight (48) months for families with a thirty-six (36) month time limit.

#### **Sanctions: Failure to Comply with the Contract and the Imposition of Sanctions**

The Contract of Mutual Responsibility encompasses three broad categories of requirements: 1) enhanced family functioning; 2) self-sufficiency; and 3) teen responsibility requirements.

1) Enhanced family functioning requirements of the Contract include, but are not limited to, acquiring family planning information and attending parenting education sessions, ensuring that children are immunized, and participating in substance abuse assessment and treatment. Sanction for non-compliance with these requirements is an initial \$50 which will increase by \$50 every month until there is compliance with the requirement. The initial \$50 reduction will be imposed whether the family fails to comply

with one, or more than one requirement. Clients will have to comply with all requirements before the sanction can end.

2) Self-sufficiency requirements of the Contract of Mutual Responsibility are employment and training, work-related activities, and ensuring school attendance requirements for dependent children under age 16.

- The sanction for non-compliance with these requirements is a 1/3 reduction of the benefit for the first occurrence, 2/3 reduction for the second occurrence and a total and permanent loss of the benefit for the third occurrence for work related activities. A third occurrence of the penalty for a child under 16 not attending school is loss of all cash benefits but is curable when the parent demonstrates compliance. The duration of the first and second sanctions will each be two months or until the person complies. If, at the end of the two month period, there is no demonstrated compliance, the sanction will increase to the next level.

- Clients will have to demonstrate compliance with all self-sufficiency requirements before all benefits are restored.

- For the purpose of determining that the individual's failure to comply has ended, the individual must participate in the activity to which s/he was previously assigned, or an activity designed by the Employment and Training provider to lead to full participation, for a period of up to two weeks before ending the sanction.

- The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits. The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:

- for a first offense, a 1/3 reduction in TANF, to be imposed for a period of two months;

- for a second offense, a 2/3 reduction in TANF, to be imposed for a period of two months;

- for a third offense, a permanent loss of all cash benefits.

- For dependent children under age 16, including teen parents, the sanction will not be imposed if the parent of the teen is working with school officials or other agencies to remediate the situation.

3) Teen responsibility requirements include maintaining satisfactory school attendance, or participation in alternative activities such as training or employment, for dependent children 16 years of age and older. The sanction for non-compliance with these requirements is to remove the needs of the teen from the TANF benefit and to remove the needs of the caretaker if the caretaker does not work to remedy the situation. Complying with the requirements ends the sanction.

Failing to comply with both the enhanced family functioning and self-sufficiency requirements will result in

combined penalties. For example, both a \$50 reduction and a 1/3 reduction to the benefit could be assessed for first failures to comply in two areas. Demonstrated compliance will not excuse penalties for the period of noncompliance. Sanctions will be imposed for the full period of noncompliance.

#### **Benefit Delivery: Direct Payments and Vouchers**

Currently, Delaware uses check issuance as the payment method for TANF.

Delaware directly pays for center-based child care authorized for TANF participants, where the center agrees to accept the Delaware child care reimbursement rate. Some caretakers, however, receive vouchers to self-arrange and pay for their child care. Delaware will reimburse these caretakers, up to the rates published in the Child Care and Development Fund (CCDF) plan, for the cost of child care provided by licensed and license-exempt child care providers.

#### **Staff Training**

TANF training has been incorporated into the Cash Grant training which is required for all new financial services staff. APHSA training has now been incorporated into Interviewing and Coaching training which is required for all new staff.

#### **Parental Responsibility**

Adults and minor parent(s) are required to comply with parenting expectations outlined in the Contract of Mutual Responsibility.

#### **Cooperation with Child Support Enforcement**

Participants in TANF must cooperate with the Division of Child Support Enforcement as a condition of eligibility. In addition, all families are required to provide sufficient information to permit Delaware to obtain child support on behalf of the family. Exceptions can be made when the caretaker demonstrates that pursuit of child support would create a danger to the caretaker or the child(ren). It is the responsibility of the client to provide documentation to verify such a good cause claim.

Failure of a caretaker, without good cause, to cooperate with and provide information to the DCSE to permit the State to pursue the collection of child support on behalf of dependent children will result in a full family sanction, until compliance. Applicants who fail to provide information so that Delaware may pursue child support collections will be denied. To cure the child support sanction, the caretaker will provide sufficient information to permit Delaware to pursue child support collections on behalf of the needy children in the family.

When a child lives with both the natural father and the mother but paternity has not been legally established, the parents will be referred to the Division of Child Support Enforcement (DCSE) for a voluntary acknowledgment of paternity. If the alleged father is unwilling to complete the voluntary acknowledgment of paternity, DSS will consider the child deprived of the care and support of his/her father. The case will be referred to DCSE for follow up on establishing paternity.

When a child lives with the natural father but paternity has not been legally established, the father will complete a declaration of natural relationship document and will provide acceptable verification of relationship.

When a child lives with a relative of the natural father but paternity has not been legally established, the relative must complete a declaration of natural relationship document and provide acceptable verification of relationship.

In Delaware, DCSE determines non-cooperation with child support requirements. In addition, effective January 1, 1999 DCSE began making the determination of good cause.

### **Distribution of Child Support Collections to TANF Recipients**

Delaware, a fill-the-gap state in 1975, uses fill-the-gap to make sure that families do not experience a net loss of income due to the State retaining Child Support paid by absent parents. A portion of Child Support payments is not counted in calculating the grant.

### **Efforts to Reduce Out-of-Wedlock Births**

Delaware believes that the number of out-of-wedlock births to teens must be reduced significantly to eliminate poverty and dependency. A study by Doble Research Associates commissioned by the Governor's Family Council, in June, 1998, concluded that Delaware's efforts to reduce teen pregnancy, including establishing more after-school program, strongly enforcing child-support enforcement and the Sexual Predator Act, and making teen mothers ineligible for cash assistance, are solidly supported by public opinion. We are undertaking a number of statewide initiatives to reduce adolescent pregnancy. Many of these initiatives are being coordinated through the activities of the Alliance for Adolescent Pregnancy Prevention (AAPP). Ventures include the provision of adolescent health services through school-based health centers and improving teen utilization of our family planning centers.

The AAPP is a statewide public and private partnership charged with the development and implementation of a comprehensive plan to prevent adolescent pregnancy in Delaware. The organizational structure of the Alliance includes a 12 member advisory board appointed by the Governor and a statewide membership of over 200 schools,

agencies, organizations, churches, and individuals concerned with teen pregnancy. Staff and program support for the Alliance is provided through a contract from the Division of Public Health (DPH) to Christiana Care.

Since its inception, the AAPP has awarded mini-grants to non-profit youth organizations to provide community based teen pregnancy programs; implemented a statewide media campaign to increase community awareness; and worked with existing coalitions to establish teen pregnancy prevention programs. AAPP plans and activities include:

- statewide leadership to develop a visible, viable structure for mobilizing resources needed to impact the problem;
- data development to develop a methodology to monitor rates in real time;
- public relations efforts to increase community awareness and involvement; and
- identifying barriers to teen utilization of family planning services and developing solutions

The Division of Public Health has the lead responsibility in Delaware to implement initiatives to reduce teen pregnancy. Using the strategies and recommendations presented by AAPP, DPH activities include school based health centers, family planning clinics, parenting education, and the peer leadership program. The "teen friendly" services provided at Department of Public Health Units located at State Service Centers have resulted in a significant increase in use. In addition, all clients seen in Sexually Transmitted Disease Clinic sites receive counseling on family planning, as well as pregnancy prevention supplies.

Based on a report by Adolescent Health Survey Research (AHSR), which used a survey and focus groups with youth and their parents conducted early in 1999 to identify top strategies in pregnancy prevention, Delaware implemented a number of initiatives to prevent subsequent births, including:

- Smart Start, an enhanced prenatal program that attempts to decrease low birth weight babies, infant mortality, and maternal mortality, through social service, nutritional, and nursing support to at-risk pregnant women;
- Placing information on our combined Food Stamp/cash assistance/MA applications for the following telephone numbers: Planned Parenthood, AAPP and Delaware Helpline, to obtain information on pregnancy prevention/family planning.

In addition, family planning and reproductive health services are provided to adults in eight public health locations in Delaware; and similar services are provided to adults by Planned Parenthood of Delaware in five locations in the state. Minority populations are targeted through family planning and reproductive health services available at three Federally Qualified Health Centers in Delaware; and family planning and reproductive health services are available to Delaware State University students through the

DSU health center.

These Delaware initiatives to reduce out-of-wedlock births are complemented and strengthened by the policies of TANF which:

- Require adults and minor parent(s) to obtain family planning information from the provider of their choice;
- Provide for a fiscal sanction of an initial \$50 reduction in benefits for failure, without good cause, to obtain family planning information. This reduction will increase each month by \$50.00, either until there is compliance or the case is closed. The sanction will end when the adult and/or minor parent(s) obtains the family planning information at the provider of their choice;
- Eliminate benefit increases for children conceived while a caretaker is receiving TANF, and apply this family cap to children who are the firstborn of minors included in a TANF grant where the children are born after March 1, 1997; and
- Treat two parent families the same as single parent families.

#### **Initiatives to Promote Two-Parent Families**

To provide broad-based support for working families, Delaware was one of the first States to recognize that the special eligibility requirements that applied to two-parent families contributed both to the non-formation and the break up of two-parent households. The six-quarter work history requirement was particularly responsible for non-marriage of teen parents, who had not yet worked enough to meet this qualification. The denial of benefits to two-parent families if one of the parents was working at least 100 hours a month also contributed to the low work rate of two-parent families which were receiving AFDC.

When Delaware eliminated these special deprivation requirements as part of our welfare reform waiver, the numbers of two-parent families receiving TANF soared, and we believe that, without the TANF change, many of these households would have applied for and been found eligible for benefits as single mother families. These never formed two-parent households would have had profound effects on the ability of the family to exit welfare and on the future success of the children. We have found that the average length of stay on TANF is much lower for two-parent families, reflecting the greater incidence of retained employment when two adults are able to engage in work and share child care duties.

Delaware has always allowed taxpayers to file separately and applied the progressive rate structure to each spouse's income separately, which avoided most tax increases resulting from marriage. However, a marriage penalty could still result from uneven standard deduction amounts. By increasing the standard deduction amount for married taxpayers to exactly twice the single standard deduction beginning January 1, 2000, enactment of HB 411

has effectively eliminated the income tax "marriage penalty" in the State of Delaware

#### **Addressing Problems of Statutory Rape and Domestic Violence**

##### *Statutory Rape*

The Sexual Predator Act of 1996 imposes more severe criminal sanctions on adult males who are significantly older than their victims and holds them financially accountable when children are born as a result of violations of this law.

The legislation requires a cooperative agreement as part of a multi-faceted effort to combat teenage pregnancy and reform welfare. Specifically, the law requires the Attorney General's Office, the Department of Health and Social Services, the Department of Services to Children Youth and Their Families, the Department of Public Instruction and law enforcement agencies statewide to establish a cooperative agreement specifying the various roles of the agencies involved. The Memorandum of Understanding establishing the cooperative agreement, executed on December 10, 1996, and SB346 are provided as **Attachment F**.

##### *Victims of Domestic Violence*

As required under the optional Certification of Standards and Procedures to Ensure that a State Will Screen for and Identify Domestic Violence, DSS will refer identified victims of domestic violence to appropriate services such as shelters and counseling and to Family Court. Under the Protection from Abuse Act (PFA), 10 Delaware Code, Chapter 9, Sections 1041-1048 (**Attachment G**), Family Court has the power and authority to expeditiously adjudicate all matters related to domestic violence including court ordered restraints, custody, property and financial resources.

Through this strong domestic violence Law, Delaware is clearly committed to assisting victims of domestic violence overcome circumstances which put them in physical, emotional and/or financial jeopardy; and to assist them in seeking redress and a safe environment for themselves and their families. The Law is a strong deterrent to domestic violence, according to a study by the National Center for State Courts, released on December 2, 1996. The study reported that 86 percent of those who sought protection under the Law, which permits individuals in danger of serious physical abuse to obtain a protection order, were no longer being physically abused.

In addition, using our Family Development Profile, caseworkers ask a series of screening questions designed to identify victims of domestic violence. (**See Attachment H**) So that we are certain that workers can use this tool to effectively identify domestic violence issues, beginning 1998 all staff members at each of Delaware's 14 field sites receive a full day of Domestic Violence Training, focused on

the impact of domestic violence on clients and their ability to abide by the conditions of the Contract of Mutual Responsibility. As part of this training, staff learn how to recognize and assist women who are victims of domestic violence. DSS has continued this training on an ongoing basis and now provides the training not only to field staff but to all staff.

We believe that our methodology of resolving domestic violence situations as quickly as possible, as provided for under a strong statute, is the most appropriate and best course of action to assist current victims and to prevent future violence where possible.

Delaware certifies that the Family Development Profile establishes a procedure that screens for domestic violence and that, pursuant to a determination of good cause, program requirements may be waived if it is determined that compliance would make it more difficult for individuals to escape violence. However, decisions to waive compliance with TANF requirements will be made on an individual, case by case basis, and will not endorse an individual's failure to behave proactively to ameliorate destructive domestic violence situations. For our program to work, domestic violence victims must take actions to recover their lives, using the relief provided by the domestic violence statute and the other resources Delaware makes available.

#### **Tribes**

Delaware has no federally recognized tribes.

#### **Administration**

##### **Structure Of Agency**

The Department of Health and Social Services is the cabinet level agency designated by the State as responsible for Delaware's public assistance programs as allowed under Title IV-A of the Social Security Act. Within the Department, the Division of Social Services administers these programs. (Organizational chart included as Attachment I to State Plan.)

##### **Administrative Spending**

Delaware will comply with federal requirements.

##### **Compliance With Participation Rates**

In order that federal TANF funds are spent in accordance with the law (P.L. 104-193), Delaware will ensure compliance with the mandatory work and participation rate provisions of the law (as modified by this State Plan which includes our previously approved waivers, described in the *Waiver Inconsistency Certification*, submitted to the U.S. Department of Health and Human Services on September 27, 1999.)

Delaware intends to meet the participation rate

requirements set forth in the TANF legislation. If the waiver is extended, as is proposed by the reauthorization legislation approved by the Senate Finance Committee, we will continue to operate in accordance with participation requirements in the waiver. If the waiver is not extended we will make necessary changes to ensure that we meet federal participation mandates. In either situation, Delaware will ensure that federal TANF funds are expended for groups of TANF clients engaged in work, using federally acceptable work activities.

##### **Maintenance of Effort**

Delaware is aware of and intends to fully comply with the requirements of the law (P.L. 104-193) to maintain a prescribed level of historic state expenditures. Delaware will ensure that expenditures of state funds for benefits and services ("Qualified State Expenditures" as defined in the law) for TANF participants (either in the Part A federally funded program or non-Part A state funded program) who are TANF eligibles will equal or exceed the required annual spending level.

Delaware has opted to continue the issuance of child support disregard and child support supplemental payments to TANF clients under our fill-the-gap waiver. Delaware considers these payments to be "cash assistance" to eligible families and therefore to be within the definition of "Qualified State Expenditures".

Financial eligibility criteria for MOE-funded assistance or services are the same as for other TANF assistance or services, except that MOE claimed for child care under the provisions of section 263.3 will follow the financial eligibility criteria established in the CCDF State Plan and associated State regulations.

##### **Implementation Date and Plan Submittal Date**

The plan is submitted for certification of completeness on October 1, 2002. The implementation date for the provisions of this plan is October 1, 2002. Any subsequent amendments to this Plan will be indicated by amending the page of the Plan that describes the program or function being changed.

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**DEPARTMENT OF JUSTICE****DELAWARE SECURITIES ACT**

Statutory Authority: 6 Delaware Code,  
Sections 7313, 6314 and 7325  
(6 Del. C. §§7313, 7314 & 7325)

**Notice Of Proposed Revisions To The Rules And  
Regulations Pursuant To The Delaware Securities Act**

In compliance with the State's Administrative Procedures Act (APA-Title 29, Chapter 101 of the Delaware Code) and section 7325(b) of Title 6 of the Delaware Code, the Division of Securities of the Delaware Department of Justice hereby publishes notice of proposed revisions to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division proposes hereby to amend sections 600, 601, 608, and 700 of the Rules and Regulations Pursuant to the Delaware Securities Act and to add a new section 610.

Persons wishing to comment on the proposed regulations may submit their comments in writing to:

James B. Ropp  
Securities Commissioner  
Department of Justice  
State Office Building, 5th Floor  
820 N. French Street  
Wilmington, DE 19801

The comment period on the proposed regulations will be held open for a period of thirty days from the date of the publication of this notice in the Delaware Register of Regulations.

**SUMMARY OF THE PROPOSED REVISIONS****1. Canadian Broker-Dealer Exemption:**

The Securities Division proposes to revise the Canadian broker-dealer registration exemption set forth at section 608 of the Rules and Regulations Pursuant to the Delaware Securities Act to extend to Canadian broker-dealer agents the benefit of the exemption. The proposed revision is consistent with the model regulation as drafted by the North American Securities Administrators Association ("NASAA"). These revisions are being proposed to correct what appears to have been an inadvertent oversight when the exemption was originally promulgated.

**2. Registration Requirements for Sole Proprietorships:**

The Securities Division proposes to revise the registration requirements for broker-dealers and investment advisors to clarify that a person conducting a brokerage or investment advisory business as a sole proprietor need not register an agent or representative with the Securities

Commissioner.

**PROPOSED REVISIONS****Part F. Broker-Dealers, Broker-Dealer Agents, and  
Issuer Agents****§600 Registration of Broker-Dealers**

(a) A person applying for a license as a broker-dealer in Delaware shall make application for such license on Form BD (Uniform Application for Broker-Dealer Registration). Amendments to such applications shall also be made on Form BD.

(b) An applicant who is registered or registering under the Securities Exchange Act of 1934 shall file its application, together with the fee required by Section 7314 of the Act, with the NASD Central Registration Depository ("CRD") and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) An applicant who is not registered or registering under the Securities Exchange Act of 1934 shall file its application; the fee required by Section 7314 of the Act; and an audited financial statement prepared in accordance with 17 C.F.R. §240.17a-5(d) with the Commissioner, together with such other information as the Commissioner may reasonably require.

~~(d) A broker-dealer registered with the Commissioner shall register at least one agent with the Commissioner.~~

(d) Except for a broker-dealer that is a sole proprietorship or the substantial equivalent, a broker-dealer registered with the Commissioner shall register with the Commissioner at least on broker-dealer agent.

(e) Registration expires at the end of the calendar year. Any broker-dealer may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

**See 1 DE Reg 1978 (6/1/98)**

**§601 Registration of Broker-Dealer Agents**

(a) A person applying for a license as a broker-dealer agent in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) An applicant for registration as an agent for a broker-dealer that is a member of the NASD shall file his or her application, together with the fee required by Section 7314 of the Act, with the NASD CRD and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) Any applicant for registration as an agent for a broker-dealer that is not an NASD member shall file his or



her application, together with the fee required by Section 7314 of the Act, with the Commissioner, together with such other information as the Commissioner may reasonably require.

~~(d) Any applicant for a broker-dealer agent license must also successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.~~

(d) Registration expires at the end of the calendar year. Any broker-dealer agent may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer agent employed by a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

(e) Registration expires at the end of the calendar year. Any broker-dealer agent may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer agent employed by a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

**See 1 DE Reg 1978 (6/1/98)**

## **§602 Registration of Issuer Agents**

(a) A person applying for a license as an issuer agent in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) An applicant for registration as an issuer agent shall file his or her application and the fee required by Section 7314 of the Act with the Commissioner, together with such further information as the Commissioner may reasonably require.

(c) Any applicant for an issuer agent license must also successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.

**See 1 DE Reg 1978 (6/1/98)**

## **§603 Continuing Obligation of Registrants to Keep Information Current**

(a) Persons registering or registered as broker-dealers, broker-dealer agents or issuer agents are required to keep reasonably current the information set forth in their applications for registration and to notify the Commissioner of any material change to any information reported in their application for registration. An applicant or registrant who is registered with the NASD may notify the Commissioner of such material change by filing an amendment through the NASD CRD. All other persons shall notify the

Commissioner directly.

(b) Failure to keep current the information set forth in an application or to notify the Commissioner of any material change to any information reported in the application shall constitute a waiver of any objection to or claim regarding any action taken by the Commissioner in reliance on information currently on file with the Commissioner.

**See 1 DE Reg 1978 (6/1/98)**

## **§604 Minimum Financial Requirements and Financial Reporting Requirements of Broker-Dealers**

(a) Each broker-dealer registered or required to be registered under the Act shall comply with SEC Rules 15c3-1 (17 C.F.R. §240.15c3-1), 15c3-2 (17 C.F.R. §240.15c3-2), and 15c3-3 (17 C.F.R. §240.15c3-3).

(b) Each broker-dealer registered or to be registered under the Delaware Securities Act shall comply with SEC Rule 17a-11 (17 C.F.R. §240.17a-11) and shall file with the Commissioner, upon request, copies of notices and reports required under SEC Rules 17a-5 (17 C.F.R. §240.17a-5), 17a-10 (17 C.F.R. §240.17a-10), and 17a-11 (17 C.F.R. §240.17a-11).

(c) To the extent that the SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Securities Division for violation of this section to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

## **§605 Bonding Requirements of Intrastate Broker-Dealers**

Every broker-dealer registered or required to be registered under the Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange, and who is not registered under Section 15 of the Securities Exchange Act of 1934 shall be bonded in an amount of not less than \$100,000 by a bonding company qualified to do business in this state.

## **§606 Record keeping Requirements of Broker-Dealers**

(a) Unless otherwise provided by order of the SEC, each broker-dealer registered or required to be registered under the Act shall make, maintain, and preserve books and records in compliance with SEC Rules 17a-3 (17 C.F.R. §240.17a-3), 17a-4 (17 C.F.R. §240.17a-4), 15c2-6 (17 C.F.R. §240.15c2-6) and 15c2-11 (17 C.F.R. §240.15c2-11).

(b) To the extent that the SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Securities Division for violation of this section to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

§607 Use of the Internet for General Dissemination of Information on Products and Services

(a) Broker-dealers and broker-dealer agents who use the Internet to distribute information on securities, products or services through communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "Home Pages" or otherwise (an "Internet Communication") shall not be deemed to be "transacting business" in Delaware for purposes of Section 7313 of the Act based solely on the Internet Communication if the following conditions are met:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(i) the broker-dealer or agent in question may only transact business in a state requiring registration if first registered, excluded or exempted from state broker-dealer or agent registration requirements, as the case may be; and

(ii) follow-up, individual responses to persons in Delaware by such broker-dealer, or agent that involve either the effecting or attempting to effect transactions in securities, will not be made absent compliance with state broker-dealer or agent registration requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitations, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in Delaware, said broker-dealer or agent is first registered in Delaware or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered broker-dealer or agent from any applicable securities registration requirement in Delaware;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities in Delaware over the Internet, but is limited to the dissemination of general information on securities, products or services; and

(4) In the case of an agent:

(i) the affiliation with the broker-dealer is prominently disclosed within the Internet Communication;

(ii) the broker-dealer with whom the agent is associated retains responsibility for reviewing and approving the content of any Internet Communication by the agent;

(iii) the broker-dealer or investment adviser with whom the agent is associated first authorizes the distribution of information on the securities, products or services through the Internet Communication; and

(iv) in disseminating information through the Internet Communication, the agent acts within the scope of the authority granted by the broker-dealer;

(b) The position expressed in this rule extends to state broker-dealer and agent registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;

(c) Nothing in this rule shall be construed to affect the activities of any broker-dealer and agent engaged in business in this state that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvement Act of 1996, as amended.

**See 1 DE Reg 1978 (6/1/98)**

### **§608 Registration Exemption for Certain Canadian Broker-Dealers**

(a) A Canadian broker-dealer which meets the conditions of this rule as set forth below shall be exempt from the registration requirement of Section 7313 of the Act.

(b) To be eligible for this exemption, the broker-dealer must be resident in Canada, have no office or other physical presence in Delaware, and comply with the following conditions:

(1) Only effects or attempts to effect transactions in securities with, or for, one or more of the following;

(i) A person from Canada who is temporarily present in Delaware, with whom the Canadian broker-dealer had a bona fide business-client relationship before the person entered Delaware;

(ii) A person from Canada who is present in Delaware, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor; or

(iii) ~~A "U.S. institutional investor" or a "major U.S. institutional investor" to the extent permitted by SEC Reg. §240.15a-6 (17 CFR §240.15a-6)~~ As otherwise permitted by the act; and

(2) Is registered in its home province or territory, and a member in good standing of a self-regulatory organization or stock exchange in Canada;

(3) Files with the Securities Commissioner a notice in the form of the current application required by the jurisdiction in which its head office is located;

(4) Files with the Securities Commissioner a consent to service of process in a form which complies with the requirements of Section 7327 of the Act.

(5) Discloses to its clients in Delaware that it is not subject to the full regulatory requirements of the Act; and

(6) Is not in violation of Sections 7303 or 7316 of the Act or any rules promulgated thereunder.

(c) Exempt transactions. Offers or sales of any security effected by a broker-dealer who is exempt from registration under this Regulation are exempt from the registration requirements of Section 7304 of the Act and the filing requirements of Section 7312 of the Act.

(d) Agent exemption: An agent who represents a Canadian broker-dealer who is exempt from registration

under this Regulation is also exempt from the registration requirement of Section 7313 of the Act, provided such agent maintains his or her provincial or territorial registration in good standing.

(e) Denial, Suspension or Revocation. The Commissioner may by order deny, suspend, or revoke the exemption of a particular Canadian broker-dealer provided pursuant to Rule 608 if he finds that the order is in the public interest and that the Canadian broker-dealer (or any partner, officer, director, or any person occupying a similar status or performing similar functions, or any person directly or indirectly, controlling the broker-dealer) has done anything prohibited by Section 7316(a)(1) to (8),(12) or (13).

### **§609 Dishonest or Unethical Practices**

(a) Each broker-dealer and broker-dealer agent registered in Delaware is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The acts and practices described below in this rule, among others, are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration or such other action authorized by the Act.

(b) Broker-Dealers. For the purposes of 6 Del. C. §7316(a)(7), dishonest or unethical practices by a broker-dealer shall include, but not be limited to, the following conduct:

(1) Engaging in an unreasonable and unjustifiable delay in the delivery of securities purchased by any of its customers or in the payment, upon request, of free credit balances reflecting completed transactions of any of its customers, or failing to notify customers of their right to receive possession of any certificate of ownership to which they are entitled;

(2) Inducing trading in a customer's account that is excessive in size or frequency in view of the customer's investment objective, level of sophistication in investments, and financial situation and needs;

(3) Recommending a transaction without reasonable grounds to believe that such transaction is suitable for the customer in light of the customer's investment objective, level of sophistication in investments, financial situation and needs, and any other information material to the investment;

(4) Executing a transaction on behalf of a customer without prior authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial

transaction in the account;

(7) Failing to segregate and identify customer's free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by SEC regulations;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit (commissions or profits equal to 10% or more of the price of a security are presumed to be unreasonable);

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which, together with the preliminary prospectus, includes all information set forth in the final prospectus;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Charging any fee for which no notice is given to the customer, and consent obtained, prior to the event incurring the fee;

(13) Offering to buy from or sell to any person any security at a stated price, unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(14) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price, unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(15) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative or deceptive device, practice, plan, program, design or contrivance, that may include but not be limited to:

(i) Effecting any transaction in a security that involves no change in the beneficial ownership thereof;

(ii) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered

by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(iii) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security for the purpose of inducing the purchase or sale of such security by others;

(16) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(17) Publishing or circulating or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security, unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or that purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona-fide bid for, or offer of, such security;

(18) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims or assertions in a brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(19) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, and, if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(20) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter or a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

(21) Failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, including:

(i) with respect to a security recommended by the broker-dealer, material information that is reasonably available; and

(ii) a written response to any written request or complaint;

(22) Making a recommendation that one customer buy a particular security and that another customer sell that security, where the broker-dealer acts as a principal and such recommendations are made within a reasonably contemporaneous time period, unless individual suitability considerations or preferences justify the different recommendations;

(23) Where the broker-dealer holds itself out as a market maker in a particular security, or publicly quotes bid prices in a particular security, failing to buy that security from a customer promptly upon the customer's request to sell;

(24) Recommending a security to its customers without conducting a reasonable inquiry into the risks of that investment or communicating those risks to its agents and its customers in a reasonably detailed manner and with such emphasis as is necessary to make the disclosure meaningful;

(25) Representing itself as a financial or investment planner, consultant, or adviser, when the representation does not fairly describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;

(26) Falsifying any record or document or failing to create or maintain any required record or documents;

(27) Violating any ethical standard in the conduct rules promulgated by the National Association of Securities Dealers; or

(28) Aiding or abetting any of the conduct listed above.

(c) Broker-Dealer Agents and Issuer Agents. For the purposes of 6 Del. C. §7316(a)(7), dishonest or unethical practices by a broker-dealer agent or an issuer agent shall include, but not be limited to, the following conduct:

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions that would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents;

(5) Dividing or otherwise splitting the agent's

commissions, profits or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer or for a broker-dealer under direct or indirect common control;

(6) Where a recommendation is made that an unsophisticated customer purchase an over-the-counter security that (A) trades sporadically or in small volume, and (B) is not traded on any United States securities exchange (excluding the Spokane Exchange) or on the NASDAQ National Market System, failing to inform the customer that he may not be able to find a buyer if the customer would subsequently want to sell the security;

(7) Where a recommendation is made to purchase an over-the-counter security in which the asked price is greater than the bid by 25 percent or more, failing to inform the customer of the bid and the asked prices and of the significance of the spread between them should the customer wish to resell the security;

(8) Using excessively aggressive or high pressure sales tactics, such as repeatedly telephoning and offering securities to individuals who have expressed disinterest and have requested that the calls cease, or using profane or abusive language, or calling prospective customers at home at an unreasonable hour at night or in the morning;

(9) Conducting or facilitating securities transactions outside the scope of the agent's relationship with his broker-dealer employer unless he has provided prompt written notice to his employer;

(10) Acting or registering as an agent of more than one broker-dealer without giving written notification to and receiving written permission from all such broker-dealers; or

(11) Holding himself out as an objective investment adviser or financial consultant without fully disclosing his financial interest in a recommended securities transaction at the time the recommendation is made;

(12) Engaging in any of the conduct specified in subparagraph (b) above; or

(13) Aiding or abetting any of the conduct listed above.

(d) Prohibited practices in connection with investment company shares. For purposes of 6 Del. C. §7316(a)(7), unethical practices by a broker-dealer, broker-dealer agent or issuer agent shall include, but not be limited to, the following conduct:

(1) In connection with the offer or sale of investment company shares, failing to adequately disclose to a customer all sales charges, including asset based and contingent deferred sales charges, which may be imposed with respect to the purchase, retention or redemption of such shares;

(2) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, that the shares are sold

without a commission, are "no load" or have "no sales charge" if there is associated with the purchase of the shares a front-end loan, a contingent deferred sales load, a SEC Rule 12 b-1 fee or a service fee which exceeds .25 percent of average net fund assets per year, or in the case of closed-end investment company shares, underwriting fees, commissions or other offering expenses;

(3) In connection with the offer or sale of investment company shares, failing to disclose to a customer any relevant sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint or the availability of a letter of intent feature which will reduce the sales charges to the customer;

(4) In connection with the offer or sale of investment company shares, recommending to a customer the purchase of a specific class of investment company shares in connection with a multi-class sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with such class of shares is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and the associated transaction or other fees;

(5) In connection with the offer or sale of investment company shares, recommending to a customer the purchase of investment company shares which results in the customer simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and any associated transaction charges or other fees;

(6) In connection with the offer or sale of investment company shares, recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings and any associated transaction charges or other fees;

(7) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, the fund's current yield or income without disclosing the fund's most recent average annual total return, calculated in a manner prescribed in SEC Form N-1A, for one, five and ten year periods and fully explaining the difference between current yield and total return; provided, however, that if the fund's registration statement under the Securities Act of 1933 has been in effect for less than one, five, or ten years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed;

(8) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit or other bank deposit account without disclosing to the customer that the shares are not insured or otherwise guaranteed by the FDIC or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal and/or return, and any other factors which are necessary to ensure that such comparisons are fair, complete and not misleading;

(9) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, the existence of insurance, credit quality, guarantees or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without disclosing to the customer other kinds of relevant investment risks, including but not limited to, interest rate, market, political, liquidity, or currency exchange risks, which may adversely affect investment performance and result in loss and/or fluctuation of principal notwithstanding the creditworthiness of such portfolio securities;

(10) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing,

(i) that the purchase of such shares shortly before an ex-dividend date is advantageous to such customer unless there are specific, clearly described tax or other advantages to the customer, or

(ii) that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in such shares;

(11) In connection with the offer or sale of investment company shares, making representations to a customer, either orally or in writing, that the broker-dealer or agent knows or has reason to know are based in whole or in part on information contained in dealer-use-only material which has not been approved for public distribution; or

(12) Aiding or abetting any of the conduct listed above.

(13) In connection with the offer or sale of investment company shares, the delivery of a prospectus shall not be dispositive that the broker-dealer or agent has fulfilled the duties set forth in the subparagraphs of this rule.

(e) The conduct set forth above is not exclusive. Engaging in other conduct such as forgery, embezzlement, theft, exploitation, nondisclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or aiding or abetting any unethical practice, shall be deemed an unethical business practice and shall also be grounds for denial, suspension or revocation of registration.

**See 1 DE Reg 1978 (6/1/98)**

### **§610 Examination Requirement**

An individual applying to be registered as a broker-dealer or a broker-dealer agent under the Act must successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.

## **Part G. Investment Advisers and Investment Adviser Representatives**

### **§700 Registration of Investment Advisors**

(a) A person applying for a license as an investment adviser in Delaware shall make application for such license on Form ADV (Uniform Application for Investment Adviser Registration under the Investment Advisers Act of 1940). Amendments to such application shall also be made on Form ADV.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form ADV; (ii) the fee required by Section 7314 of the Act; (iii) a balance sheet prepared in accordance with Schedule G of Form ADV; (iv) a list of all investment adviser representatives employed by the investment adviser; and (v) proof of compliance with Rule 710 by filing an Investment Adviser Affidavit available at <http://www.state.de.us/securities> or by contacting the Division of Securities; and (vi) such other information as the Commissioner may reasonably require.

(c) Registration expires at the end of the calendar year. Any investment adviser may renew its registration by filing with the Commissioner an updated Form ADV, together with the fee required by Section 7314 of the Act and a list of all investment adviser representatives employed by the investment adviser.

~~(d) Every investment adviser must have at least one investment adviser representative registered with the Commissioner to obtain or to maintain its license as an investment adviser. Except for an investment advisor that is a sole proprietorship or the substantial equivalent, an investment adviser registered with the Commissioner shall register with the Commissioner at least one investment advisor representative.~~

**See 4 DE Reg 510 (9/1/00)**

### **§701 Registration of Investment Adviser Representatives**

(a) A person applying for a license as an investment adviser representative in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form U-4; (ii) the fee required by Section 7314 of the Act; (iii); proof of

compliance with Rule 710 by filing an Investment Adviser Affidavit available at <http://www.state.de.us/securities> or by contacting the Division of Securities; and iv) such other information as the Commissioner may reasonably require.

(c) Registration expires at the end of the calendar year. Any investment adviser may renew its registration by filing with the Commissioner a letter of intent to renew and the fee required by Section 7314 of the Act.

**See 4 DE Reg 510 (9/1/00)**

## **§702 Notice Filing Requirements for Federal Covered Advisers**

(a) The notice filing for a federal covered adviser pursuant to 6 Del. C. §7314 shall be filed with the Commissioner on an executed Form ADV (Uniform Application for Investment Adviser Registration (17 C.F.R. §279)) and shall include the fee required by Sec. 7314 of the Act. A notice filing shall be effective from its receipt by the Commissioner until the next December 31st.

(b) The renewal of the notice filing for a federal covered adviser pursuant to Section 7314(b) of the Act shall be filed prior to December 31st upon Schedule I to Form ADV, and shall contain the fee required by Section 7314(c) of the Act. A renewal filing under this rule shall take effect upon the expiration of the filing being renewed.

**See 1 DE Reg 1978 (6/1/98)**

## **§703 Continuing Obligation of Registrants and Notice Filers to Keep Information Correct**

(a) Persons registering as investment advisers or investment adviser representatives are required to keep reasonably current the information set forth in their applications for registration and to notify the Commissioner of any material change to any information reported in their applications for registration.

(b) A federal covered adviser who has made a notice filing under the Act shall file with the Commissioner a copy of any amendment to its Form ADV or any schedule thereto as and when such amendment is filed with the SEC. Failure to keep current the information set forth in an application or to notify the Commissioner of any material change to any information reported in the application shall constitute a waiver of any objection to or claim regarding any action taken by the Commissioner in reliance on information currently on file with the Commissioner.

**See 1 DE Reg 1978 (6/1/98)**

## **§704 Minimum Financial Requirements for Investment Advisers**

(a) Except as otherwise provided in subsection (c) of this Rule, unless an investment adviser posts a bond pursuant to Rule 705, an investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a

minimum net worth of \$35,000, every investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(b) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under the Act whose total net worth falls below the minimum required shall notify the Commissioner by the close of business on the next day of such net worth deficiency. After transmitting such notice, each investment adviser shall, by the close of business on the next business day, file a report with the Commissioner of its financial condition, including the following:

- (1) A trial balance of all ledger accounts;
- (2) A statement of all client funds, securities or assets which are not segregated;
- (3) A computation of the aggregate amount of client ledger debit balances; and
- (4) A statement as to the number of client accounts.

(c) For purposes of this Rule, the term "net worth" shall mean the excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, any asset of intangible nature, home, home furnishings, automobile(s), any personal item not readily marketable (in the case of an individual), advances or loans to stockholders and officers (in the case of a corporation), and advances or loans to partners (in the case of a partnership). For purposes of this Rule, the term "net capital" in Section 222(c) of the Investment Advisers Act of 1940 shall have the same meaning as "net worth" as defined in this subsection.

(d) The Commissioner may require that a current appraisal be submitted in order to establish the worth of any asset.

(e) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

**See 1 DE Reg 1978(6/1/98)**

## **§705 Bonding Requirements of Certain Investment Advisers**

(a) Any bond required by this rule shall be issued by a

company qualified to do business in this state in the form determined by the Commissioner and shall be subject to the claims of all clients of the investment adviser regardless of the client's state of residence. "Assets under management" for purposes of this rule shall mean the assets under management as disclosed on the adviser's current Form ADV or any schedule or supplement thereto filed with the Commissioner.

(b) Every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded in an amount of not less than \$35,000 by a bonding company qualified to do business in Delaware. The requirements of this Rule shall not apply to those applicants or registrants who comply with the requirements of Rule 704.

(c) An investment adviser that has its principal place of business in a state other than Delaware shall be exempt from the requirements of subsection (a) of this section, provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

**See 1 DE Reg 1978 (6/1/98)**

#### **§706 Record keeping Requirements of Investment Advisers**

(a) Every investment adviser registered or required to be registered under this Act shall make and keep true, accurate and current the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof) paid

or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to: (i) Any recommendation made or proposed to be made and any advice given or proposed to be given; (ii) any receipt, disbursement or delivery of funds or securities; or (iii) the placing or execution of any order to purchase or sell any security, provided, however: (A) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and (B) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than clients receiving investment supervisory services or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(12)(i) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except: (A) transactions effected in any account



over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (B) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) For purposes of this subdivision (12) the term "advisory representative" shall mean any partner, officer or director of the investment adviser, any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (A) any person in a control relationship to the investment adviser; (B) any affiliated person of such controlling person; and (C) any affiliated person of such affiliated person. "Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended. (iii) An investment adviser shall not be deemed to have violated the provisions of this subparagraph because of his failure to record securities transactions of any investment adviser representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13)(i) Notwithstanding the provisions of subdivision (12) above, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction requires, any direct or indirect beneficial ownership, except: (A) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or

indirect influence or control; and (B) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of (1) its total sales and revenues, and (2) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(iii) For purposes of this subdivision (13) the term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, shall mean any partner, officer, director or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (A) any person in a control relationship to the investment adviser; (B) any affiliated person of such controlling person; and (C) any affiliated person of such affiliated person. "Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

(iv) An investment adviser shall not be deemed to have violated the provisions of this subdivision (13) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance

with the provisions of Rule 709(a)(16), and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(b) If an investment adviser subject to subsection (a) of this Rule has custody or possession of securities or funds on any client, the records required to be made and kept under subsection (a) above shall also include: (1) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts; (2) a separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits; (3) copies of confirmations of all transactions effected by or for the account of any such client; and (4) a record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount of interest of each such client, and the location of each such security.

(c) Every investment adviser subject to subsection (a) of this Rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current: (1) records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale; and (2) for each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.

(d) Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

(e) (1) All books and records required to be made under the provisions of subsections (a) to (c), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser. (2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(f) An investment adviser subject to subsection (a) of this Rule, before ceasing to conduct or discontinuing

business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule, and shall notify the Commissioner in writing of the exact address where such books and records will be maintained during such period.

(g) (1) The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in paragraph (g)(2) below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall: (i) arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record; (ii) be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium the Commissioner by its examiners or other representatives may request; (iii) store separately from the original one other copy of the film or computer storage medium for the time required; (iv) with respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and (v) with respect to records stored on photographic film, at all times have available for the Commissioner's examination of its records pursuant to section 7315(e) of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) Pursuant to this paragraph (g) an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h) For purposes of this rule "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(i) Every investment adviser that has its principal place of business in a state other than Delaware shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with the state's record keeping requirements.

**See 1 DE Reg 1978 (6/1/98)**

#### **§707 Use of the Internet for General Dissemination of Information on Products and Services**

(a) Investment advisers and investment adviser representatives who use the Internet to distribute information on available products and services through communications made on the Internet directed generally to

anyone having access to the Internet, and transmitted through postings on "Bulletin Boards", displays on "Home Pages" or otherwise (an "Internet Communication") shall not be deemed to be "transacting business" in Delaware for purposes of Section 7313 of the Act based solely on the Internet Communication if the following conditions are met:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(i) The investment adviser or representative in question may only transact business in a state requiring registration if first registered, excluded or exempted from state investment adviser or representative registration requirement, as the case may be; and

(ii) follow-up individualized responses to persons in Delaware by such investment adviser or representative that involve the rendering of personalized investment advice for compensation will not be made absent compliance with state investment adviser or representative registration requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said investment adviser or representative is first registered in Delaware or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered investment adviser or representative from any applicable securities registration requirement in Delaware;

(3) The Internet Communication does not involve the rendering of personalized advice for compensation in Delaware over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a representative:

(i) the affiliation with the investment adviser is prominently disclosed within the Internet Communication;

(ii) the investment adviser with whom the representative is associated retains responsibility for reviewing and approving the content of any Internet Communication by the representative;

(iii) the investment adviser with whom the representative is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(iv) in disseminating information through the Internet Communication, the representative acts within the scope of the authority granted by the investment adviser;

(b) The position expressed in this rule extends to state investment adviser and representative registration requirements only, and does not excuse compliance with

applicable securities registration, antifraud or related provisions;

(c) Nothing in this rule shall be construed to affect the activities of any investment adviser and representative engaged in business in Delaware that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvements Act of 1996, as amended.

**See 1 DE Reg 1978 (6/1/98)**

#### **§708 Custody of Client Funds or Securities**

It is unlawful for an investment adviser to take or have custody of any securities or funds of any client unless:

(a) The investment adviser notifies the Commissioner in writing that the investment adviser has or may have custody;

(b) The securities of each client are segregated, marked to identify the particular client having the beneficial interest in those securities, and held in safekeeping in a place reasonably free from risk of destruction or other loss;

(c) All client funds are deposited as follows:

(1) In one or more bank accounts containing only clients' funds;

(2) The account or accounts are maintained in the name of the investment adviser as agent or trustee for the clients; and

(3) The investment adviser maintains a separate record for each account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;

(d) Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place and manner in which the funds and securities will be maintained and subsequently, if or when there is a change in the place or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client;

(e) At least once every 3 months, the investment adviser sends to each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of the period, and all debits, credits and transactions in the client's account during that period; and

(f) At least once every calendar year, an independent certified public accountant or public accountant verifies all client funds and securities by an actual examination, which shall be made at a time chosen by the accountant without prior notice to the investment adviser. A report stating that the accountant has made an examination of the client funds and securities in the custody of the investment adviser, and describing the nature and extent of the examination, shall be filed with the Commissioner within 30 days after each examination.

**§709 Dishonest or Unethical Practices**

(a) A person who is an investment adviser, a federal covered adviser, or an investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of the client. While the extent and nature of this duty varies according to the nature of the relationship with the client and the circumstances of each case, no investment adviser, federal covered adviser or representative shall engage in any dishonest or unethical business practice. The provisions of this section apply to federal covered advisers only to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). For purposes of §7316(a)(7) of the Act, the term "dishonest or unethical practices" shall include but not be limited to the following:

(1) Recommending to a client, to whom investment supervisory, management or consulting services are provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specific security that shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the client's financial resources and investment objectives and the character of the account.

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party trading authorization from the client.

(6) Borrowing money or securities from a client, unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) Extending arranging for, or participating in arranging for credit to a customer in violation of the provisions of Regulation T promulgated by the Federal Reserve Board, 12 C.F.R. §§220.1-220.131.

(8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services

being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation prepared by someone other than the adviser to any advisory client prepared by someone other than the adviser without disclosing the fact; provided, however, that this prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

(10) Charging a client an advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.

(11) Failing to disclose to clients, in writing, before any advice is rendered, any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice, including:

(i) Compensation arrangements connected with advisory services which are in addition to compensation from such clients for such services; and

(ii) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice to be rendered.

(13) Publishing, circulating, or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, affairs, or investments of any client, unless required by law to do so, or unless consented to by the client.

(15) Violating Rule 206(4)-2 under the Investment Advisers Act of 1940, irrespective of whether such investment adviser is registered under the Investment Advisers Act of 1940.

(16) Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and discloses, in substance, the information required by Part II of Form ADV, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract. The information required by Part

II of form ADV may be disclosed in a document advisory contract, so long as it is disclosed at the time the contract is entered into, extended or renewed.

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisors Act of 1940

(18) Entering into, extending, or renewing any advisory contract which would violate Section 205 of the Investment Advisors Act of 1940. This provision shall apply to all advisers registered or required to be registered under the Delaware Securities Act.

(19) To include in an advisory contract any condition, stipulation, or provision binding any person to waive compliance with any applicable provision of the Delaware Securities Act, any rule promulgated thereunder, the Investment Advisors Act of 1940, or any rule promulgated thereunder, or to engage in any other practice that would violate Section 215 of the Investment Advisors Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of Section 206(4) of the Investment Advisors Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisors Act of 1940.

(21) Engaging in any conduct, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Delaware Securities Act or any rule thereunder.

(22) Aiding or abetting any of the conduct listed above.

(b) The conduct set forth in subparagraph (a) of this Rule is not exclusive. Engaging in other conduct such as forgery, embezzlement, theft, exploitation, non-disclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or aiding or abetting any unethical practice, shall be deemed an unethical business practice and shall also be grounds for denial, suspension or revocation of registration. The federal statutory and regulatory provisions referenced herein shall apply to all investment advisers, federal covered advisers and investment adviser representatives only to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

**See 1 DE Reg 1978 (6/1/98)**

## §710 Examination Requirements

(a) Examination Requirements. An individual applying to be registered as an investment adviser or investment adviser representative under the Act shall provide the Commissioner with proof of obtaining a passing score on one of the following examinations:

(1) The Uniform Investment Adviser Law Examination (Series 65 examination); or

(2) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(b) Grandfathering.

(1) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on the effective date of this Rule shall not be required to satisfy the examination requirements for continued registration, except that the Commissioner may require additional examinations for any individual found to have violated any state or federal securities law.

(2) An individual who has not been registered in any jurisdiction for a period of two (2) years shall be required to comply with the examinations requirements for this Rule.

(c) Waivers. The examination shall not apply to an individual who currently holds one of the following professional designations:

(1) Certified Financial Planner (CFP) awarded by the; Certified Financial Planner Board of Standards, Inc.

(2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(4) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(5) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(6) Such other professional designation as the Commissioner may by rule or order recognize.

(d) The Commissioner reserves the power to waive the exam requirements upon good cause shown.

**See 4 DE Reg 510 (9/1/00)**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code,  
Section 103(a)(1) and (b),  
(7 Del.C. 103(a)(1) and (b))

**Secretary's Order No.: 2002-W-0048**

**Date of Issuance: August 26, 2002**

**REGISTER NOTICE****1. Brief Synopsis of the Subject, Substance and Issues**

The Department of Natural Resources and Environmental Control, Division of Water Resources, Surface Water Discharges Section, held a public hearing on August 29, 2000 to receive comments on proposed amendments to the Regulations Governing the Control of Water Pollution. The proposed amendments and a notice of the August 29, 2000 public hearing were published in the Delaware Register of Regulations on July 1, 2000. The Department responded to the comments entered into the public hearing record in a Response Document dated March 8, 2002. The Hearing Officer's Report to the Secretary recommended adoption of the revisions as discussed in the Response Document. On August 26, 2002, the Secretary ordered that the Regulations be amended as proposed with the revisions outlined in the response document. Under 29 Del C. no agency can adopt a regulation if more than 12 months has elapsed since the end of the public comment period, therefore these regulations are being published in their modified form to provide the public an additional opportunity to submit comments before the amendments are promulgated in the manner required by law.

**2. Possible Terms of the Agency Action:**

N/A

**3. Statutory Basis or Legal Authority to Act:**

7 Del C. Chapter 60

**4. List of Other Regulations That May be Impacted or Affected by the Proposal:**

Regulations Governing the Control of Water Pollution (Amended September 15, 1998)

**5. Notice Of Public Comment:**

The Department of Natural Resources and Environmental Control, Division of Water Resources, Surface Water Discharges Section, held a public hearing on August 29, 2000 to receive comments on proposed amendments to the Regulations Governing the Control of Water Pollution. The Department responded to the comments entered into the public hearing record in a Response Document sent to the Hearing Officer dated March 8, 2002. In his report, the Hearing Officer recommended the adoption of the revisions as discussed in the Response Document. The Department is publishing the Secretary's Order and the revised version of the Regulations Governing the Control of Water Pollution for public comment before final promulgation of the amendments in the manner required by law. The public comment period will remain open until October 31, 2002. Comments should be sent in writing to Paul Janiga, Surface Water Discharges Section, Division of Water Resources, DNREC, 89 Kings

Hwy., Dover, DE 19901. Copies of the Department's Response Document are available by contacting Paul Janiga at (302) 739-5731.

**I. Background**

The Department of Natural Resources and Environmental Control held a public hearing on August 29, 2000 to receive comments on proposed amendments to the Department's **Regulations Governing the Control of Water Pollution**. Public notices advertising the hearing were published in two newspapers, the Delaware State News and The News Journal, on Wednesday, August 2, 2000, and on Sunday, August 6, 2000. The proposed amendments and a notice advertising the August 29, 2000 public hearing were published in the **Delaware Register of Regulations** on July 1, 2000.

The majority of the proposed amendments focus on the Department's issuance and administration of NPDES permits in the State of Delaware. Administration of this program was delegated to the State of Delaware by EPA in 1974. In addition, the Department proposed updates to its regulations for the construction and operation of wastewater/pollution control facilities and proposed to adopt regulations that formalize a periodic assessment of municipal treatment plant performance and infrastructure needs. Regulations were also proposed to address administrative procedures for evaluating and issuing a State certification that an activity will be conducted in such a manner that won't violate the applicable surface water quality criteria or standards. Such certification is required under federal law for any activity that involves a federal license or permit.

Prior to the August 29, 2000 public hearing, the Department conducted a public workshop on Monday, September 13, 1999. At that workshop, Department staff outlined and discussed the possible changes to the water pollution control regulations. The Department staff also met with a group of interested parties on four separate occasions in November and December 1999 to review and discuss the proposed regulatory changes in detail and to answer any questions the group had. The Department also conducted a follow-up workshop on January 10, 2000.

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 August 26, 2002, and that report is expressly incorporated herein by reference.

**II. Findings and Conclusions**

1. Proper notice of the hearing was provided as required by law.
2. The Department has carefully considered all

relevant public comments regarding this proposed rulemaking, and has provided a reasoned analysis and sound conclusions regarding each one as reflected in the March 8, 2002 Response Document, which is attached and incorporated into this Order. The reasoning and conclusions with respect to each issue are hereby incorporated into this Order as formal findings.

3. This rulemaking, together with the revisions made as a result of the comment process, will provide a significant water quality benefit for the State of Delaware, while being sensitive to the practical implications for the regulated community.

### III. Order

In view of the above findings, it is hereby ordered that the **Regulations Governing the Control of Water Pollution** be amended and promulgated in the manner required by law to reflect the final version of these amendments, attached hereto, which includes appropriate revisions as discussed in the Response Document.

### IV. Reasons

This rulemaking represents careful, deliberate and reasoned action by this agency to address shortcomings in its existing regulations and to maintain consistency with evolving Federal requirements, while taking into account the practical interests and concerns of the regulated community.

Nicholas A. DiPasquale, Secretary

**\* PLEASE NOTE: DUE TO THE LENGTH OF THE FINAL REGULATION AND SPACE CONSIDERATIONS, THE FULL TEXT OF THE REGULATION IS NOT BEING REPRODUCED HERE. THERE ARE TWO VERSIONS AVAILABLE FROM THE WEBSITE.**

**ADOBE PDF VERSION**  
**HTML VERSION**

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## DELAWARE RIVER BASIN COMMISSION

### NOTICE OF PROPOSED RULEMAKING

The Delaware River Basin Commission ("Commission") is a federal-state regional agency charged with managing the water resources of the Basin without regard to political boundaries. Its members are the governors of the four Basin states – New Jersey, New York, Pennsylvania and Delaware – and a Federal representative

appointed by the President of the United States. The Commission is not subject to the requirements of 29 Delaware Code Chapter 101. This notice is published by the Commission for informational purposes

### Proposed Amendments to the Comprehensive Plan and the Water Code

#### Relating to the Operation of Lake Wallenpaupack During Drought Watch, Drought Warning and Drought Conditions

**Summary:** The Commission will hold a public hearing to receive comments on proposed amendments to its *Comprehensive Plan* and *Water Code* to incorporate a revised drought operating plan for the Lake Wallenpaupack Reservoir and Hydroelectric Facility, currently owned and operated by PPL Holtwood, LLC ("PPL"). The proposed rulemaking would increase by 12,500 acre-feet or 4.1 billion gallons the amount of Lake Wallenpaupack water available to the Commission for flow augmentation in the main stem Delaware River during drought watch, drought warning and drought emergency conditions, as defined in Section 2.5.3 of the *Water Code* and Docket D-77-20 CP (Revision 4), dated April 28, 1999. The minimum lake elevation to be maintained during drought conditions – the target elevation for December 1 – would decrease from 1170.0 feet to 1167.5 feet. The right to use as much as 4.1 billion gallons of Lake Wallenpaupack water to augment Delaware River flows during drought would be deemed to satisfy up to 10,000 acre-feet of the Commission's consumptive use replacement requirement for the Martins Creek and Lower Mount Bethel generating facilities and future facilities that PPL (or its successors in interest) might construct. That is, under the proposed drought plan, the Commission would release PPL (and its successors) from the requirement that it provide up to 10,000 acre-feet or 3.3 billion gallons of dedicated storage to replace, gallon for gallon, water consumptively used by the entity's existing and future generating facilities when the basin is in drought watch, warning or drought operations.

**Dates:** The public hearing will be held on Wednesday, October 16, 2002 during the Commission's regular business meeting, which will begin at 1:30 p.m. Persons wishing to testify are asked to register in advance with the Commission Secretary by phoning 609-883-9500 ext. 203. Written comments will be accepted through Friday, November 15, 2002. Comments must be *received*, not merely postmarked, by that date.

**Addresses:** The public hearing will be held at the Commission's offices, 25 State Police Drive, West Trenton, NJ. Written comments should be addressed to the Commission Secretary at DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360.

**Further Information, Contacts:** A draft resolution enacting the proposed amendments to Sections 2.5.5 and 2.5.6 of the *Water Code* and the text of the current *Water Code* (which is incorporated in the *Comprehensive Plan*) may be viewed on the Commission's web site, at <http://www.drbc.net>. Please contact Pamela M. Bush ext. 203, with questions about the proposed rule change or the rulemaking process.

PAMELA M. BUSH, ESQ.  
Commission Secretary  
September 18, 2002

**Revised 9/11/02**

**NO. 2002-**

**A RESOLUTION** to amend the *Comprehensive Plan* and the *Water Code* relating to the operation of Lake Wallenpaupack during drought, drought warning and drought watch conditions.

**WHEREAS**, Sections 2.5.3 and 2.5.4 of the *Water Code* specify criteria defining "basinwide drought" and "basinwide drought warning;" and

**WHEREAS**, Section 2.5.5 of the *Water Code* specifies how the Commission may direct operation of Lake Wallenpaupack during basinwide drought, in accordance with Table 2 therein, "Lake Wallenpaupack Elevation Schedule During Drought Conditions" ("Table 2"); and

**WHEREAS**, Table 2 currently reflects total storage in Lake Wallenpaupack of 29.8 billion gallons ("bg") available for drought operation; and

**WHEREAS**, Section 2.5.6 of the *Water Code* establishes criteria defining "lower basin drought" and "lower basin drought warning," and specifies how the Commission may direct operation of Lake Wallenpaupack during lower basin drought in accordance with Table 2; and

**WHEREAS**, in Docket No. D-77-20 CP (Revised), the Commission has temporarily modified the criteria defining basinwide drought warning and has specified criteria defining "basinwide drought watch;" and

**WHEREAS**, PPL Holtwood, LLC ("PPL") has proposed to the Commission that the *Water Code* be revised to reflect the availability of an additional 4.1 bg of storage in Lake Wallenpaupack for basinwide and lower basin drought operation as directed by the Commission, and for use during basinwide drought watch, basinwide drought warning and lower basin drought warning, also as directed by the Commission, which proposal is herein called the "Proposed New Drought Operations Plan for Lake Wallenpaupack" (or "the proposal"); and

**WHEREAS**, the Commission has developed a daily flow computer model called OASIS, which PPL has modified to include Lake Wallenpaupack as an operating

reservoir; and

**WHEREAS**, PPL submitted to the Commission the report "Analysis of a New Drought Operations Plan for Lake Wallenpaupack – Final Report," dated January 2002 ("Final Report"), which presents the results of PPL's analysis of the Proposed New Drought Operations Plan for Lake Wallenpaupack using the OASIS model and demonstrates the benefits of the proposal to the basin; and

**WHEREAS**, the benefits to the basin set forth in the Final Report include: reduced drought frequency and intensity, reduced incidence of cutbacks in conservation, directed and thermal releases, and reduced incidence of cutbacks in diversions of Delaware Basin water to New York City and the State of New Jersey; and

**WHEREAS**, Lake Wallenpaupack is a component of PPL's Lake Wallenpaupack Hydroelectric Project licensed by the Federal Energy Regulatory Commission ("FERC"); and

**WHEREAS**, the FERC license for the Lake Wallenpaupack Hydroelectric Project expires in September 2004, and PPL is preparing an application to the FERC for a new license, which application must be submitted to FERC no later than September 30, 2002; and

**WHEREAS**, PPL's Martins Creek and Lower Mount Bethel generating stations and unidentified PPL potential future generating facilities in the basin may require a combined dedicated water supply of up to 10,000 acre feet (approximately 3.3 bg) per year to satisfy the Commission's consumptive water use compensation requirement; and

**WHEREAS**, PPL proposes to satisfy the Commission's consumptive water use compensation requirement for PPL's existing and potential future generating facilities in the basin through the Proposed New Drought Operations Plan for Lake Wallenpaupack for a credit of up to 10,000 acre feet of water per year toward satisfaction of the requirement; and

**WHEREAS**, the Proposed New Drought Operations Plan for Lake Wallenpaupack would:

- preserve lake elevations for recreation;
- accommodate project operation to enhance conditions in the Lackawaxen River;
- sustain the project's capability to produce peaking and emergency electricity;
- assure refill of the lake by June 1<sup>st</sup> in most years;
- make additional storage in Lake Wallenpaupack available to satisfy the Montague flow objective during drought watch, drought warning and drought conditions; and
- allow for the conservation of storage in the three New York City Delaware Basin reservoirs; and

**WHEREAS**, under some conditions, the proposal would increase the quantity of water from the New York City



Delaware Basin reservoirs required to meet temperature objectives in the reservoir tailwaters, but these releases would be offset by the availability of increased storage in the reservoirs; and

**WHEREAS**, an interim minimum flow target established for the West Branch Delaware River by the parties to the 1954 Supreme Court Decree will remain in effect notwithstanding any increase in releases from Lake Wallenpaupack under the proposal; and

**WHEREAS**, PPL has performed a comparison of its proposal with the alternative of gallon for gallon replacement by Lake Wallenpaupack of depletive use by its generating units and has demonstrated that gallon for gallon replacement results in comparatively greater use of storage in the Upper Basin and increased incidence of basinwide drought conditions; and

**WHEREAS**, the Commission's Flow Management Technical Advisory Committee has reviewed the results of PPL's analysis of the Proposed New Drought Operations Plan for Lake Wallenpaupack and has recommended, with the concurrence of New York City, that the Commission accept PPL's Proposed New Drought Operations Plan and grant to PPL its proposed consumptive water use compensation credit, and that the Comprehensive Plan and the Water Code be amended accordingly; now therefore,

**BE IT RESOLVED** by the Delaware River Basin Commission:

1. The Comprehensive Plan and Article 2, Sections 2.5.5 and 2.5.6 of the Water Code of the Delaware River Basin are amended as indicated in paragraphs 1.A through 1.F, below, to permit the Commission to direct operation of Lake Wallenpaupack during all drought operations, in accordance with Table 2 of Section 2.5.5 as hereby revised. It is understood that any and all provisions pertaining to the operation of Lake Wallenpaupack during basinwide drought warning also apply to basinwide drought watch as temporarily defined by the Commission in Docket No. D-77-20 CP (Revised); reference to "drought watch" is noted in brackets "[ ]" for clarity herein but is not to be included in the amended Water Code at this time.

A. The following sentence is added at the end of the first paragraph of Section 2.5.5:

Lake Wallenpaupack also may be utilized to complement the drought management operations of the New York City reservoirs during "drought warning" [and drought watch] conditions as defined by Figure 1 in Section 2.5.3A.

B. The second paragraph of Section 2.5.5 (beginning "Lake Wallenpaupack and the Mongaup reservoirs ...") is revised as follows, beginning with the third sentence:

During "drought" and "drought warning" [and drought watch] conditions, as defined in Figure 1 of Section 2.5.3.A of the Water Code, the power companies shall release water only in accordance with Commission direction. The Lake Wallenpaupack elevation schedules during normal, drought warning, [drought watch,] and drought conditions are set forth in Table 2. The lake elevations in Table 2 have been established to preserve the recreation values and other operational benefits of the lake while also providing water storage to be utilized at the direction of the Commission during the Commission's drought operations as set forth in this section and in Section 2.5.6. The utilization of Lake Wallenpaupack at the direction of the Commission during the Commission's drought operations shall be conditioned upon the following:

1. Utilization of Lake Wallenpaupack during drought warning [and watch] shall be consistent with PPL's FERC license and power generation requirements as well as with lake and downstream needs.
2. During drought, PPL may, at the Commission's direction, operate for power production when the lake elevation is above the following first-of-month "normal elevation" as defined in Table 2.
3. During a declared power emergency, PPL may operate for power production regardless of lake elevation.
4. Subject to the concurrence of the Commission, in response to changing electrical demand patterns, PPL may revise the lake elevations for "normal conditions" shown in Table 2.

C. Table 2 of Section 2.5.5 is revised in its entirety, as follows:

**TABLE 2. LAKE WALLENPAUPACK ELEVATION SCHEDULES**

Day	Normal Conditions	Drought Warning [and Watch]	Drought
June 1	1187.0	1187.0	1187.0
July 1	1185.0	1185.0	1185.0
August 1	1183.0 <sup>1</sup>	1183.0 <sup>1</sup>	1183.0 <sup>1</sup>
September 1	1181.0	1180.0	1179.0
October 1	1179.0	1176.0	1175.0
November 1	1181.0	1172.0	1171.0
December 1	1182.0	1167.5	1167.5
January 1	1183.0	1170.1	1170.1
February 1	1181.5	1173.3	1173.3
March 1	1180.0	1175.6	1175.6
April 1	1182.3	1182.3	1182.3
May 1	1185.6	1185.6	1185.6

<sup>1</sup> The existing FERC license for the Lake Wallenpaupack Hydroelectric Project requires that, except when flood waters are being stored, the maximum elevation of the lake shall be limited to elevation 1182.0 between August 1 and November 15 of each year (Article 41). In its application to the FERC for a new license, PPL will seek to include the drought condition lake elevation schedules in Table 2 on a permanent basis, including a lake elevation of 1183.0 on August 1. In the interim, until the FERC issues a new license, PPL will request annual approval from the FERC to operate the lake in accordance with Table 2 during the August 1-November 15 period. PPL will notify the Commission of the FERC's response to each annual request.

D. Subsection C.3.c is added to Section 2.5.6, as follows:

c. The Commission may direct releases from Lake Wallenpaupack subject to the same conditions as applied to operation during lower basin drought in D.3.e, except that utilization of Lake Wallenpaupack during lower basin drought warning shall be consistent with PPL's FERC license and power generation requirements as well as with lake and downstream needs.

E. At Subsection D.3.b.iv of Section 2.5.6, the volume of storage assigned to Lake Wallenpaupack is

revised to 33.9 bg from 29.81 bg.

F. A second sentence is added to Subsection D.3.e.i of Section 2.5.6 as follows:

During drought, PPL may, at the Commission's direction, operate for power production when the lake elevation is above the following first-of-month "normal elevation" as defined in Table 2 and during a declared power emergency regardless of lake elevation.

2. The Commission hereby grants PPL a credit to satisfy the Commission's consumptive use compensation requirement for PPL's existing and potential future generating facilities in the basin. During any period from June 1 to the following May 31, the credit shall be equal to the amount of consumptive water use compensation otherwise required by PPL's generating facilities but in no event shall the credit exceed 10,000 acre feet (approximately 3.3 bg).

3. Any adverse impact on the New York State reservoir releases program for recreational uses of the river that is attributable to the proposed operation of Lake Wallenpaupack will be ameliorated by releases from the New York City Delaware Basin reservoirs. Water saved in the New York City Delaware Basin reservoirs as a result of operations in accordance with this resolution shall be available for such uses as may be approved from time to time by the parties to the 1954 Supreme Court Decree.

BY THE COMMISSION

ADOPTED:

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

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

24 DE ADMIN. CODE 2500  
Statutory Authority: 24 Delaware Code,  
Section 2509 (24 Del. C. 2509)

**ORDER**

A Public Hearing was held to receive comments on June 5, 2002 at a scheduled meeting of the State Board of Pharmacy. The Board considered proposed changes to Regulations 1.0, 3.0, 5.0, 9.0, 10.0, 11.0 and 15.0 as published in the **Register of Regulations**, Vol. 5, Issue 11, May 1, 2002.

**Summary Of The Evidence And Information Submitted**

*The following is a summary of the written comments.*

1. Albert W. Helmeczi, M.S., R.Ph., FASHP, the Director of Pharmacy Services for Christiana Care Health Services, commented that he supports the elimination of the requirement that a pharmacist must check compounding ingredients, their weights and measures prior to compounding by a certified pharmacy technician or pharmacy intern because this may lead to more efficient

practices. The pharmacist may still check ingredients and weights before compounding to ensure accuracy. However, if procedures may be established to verify this accuracy after the product is prepared, the compounding process may increase efficiency without decreasing accuracy.

He does not support changes in the definition of the "practice of dispensing" (Section B) and the changes regarding who may exchange prescriptions verbally because these changes may lead to medication errors or adverse reactions. If a pharmacy technician is allowed to receive prescriptions verbally, the responsible pharmacist has no way to verify accuracy. The current certification process does not ensure that pharmacy technicians have sufficient skill and knowledge to certify prescription orders.

Mr. Helmeczi does not believe that training procedures for pharmacy technicians prepares them to assess adequately and respond to requests for information that a pharmacy receives or determine potential drug interactions. Pharmacy technicians should not perform these functions without supervision.

2. Herbert E. Von Gorres, R.Ph. commented that the National Association of Boards of Pharmacy (N.A.B.P.) model language will allow for more efficient and safe prescription processing. He supports the expanded role of pharmacy technicians, although he does not have a nationally certified pharmacy technician working for him and doubts that he or his partners would be comfortable with the expanded role of pharmacy technicians in providing information. He does not support removing the pharmacist

from providing the final check and asks that the Board not indiscriminately grant exceptions to the final check “for good cause shown,” particularly in a community practice.

Like pharmacists, nationally certified pharmacy technicians acquire professional judgment and a high level in their field. They are also required to continue their education. They are often at least as proficient as a first- or second-year pharmacy intern, who may lack practical pharmacy experience.

The pharmacist is increasingly a dispenser of knowledge rather than a dispenser of drugs. Relinquishing a portion of the drug-dispensing process not requiring a pharmacist’s professional judgment to those under a pharmacist’s supervision would be better than relinquishing the entire process.

3. Kevin N. Nicholson, R.Ph., J.D., Director of Pharmacy Regulatory Affairs for the National Association of Chain Drug Stores, commented that his organization supports the Board’s proposal of N.A.B.P. language for centralizing prescription processing. Centralized processing is necessary to meet the needs of increased prescription volume, patient counseling, and other cognitive services. The model language also allows technological changes in a safe and efficient manner.

He recommends that Regulation 5.0, defining a “certified pharmacy technician” as one who has passed a “national certification program approved by the Board and maintains certification” be expanded to include other options, such as Pharmacy Technician Competency Examinations and training-and-assessment programs including those provided by employers. These examinations and training programs are usually targeted toward particular practice areas and often better prepare technicians than does general certification. He provides suggested language.

He also recommends that, rather than limiting technicians to duties provided by specified lists under subsections 5.4.3 and 5.4.4, the Board state those activities that the two classes of technicians may not perform and allow their performance of all other functions. He provides suggested language for sections defining the roles “Certified Pharmacy Technician” and “Pharmacy Technician.”

Finally, he recommends elimination of the proposed language under 5.4.2.2. that provides that the pharmacist on duty must complete and maintain written documentation permitting the certified pharmacy technician to perform allowed activities. This is in keeping with the previous recommendations regarding adoption of language in the N.A.B.P. model concerning activities the certified pharmacy technician may not perform. This would allow pharmacists to decide which of the non-prohibited activities technicians may perform without increased record-keeping requirements.

4. Lawrence J. Rasero, Ph.D. commented that he is opposed to proposed changes that would reduce patient

safety. Under A.9.B. #1 and #2, pharmacy technicians should not be allowed to receive oral prescriptions or to certify a prescription order. Under D.4.b and C., pharmacy technicians should not be allowed to provide drug information to health care professionals. The proposed change should also assure that the pharmacist is directly supervising a pharmacy technician during the compounding process. Under D.5, the compounding rules should not be eased. Quality assurance requires that each step of the process be controlled or checked. Looking at the end product does not provide quality assurance. Under G.4, only the pharmacist should be responsible for prospective and retrospective drug reviews. Patient safety will be compromised if the role of the pharmacy technician is expanded to include activities beyond the pharmacy technician’s training and experience.

5. Kenneth R. Baker, R.Ph., J.D., Executive Vice President for PMC Quality Commitment, Inc. and Vice President and general counsel for Pharmacists Mutual Insurance Co., commented that he advocates a greater role and responsibility for pharmacy technicians so long as patient safety is not compromised. He makes the following eight comments:

1. Definition A.8 “Pharmacy Technician” is a non-definition because it includes everyone except pharmacists and interns. The regulation does not provide for registration of pharmacy technicians and, therefore, does not provide for control over who has access to drugs or judge training and knowledge.

2. The role of the pharmacy technician should be expanded in the mechanical aspects of dispensing. It should not be expanded into areas requiring a pharmacist’s training and knowledge. The proposed definition in paragraph B would blur the distinct line between those pharmacist’s duties that can and cannot be delegated. Although a pharmacist’s training and knowledge may not always be needed, a patient may be put at risk when that training and knowledge is needed and not available. Paragraphs D.3 and D.4 do not satisfy this concern because they are not exhaustive and do not provide limitations.

3. Paragraph D. fails to provide standards for training of pharmacy technicians. In-store training may or may not be effective. The pharmacist-in-charge is not provided guidance about what constitutes “proper” training. The documentation requirement does not cure the problem. Recognition of specific, standardized material and courses provides greater protection. Several standard training manuals are available and could be approved. Training should be standardized, and successful training should be documented.

4. Parts of paragraph D.4 raise concerns. D.4(a) could be interpreted to allow a Certified Pharmacy Technician to take new prescriptions by phone. This is an activity that requires the training and knowledge of a

pharmacist. The definition of Certified Pharmacy Technician does not require experience sufficient to realize and resolve problems at this point in the prescription process. There are also potential problems of interpretation.

5. Paragraph D.4(d) could tempt Certified Pharmacy Technicians to read drug information rather than provide counseling. Patient counseling by a pharmacist is necessary for public safety.

6. Paragraph D.5 raises unspecified concerns about compounding.

7. Paragraph G.3 appears unduly restrictive, at least for community practice in that it limits who can take information concerning allergies and other medications to pharmacists, interns, and Certified Pharmacy Technicians. Most people can be trained to take this information. If allergies or other medications are present, it is the pharmacist and not the pharmacy technician who decides on further investigation before or during counseling.

8. Paragraph G.4 raises problems because it is not prudent to allow a pharmacy technician, regardless of amount of training or degree of supervision, to perform drug reviews. Although C.1 requires prospective drug reviews to be conducted by pharmacists, Paragraph G.4 can be read to allow important parts of that function to be performed by Certified Pharmacy Technicians.

6. Kimberly Couch, Pharm.D., President of Delaware Society of Health-System Pharmacists (D.S.H.P.), commented that the D.S.H.P. Board of Directors requests that the definition for dispensing be amended to require that the resulting product is one that stems from a lawful order of a practitioner but that such an order be certified by a licensed pharmacist because only a licensed pharmacist has the knowledge to certify a prescription accurately. Under Item 5.2, the Board opposes removal of the language "which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program" because such removal allows for the dispensing of product by unqualified personnel.

Under Item 5.4.4.1, the Board requests that the phrase "new authorizations" be changed to "authorization for renewals" because this reflects language in 5.6 and conveys that a certified pharmacy technician may receive authorizations for continuation of medications but not new prescriptions.

Under Item 5.4.4.4, the Board believes that the current certification process for pharmacy technicians does not focus on the interpretation of medical or drug information. It may be contrary to the public interest to allow pharmacy technicians to provide information by pharmacy technicians reading directly from reference material. The knowledge of a certified pharmacy technician does not provide adequately for the assessment and decision-making necessary to provide drug information. The pharmacy technician could provide

other information, such as that regarding product preparation and stability.

Under Item 5.4.5, the Board support removing the phrase "before proceeding with the compounding" from both the checking of the compounding and the checking of weights and measurements because these allow the pharmacist to exercise professional judgment in determining the appropriate time for such checks relative to the task being performed.

Under Item 5.7.4, the Board opposes allowing certified pharmacy technicians to examine patient profiles to determine the possibility of harmful drug interactions. The training of certified pharmacy technicians does not provide the knowledge necessary to detect or determine the severity of potentially harmful interactions. The computer software programs in use are not a substitute for the pharmacist's review of individual patient profiles. The Board recommends deletion of the language "certified pharmacy technician under the direct supervision of a pharmacist."

7. Nancy J. W. Lewis, Pharm.D., M.P.H. commented that she opposed specific changes to Regulation V. Sections 5.2.1 and 5.2.2 expand pharmacy technicians' duties to confirming proper dosage and instructions, reviewing for incompatibility and determining possible harmful interactions, all of which require the pharmacist's expert knowledge. Section 5.4.4.4 allows a certified pharmacy technician to provide drug information by quoting from reference material, which both fails to assist provision of accurate and appropriate information and increases potential liability for the pharmacy technician's actions. Section 5.2.1 allows pharmacy technicians to receive new oral prescriptions, which is contrary to recommendations of both the National Association of Boards of Pharmacy and the Institute for Safe Medication Practices that only pharmacists receive such prescriptions. Sections 5.4.5.2 and 5.4.5.3 remove the pharmacist's check of ingredients and amounts used in prescriptions before compounding occurs, which checks are critical for the accurate compounding of creams and ointments. Section 5.4.2.2 allows for fragmented patient care processes and creates barriers to a systematic approach to protecting patient safety.

In summary, Ms. Lewis opposes adoption of the proposed changes, recommends further discussion regarding the training and regulation of pharmacy technicians, seeks comments from national pharmacy organizations involved in patient safety, and wants additional information from the pharmacy and legal communities regarding wording.

8. Suzanne E. Raab-Long, Vice President, Professional Services, Delaware Healthcare Association commented that the Association agrees that the concept of certified pharmacy technician may have merit, more work should be given to make sure that the scope of the technician's practice does not go beyond their training or is outside direct supervision of a pharmacist.

She makes detailed comments regarding **Regulation V**. She calls for reinsertion of deleted language in sections 5.2 and 5.4.2 and, in the latter, change “supportive personnel” to “pharmacy technician.” She suggests the complete removal of sections 5.4.2.2, 5.4.4.2, and 5.4.4.4; deletion of the first sentence in sections 5.4.2.1 and 5.4.2.3; removal of the word “certified” in sections 5.4.5, 5.7.3, and 5.7.4. She also makes the following recommendations: (1) in section 5.4.4.1, calling for a refill can be done by either level of technician and should be included in section 5.4.3.7; (2) in section 5.8.1.1, delete “certified pharmacy technician” while leaving “intern”; and in section 5.12, require that the public be informed of information shared through the use of outside contract and also inform the patient of any instances of information sharing.

She also raises detailed questions regarding **Regulation XI** that indicate that language may need to be clarified. Regarding section 11.2.7, she asks the nature and frequency of accountability procedures, whether institutions must have nurses sign off for each receipt of a controlled substance, and also would nurses be required to count meds received and keep a descending record of all controlled substances. Regarding section 11.3, she asks whether it is the intent of the Board of Pharmacy to delegate several aspects of its authority to the Executive Secretary. Regarding section 11.3.1.3, she queries if it is the intent of the section to require nursing home to submit influenza and pneumococcal vaccines, which are normally stocked during the fall season, on the stock list. Regarding section 11.3.1.6, she questions whether the section intends that all syringes and needles must be counted or rather that there be a process in place to inventory needles and syringes. Regarding section 11.3.4.2, she asks whether the pharmacist physically replace all medications in a Pyxis system or may the pharmacy technician refill the medications after they have been checked for accuracy by the pharmacist. Regarding section 11.4.1, inquires if it is the intent of the section to require nurses to log the date, quantity, name and strength of every medication returned. Regarding section 11.4.3, she asks if unit doses of controlled substances be returned. Finally, regarding section 11.5.4, she suggests that, since a nurse cannot change the directions on a pharmacy label, an extra label should be provided or a new label printed.

9. Daniel A. Hussar, Ph.D., Remington Professor of Pharmacy, Philadelphia College of Pharmacy commented that he supports the use of technicians to support pharmacists in their practice, however, he has concerns about some of the responsibilities technicians would assume if the proposed revisions are approved. First, regarding section 5.2, he is opposed to certified pharmacy technicians having the authority to receive oral prescriptions because of the increased risk of transmission errors and misinterpretation of prescription orders. Second, regarding section 5.4.4.4, he is concerned about certified pharmacy technicians providing

information to the public from available reference material. He cites the examples of providing dosage information for a medication when the medication may be used for varying purposes with different dosage levels, something beyond the educational background of certified technicians. Third, regarding section 5.4.5, he is concerned about the deletions of the phrase “before proceeding with compounding,” which would lead to the weighing and measuring of ingredients by technicians not directly under the direct observation of the pharmacist. If the pharmacist does not verify accuracy, it is unlikely that mistakes in compounded medications would not be detected prior to patient use. Fourth, regarding sections 5.4.1 and 5.4.2, he is uncertain about the distinctions between “pharmacist-in-charge,” “pharmacist-on-duty,” “registered pharmacist,” and “licensed pharmacist,” as used in these sections. Fifth, regarding section 5.4.2.3, he is unclear what kinds of situations might qualify for the exemption to the final check by the pharmacist prior to dispensing contained in the phrase “except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.” Finally, he suggests that the regulations include a provision, similar to that in some other states, that a pharmacy technicians may not enter or be in a pharmacy when there is no pharmacist on duty.

He also suggests that pharmacy technicians be trained to assume a greater role in resolving matters involving a patient’s prescription drug benefits insurance. Dispensing errors currently seen in the industry argue for more supervision in the dispensing process. If the regulations are promulgated in their current form, he believes it imperative that the Board of Pharmacy obtain information regarding dispensing errors and any resulting lawsuits involving Delaware pharmacies to provide a baseline for assessing the impact of the regulations.

10. Donald Holst, President of the Delaware Pharmacists Society comments that he supports an greater education for and expanded use of pharmacy technicians. However, he has concerns with certain provisions of **Regulation V**. Regarding section 5.4.4.1, while not opposing refill authorization, he sees a problem with technicians receiving a new prescription directly from someone who is not usually a nurse or physician. The lack of appropriate training by both parties to the transaction could well lead to disaster. Regarding section 5.4.4.4, he believes that it is not appropriate for technicians to provide information directly to the public. Such information should be provided by someone with the expertise to give a valid clinical opinion. Regarding sections 5.4.4.2 and 5.4.4.3, he believes that weighing and measuring of ingredients to be compounded should be checked prior to compounding the prescription.

11. Susan Winckler, Esq., Vice President for Policy and Communications, American Pharmaceutical Association, and a pharmacist commented that it is the

policy of the APhA to support an expanded role for pharmacist technicians but to require pharmacist control of the dispensing process and take responsibility for completed medication orders. The APhA also supports the use of technical and personnel assistance in performing administrative tasks. The APhA opposes the expansion of the technician's role if it crosses the line into the practice of pharmacy. The APhA recommends that the intent of the proposed changes in section 5.2, particularly 5.2.2, be clarified so as not to all technicians from confirming that a prescription order has the "proper dosage and instructions" or that the prescription is "complete." The APhA also opposes changes to section 5.4.4.4 that would allow a pharmacy technician to provide drug information from reference materials. Finally, the APhA recommends clarification of the intent of section 5.7.4 that appears to allow pharmacy technicians to determine harmful drug interactions or allergic reactions. The technician does not have the educational background to interpret drug interaction or allergic reaction information provided by pharmacy computer systems, which, although valuable, do not always provide reliable information. In conclusion, the APhA supports the expanded role of pharmacist technicians, particularly in administrative functions, that would aid the pharmacist in moving into a more proactive patient-centered role. Ms. Winckler also submitted 2 articles: (1) Elizabeth A. Chrischilles, et al., "The Role of Pharmacy Computer Systems in Preventing Medication Errors," *Journal of the American Pharmaceutical Association*, May/June 2002, 439-48 and (2) American Pharmaceutical Association, "2002 White Paper on Pharmacy Technicians: Needed Changes Can No Longer Wait," 6<sup>th</sup> Draft, April 8, 2002.

13. Pat Carroll-Grant, R.Ph., C.D.E., Executive Director of the Delaware Pharmacists' Society (DPS) sent in comment from the DPS Board of Directors. Their concerns related to Regulation 5.0, specifically,

1. 5.4.4.4 allowing certified pharmacy technicians to provide drug information quoted from reference material;
2. 5.4.5.2 and 5.4.5.3 removing the wording requiring the pharmacist to check formulation and ingredients prior to compounding;
3. 5.2 and 5.2.1 and 5.3.3 allowing a technician to receive oral prescriptions and certify a prescription order;
4. 5.4.2.2 requiring written documentation from the pharmacist on duty permitted the certified pharmacy technician to perform the task allowed under the regulation; and
5. 5.4.2.3 allowing the Board to give a waiver from the final check.

The Board of Directors also questioned whether the statute authorized the changes. On May 18, 2002, the general membership voted to oppose the changes to Regulation 5.0.

*The following is a summary of the verbal comments made by individuals who did not also submit written comments.*

1. Kim Robbins, R. Ph., is President-Elect of the Delaware Pharmaceutical Society and a retail pharmacist. She speaks for herself and not for the Society in her presentation. She agrees that a pharmacy technician performing non-clinical tasks so that the pharmacist can spend more time with patients is important. She is, however, opposed to pharmacy technicians providing drug information. She also believes that nationally certified technicians should be registered with the Board of Pharmacy. She urged the Board not to pass Regulation 5 but to return it to the committee to address the problems that were raised.

2. Dustin Crane is a certified pharmacy technician and a Pharm. D. candidate. He was concerned with the changes in Regulation 5 that would permit certified pharmacy technicians to give out drug information to others in the health care system. He does not believe that pharmacy technicians have the knowledge of appropriate dosage necessary or a sufficient understanding the side effects of medication. He believes a pharmacist should be the sole provider of drug information.

3. Maryanne Holzapfel, R. Ph., has been a practicing pharmacist for 19 years and she is a past President of the Board of Pharmacy. She believes the Board should consider registration of pharmacy technicians as a tracking mechanism. She also believes that the pharmacist should be supervising compounding and that pharmacy technicians should not be permitted to give out drug information.

4. Gesine Abrutyn, R.N., is not a pharmacist. She recognizes that pharmacists need help but is concerned about using a pharmacy technician to take prescriptions and give information to a practitioner's office. It increases the chance of error. She related a personal experience where a pharmacist was able to catch a medication error.

5. Patti Choruzy is a nationally certified pharmacy technician. She has taught the pharmacy technician course at Del Tech and was on the committee that proposed these regulation changes. She is currently the pharmacy trainer at Happy Harry's. She believes that expanding the role of the certified pharmacy technician would improve patient care by freeing the pharmacist from clerical and administrative duties so that the pharmacist could concentrate on patient care.

6. David Dryden, R.Ph., J.D. is the Executive Secretary for the Board of Pharmacy and Director of the Office of Narcotics and Dangerous Drugs. He is past present of the Delaware Pharmaceutical Society. He was a member of the pharmacy technician committee to draft changes and supports what the Board is trying to accomplish in making pharmacists more available to patients. The pharmacy technician committee included individuals from hospital

and community pharmacists. His real concern with the proposed regulation was with the scientific information that is provided. He believes that duty should be solely the responsibility of the pharmacist. The pharmacist should be responsible for the Drug Utilization Review check, the final check, and consultation.

#### **Findings Of Fact With Respect To The Evidence And Information Submitted**

1. The comments from the public persuade the Board that Regulation 5.0 should be withdrawn. Generally, the concept of trained pharmacy technicians to assist in the practice of pharmacy is supported. The main public safety concerns expressed relate to receiving new verbal prescriptions and providing drug information to medical personnel. These activities may require more training than is received by a pharmacy technician to avoid errors. The Board agrees that it should return the revision of Regulation 5.0 to the pharmacy technician committee with instructions to carefully consider the pharmacy technician model rules from the National Association of the Boards of Pharmacy and the comments received. Legislative changes may also be recommended.

2. Other proposed regulations where terms were changed to be consistent with proposed Regulation 5.0, viz., Regulations 3.0, 9.0, 10.0, and 11.0 are also withdrawn.

3. There were no public comments related to the proposed change to Regulation 1.0.

4. There were no public comments related to the proposed change to Regulation 15.0.

A change to proposed Regulation 15.0 is necessary in order to replace the proposed words "pharmacy technician" with the words "supportive personnel." The Board finds this is non-substantive and results from the withdrawal of proposed Regulation 5.0.

#### **Decision And Effective Date**

1. The Board hereby withdraws its proposal to change Regulations 3.0, 5.0, 9.0, 10.0, and 11.0.

2. The Board adopts the changes to Regulation 1.0 and 15.0 to be effective 10 days following publication of this order in the Register of Regulations.

#### **Text And Citation**

The text of the Regulations 1.0 and 15.0 are as they appeared in the Register of Regulations, Vol. 5, Issue 11, May 1, 2002 except that the words "pharmacy technician" is replaced with the words "supportive personnel" in Regulation 15.0. as noted above.

**SO ORDERED** this 14<sup>TH</sup> day of August, 2002.

#### **STATE BOARD OF PHARMACY**

Calvin A. Freedman, R.Ph.      Karen J. Dey,  
President                              R.Ph. Vice President  
Yvonne Brown, R.Ph.              Carolyn Calio,  
Donna Dagen, Public Member, John E. Murphy, R.Ph.  
Nancy E. Weldin, Public Member

#### **Board of Pharmacy**

- 1.0 Pharmacist Licensure Requirements
- 2.0 Grounds for Disciplinary Proceedings
- 3.0 Pharmacy Requirements
- 4.0 Pharmacy Closing Procedure
- 5.0 Dispensing
- 6.0 Pure Drug Regulations
- 7.0 Non-pharmacy Outlets Handling Legend  
Veterinary Drugs
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Drugs on a Wholesale Basis
- 9.0 Hospital Pharmacy
- 10.0 Sterile Pharmaceuticals and Antineoplastic Agents
- 11.0 Pharmaceutical Services in Nursing Homes
- 12.0 Health Care Facilities
- 13.0 Nuclear Pharmacy Regulations
- 14.0 Administration of Injectable Medications
- 15.0 Automated Pharmacy Systems

#### **1.0 Pharmacist Licensure Requirements**

##### **1.1 Examination Requirements**

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



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

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

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

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

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

**1.2 Practical Experience Requirements**

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

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

Services.

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

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

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

**1.3 Continuing Education Requirements**

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

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

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

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

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

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

1.3.3.2 The Board of Pharmacy will review requests.

1.3.3.3 The Board will notify the registrant of

its decision.

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

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

**1.4 Continuing Professional Educational Programs**

**1.4.1 Topics of Study**

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

**1.4.2 Approved Provider**

1.4.2.1 Any provider approved by ACPE.

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

**1.4.3 Application for Delaware State Provider**

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

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

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

**1.4.4.1 Administration and Organization**

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

programs.

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

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

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

1.4.4.1.5 Administrative Requirements include:

1.4.4.1.5.1 The development of promotional materials which state:

1.4.4.1.5.1.1 Educational objectives.

1.4.4.1.5.1.2 The target audience.

1.4.4.1.5.1.3 The time schedule of the activities.

1.4.4.1.5.1.4 Cost to the participant/covered items.

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

1.4.4.1.5.1.6 Credentials of the faculty, presenters, and speakers.

1.4.4.1.5.1.7 Self-evaluation instruments.

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

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

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

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

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

1.4.4.1.5.2.5 The provider must

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

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

#### 1.4.4.3 Program Content Development

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

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

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

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

1.4.4.3.1.4 pharmaceutical monitoring and management of patients.

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

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

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

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

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

1.4.4.5.1 Participant - Some evaluation mechanisms must be developed by the provider to

allow the participant to assess his/her own achievement per the program.

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

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

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

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

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

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

#### See 4 DE Reg. 1501 3/1/01

~~1.4.5.5~~ ~~1.4.4.6.5~~ Credit for Instructors of Continuing Education

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

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

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

~~1.4.5.5.3~~ ~~1.4.4.6.5.3~~ Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted

only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

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

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

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

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

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

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

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

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

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

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

1.6.1 Payment of any back fees;

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

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

1.7 Reciprocal Requirements

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

the Delaware Board.

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

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

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

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

Regulation 1.2 revised 10/11/96

Regulation 1.3.2 revised 2/6/97

Regulation 1.3.2 deleted, 1.3.3.1 amended, 1.4 amended  
Effective date 10/11/98

**2.0 Grounds for Disciplinary Proceeding**

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

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

2.1.2 Knowingly dispensing an outdated or questionable product;

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

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

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

2.1.6 Knowingly dispensing medication without proper authorization;

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

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

2.1.9 Fraudulently altering or forging the contents of prescriptions;

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

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

2.1.12 Unauthorized substitution;

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

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

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

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

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

2.1.18 Practicing under the influence of drugs or alcohol;

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

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

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

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

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

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

### 3.0 Pharmacy Requirements

#### 3.1 Pharmacist in Charge

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

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

the following:

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

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

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

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

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

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

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

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

#### 3.3.1 References:

3.3.1.1 Delaware Laws and Regulations governing Pharmacy.

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

3.3.1.3 USP-DI (All volumes and supplements)

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

#### 3.3.1.4.1 Drug Interactions

3.3.1.4.1.1 Facts and Comparisons Drug Interactions (Metaphor)

3.3.1.4.1.2 Drug Interactions

3.3.1.4.1.3 Hansten's Drug Interactions

3.3.1.4.1.4 APhA Evaluation of Drug Interactions

#### 3.3.1.4.2 Drug Information:

3.3.1.4.2.1 Facts and Comparisons

3.3.1.4.2.2 American Hospital Formulary Service

3.3.1.4.2.3 Pharmindex

3.3.2 Equipment

3.3.2.1 Prescription Scale, Class a Set of Metric Weights

3.3.2.2 Graduates, (must be glass) Metric One of Each:

- 30 ml
- 60 ml
- 125 ml
- 500 ml

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

3.3.2.3 Mortars and Pestles

- 1 8 ounce glass
- 1 8 ounce wedgewood

3.3.2.4 Filter Paper

3.3.2.4 Prescription/physician Order Files

3.3.2.5 Two Spatulas

3.3.2.6 One Glass Funnel

3.3.2.7 One Glass Stirring Rod

3.3.2.8 Ointment Slab or Papers

3.3.2.9 Purified Water

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

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

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

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

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

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

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

Refrigerator - 36° to 46° Fahrenheit

Freezer - plus 4° to minus 14° Fahrenheit.

A sign with letters not less than 3/4" in height in the vicinity of the prescription department visible to the public which shows the name of the pharmacists employed

at that pharmacy or the name of the pharmacist on duty.

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

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

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

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

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

3.5.5 The blueprints must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of Narcotics and Dangerous Drugs.

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

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

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

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

Regulation 3.5.2 revised 6/16/97

Regulation 3.5.6 revised Effective date 10/11/98

#### 4.0 Pharmacy Closing Procedure

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

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

##### 4.1 Permanent Closing of a Pharmacy

###### 4.1.1 Board Notification:

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

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

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

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

4.1.2.1 Name, address and phone number.

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

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

4.1.2.4 Date of closing.

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

4.1.2.6 A closing inventory signed and dated of all controlled substances to be sent to the Office of

Narcotics and Dangerous Drugs for their records.

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

###### 4.1.3 Public Notification:

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

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

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

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

4.1.4 Permits and registration to be surrendered upon closing:

4.1.4.1 Pharmacy permit (Executive Secretary, Board of Pharmacy)

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

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

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

###### 4.1.5 Sale of prescription drugs:

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

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

##### 4.2 Temporary Closing of a Pharmacy

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

4.2.2 Board notification must include the following:

4.2.2.1 The exact date the pharmacy will be closing.

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

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

4.2.3.1 Dates the pharmacy will be closed.

4.2.3.2 A contact number in case of emergency.

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

**5.0 Dispensing**

5.1 Definitions

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

**“Automated Data Processing System (ADP)”** - A system utilizing computer software and hardware for the purposes of record keeping.

**“Cell”** - Any container which holds the medication for automatic dispensing.

~~“Centralized Prescription Processing - The processing by a Pharmacy of a request from another Pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, DUR, claims adjudication, refill authorizations and therapeutic interventions.”~~

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

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

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

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

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

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

**“CRT”** - Cathode Ray Tube used to impose visual information on a screen.

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

~~“Dispense or”~~ **Dispensing** - To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order

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

**“Downtime”** - That period of time when a computer is not operable.

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

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

**“New Medication”** - A medication not previously dispensed by the pharmacy for the ultimate user.

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

**“Pertinent Patient Medication Information”** - Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

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

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

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

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

**“Reduced to Writing”**

For new prescriptions this means the preparation of a paper document containing all the



information required for a written prescription including the State requirement (Section 2553) for drug product selection;

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

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

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

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

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

5.2.1 Receive oral prescriptions and reduce them immediately to writing.

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

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

### 5.3 Patient Counseling

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

5.3.2 Except when a prescriber requests that

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

5.3.2.1 the name and description of the prescribed drug;

5.3.2.2 the dosage and the dosage form;

5.3.2.3 the method and route of administration;

5.3.2.4 the duration of the prescribed drug therapy;

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

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

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

5.3.2.8 proper storage;

5.3.2.9 prescription refill information;

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

5.3.2.11 current over-the-counter medication use.

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

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

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

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

5.3.7 The pharmacist who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the pharmacist verifies either on a daily printout or in a bound log book

daily that the information on the prescription is correct. The verification must be hand-signed and dated by the pharmacist.

5.4 Supportive personnel ~~[Pharmacy Technician]~~

5.4.1 Qualifications and training

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

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

- 5.4.1.2.1 general drug and dosage form knowledge
- 5.4.1.2.2 medical terminology
- 5.4.1.2.3 pharmaceutical calculations
- 5.4.1.2.4 prescription labeling requirements
- 5.4.1.2.5 general filling/dispensing responsibilities
- 5.4.1.2.6 patient profile record system requirements
- 5.4.1.2.7 requirements for patient counseling
- 5.4.1.2.8 confidentiality
- 5.4.1.2.9 safety practices

5.4.1.2.10 inventory functions

- 5.4.1.2.11 knowledge of applicable State and Federal Statutes and Regulations
- 5.4.1.2.12 other site-specific parameters

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

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

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

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

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

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

5.4.3 Activities allowed ~~[for a Pharmacy Technician]~~

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

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

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

~~[5.4.3.1 Obtain medication from stock.~~

~~5.4.3.2 Counting and pouring of medication.~~

~~5.4.3.3 Prepackaging of bulk medication.~~

~~5.4.3.4 Entering prescription or patient profile information into the computer.~~

~~5.4.3.5 Generating a prescription label.~~

~~5.4.3.6 Reconstitution of medications.~~

~~5.4.4 Additional activities allowed for a Certified Pharmacy Technician~~

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

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

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

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

~~[5.4.5] 5.4.3.3 Compounding is the responsibility of the pharmacist. or [The] pharmacy intern/[certified pharmacy technician may perform compounding functions] under the direct supervision of the pharmacist. All compounding must be in compliance~~

with FFDCA Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of supportive personnel ~~[pharmacy Technician]~~ if the following is performed:

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

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

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

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

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

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

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

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

#### 5.7 Mandatory Patient Profile Record System

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

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

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

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

~~[5.7.2.3]~~ 5.7.1.2.4 The patient's age, or date of birth, and gender;

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

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

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

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

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

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

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

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

5.7.4 Upon receipt of a new prescription, a pharmacist or pharmacy intern/~~certified pharmacy technician~~ under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the physician.

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

#### 5.8 Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

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

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

5.8.1.2 The copy is immediately reduced to

writing and contains the information required on a written prescription as listed in Regulation 5.0, and includes the first and last name of the pharmacist transmitting the information.

5.8.1.3 The prescription used for refills must be clearly identified as a copy.

5.8.1.4 The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.

5.8.1.5 The copy shows the last date of dispensing.

5.8.1.6 Only the actual number of refills remaining are indicated.

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

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

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

#### 5.9 Automated Data Processing Systems

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

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

5.9.2.1 Original dispensing date

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

5.9.2.3 Name of prescriber

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

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

5.9.2.6 Renewals authorized

5.9.2.7 Directions of use for patient

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

5.9.3.1 Quantity dispensed

5.9.3.2 Date of dispensing

5.9.3.3 Serial Number (or equivalent if an institution)

5.9.3.4 The identification of the pharmacist

responsible for dispensing

5.9.3.5 Record of renewals to date

5.9.3.6 Name and strength of medicine

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

5.9.4.1 Serial number of prescription (equivalent if an institution)

5.9.4.2 Date of processing

5.9.4.3 Quantity dispensed

5.9.4.4 The identification of the pharmacist responsible for dispensing

5.9.4.5 Medication dispensed

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

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

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

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

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

5.9.7.3 The computer record shall reflect the

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

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

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

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

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

#### 5.10 Electronic Transmission Of Prescriptions

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

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

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

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

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

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

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

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

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

5.10.6 Controlled substance prescriptions may

only be electronically transmitted via a facsimile.

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

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

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

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

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

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

#### 5.11 Return of Medications and Supply

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

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

#### **~~5.12 Centralized Prescription Processing~~**

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

**~~5.12.1.2 have the same owner; or~~**

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

**~~5.12.1.4 share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to fill or~~**

~~refill a prescription drug order.~~

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

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

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

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

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

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

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

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

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

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

Effective Date: October 11, 1996

Effective Date: April 14, 1997 Section 5.4 revised

Effective Date: June 11, 1998

Amended Effective September 11, 1999

**6.0 Pure Drug Regulations**

**6.1 Definition**

“Central Nervous System” - Central nervous system stimulants are drugs which increase the activity of some portion of the brain or spinal cord. Drugs which act upon the cerebral cortex and subcortical structures including the thalamus (e.g. methylphenidate, etc.) increase motor activity and enhance mental alertness; those which act upon the sensory areas in the brain (e.g. caffeine and its various combinations) increase alertness, brighten spirits and combat

mental fatigue; those which act directly or reflexly on the medulla (e.g. nikethamide, pentylenetetrazol and picrotoxin) stimulate the respiratory center; those which act on the spinal cord (e.g. nux vomica and strychnine) facilitate and exaggerate spinal reflexes.

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

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

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

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

6.4 All biologicals, vaccines, drugs, chemicals, preparations and compounds must be packaged, labeled, stored and preserved in compliance with USP/NF and all other State and Federal standards. A pharmacist may, with the permission of the patient or the patient's agent, provide a “Customized Patient Medication Package” only to patients that are self-medicating. The containers shall meet all of the requirements of the USP/NF standard entitled, "Customized Patient Medication Package."

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

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

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

ingredient but caffeine.

### 7.0 Non-pharmacy Outlets Handling Legend Veterinary Drugs

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

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

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

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

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

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

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

#### 7.8 Records:

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

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

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

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

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

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

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

8.1 Purpose. The purpose of this regulation is to implement the provisions of the prescription Drug Marketing

Act of 1987 by defining the minimum standards, terms, and conditions for which a permit may be issued to persons who engage in wholesale distribution of (prescription) drugs within the State of Delaware.

#### 8.2 Definitions

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

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

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

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

**“Person”** means an individual, partnership, corporation, business firm, or a sole proprietorship.

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

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

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

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

The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

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

The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers

shall not exceed five (5) percent of the total prescription drug sales revenue of either the transferrer or transferee pharmacy during any 12 consecutive month period;

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

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

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

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

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

8.4 Wholesale Distributor Permit Requirement

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

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

8.4.1.2 All trade or business names used by the permittee;

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

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

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

8.4.1.5.1 If a person, the name of the person;

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

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

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

8.4.1.6 Submission of a policy and

procedures manual pertinent to employee qualifications and training.

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

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

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

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

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

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

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

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

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

8.6 Personnel. As a condition for receiving and retaining a wholesale drug distributor permit, the permittee shall require each person employed in any prescription drug wholesale distribution activity to have education, training, and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety and security will at all times be maintained as required by law. The permittee must maintain records evidencing that each employee has been trained in accordance with the policy and procedure manual approved at the time of the issuance of the permit. These records shall be kept two years from the date of separation of the employee from the company. Records on all current employees shall be available at any time for inspection.

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

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

8.7.2 Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation,



humidity, space, equipment, and security conditions.

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

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

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

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

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

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

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

8.9.2 Records for all personnel and training.

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

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

#### 8.10 Written Policies and Procedures

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

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

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

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

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

#### 8.12 Security

8.12.1 All facilities shall be secured from unauthorized entry.

8.12.2 The outside of the premises shall be well lighted.

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

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

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

### 9.0 Hospital Pharmacy

#### 9.1 Definition:

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

#### 9.2 Personnel

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

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

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

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

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

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

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

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

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

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

9.2.1.10 A policy for drugs brought in by patients.

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

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

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

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

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

#### 9.4 Night Cabinets or Other Designated Areas

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

9.4.2 Access must be limited to authorized personnel.

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

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

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

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

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

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

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

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

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

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

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

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

9.7 Equipment and Texts. Each hospital pharmacy

shall have the equipment and texts required by Board Regulation 3.0 and Regulation 10.0.

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

#### 9.9 Labeling

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

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

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

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

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

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

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

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

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

9.15.1 Disinfectants and drugs for external use are stored separately.

9.15.2 Drugs are stored under proper conditions.

9.15.3 No outdated drugs are present.

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

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

9.15.6 Drugs are properly secured.

9.16 Hospital Operating with an Off-site Pharmacy Provider.

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

9.16.2 Personnel.

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

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

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

9.16.3 Monthly Inspections. The Director of Pharmacy or Consultant Pharmacist must perform monthly medication area inspections as outlined in "O" of this section.

9.16.4 Storage

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

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

refrigeration.

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

9.16.6 Medication Errors or Adverse Reactions

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

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

9.16.7 Emergency Medications

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

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

**10.0 Sterile Pharmaceuticals and Antineoplastic Agents**

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

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

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

**“Antineoplastic Agent”** - A drug used to treat various forms of cancer.

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

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

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

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

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

**“Parenteral”** - A sterile preparation intended for injection and used in the diagnosis, cure, mitigation, or

treatment of disease or modification of physiological functions in human beings, but not including blood or blood products or as otherwise defined in the current United States Pharmacopeia.

**“Sterile Pharmaceutical”** - A dosage form free from living microorganisms.

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

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

10.2.1 Facilities and Equipment

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

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

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

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

10.2.1.4.1 Minimally, a class 100 air flow unit

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

10.2.1.4.2 Refrigerator

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

10.2.1.4.4 Appropriate waste containers for:

10.2.1.4.4.1 Used needles and syringes

10.2.1.4.4.2 All antineoplastic wastes including apparel used in their preparation

10.2.1.4.5 Supplies:

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

10.2.1.4.5.2 Disinfectant cleaning agents

10.2.1.4.5.3 Single-use lint free

towels or air-driers

10.2.1.4.5.4 Hand washing materials with bactericidal action

10.2.1.4.5.5 Equipment and materials for cleaning antineoplastic agent spills

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

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

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

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

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

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

### 10.3 Personnel

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

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

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

### 10.4 Storage, Preparation, Dispensing, and Handling

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

preparation.

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

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

### 10.5 Labeling

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

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

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

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

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

### 10.6 Policy and Procedures Manual

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

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

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

10.6.4 Documentation of the following shall be included:

10.6.4.1 Replacement of filters and prefilters.

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

10.6.4.3 Cleaning and maintenance of the equipment.

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

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

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

10.6.5.2.1 A certified vertical laminar air flow hood.

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

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

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

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

## 11.0 Pharmaceutical Services in Nursing Homes

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

### 11.2 General Requirements

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

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

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

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

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

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

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

### 11.3 Stock Medication

#### 11.3.1 Non-legend medications:

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

11.3.1.2 If accountabilities for individual patients are found to be inadequate upon inspection, then the stock non-legend medications may be subject to limitations.

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

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

~~11.3.1.2~~ 11.3.2.2 **Emergency use** medications are those which may be required to meet the

immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.

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

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

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

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

~~[11.3.2] 11.3.3 Legend **Prescription** medications - Interim supply~~

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

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

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

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

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

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

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

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

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

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

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

~~[11.3.4] 11.3.5 Accountability for legend **prescription** stock usage [drugs]~~

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

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

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

~~[11.3.4.4] 11.3.5.3 Continuous violations of accountability procedures for the non controlled legend [stock] medications may result in review proceedings before the Board of Pharmacy.~~

11.4 Return Medication Procedures

11.4.1 All unused portions of any patient's discontinued prescription medication shall be immediately isolated [Non-controlled medication shall be destroyed

~~or~~] and returned to the pharmacist or provider pharmacy supplying pharmaceutical services within 72 hours with the appropriate notation of such returns for ~~[disposal destruction. The notation shall include the date, quantity, and name and strength of the medication.]~~

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

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

#### 11.5 Labeling

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

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

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

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

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

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

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

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

#### 11.6 Duties of Consultant Pharmacist (CP)

11.6.1 A consultant pharmacist (CP) to a nursing home in the State of Delaware must be licensed to practice pharmacy in the State of Delaware. The consultant pharmacist shall be responsible for the general supervision

of the nursing home pharmaceutical services, ~~[and the direct supervision of Delaware registered pharmacy interns, who may assist in chart reviews. Supervision of the pharmacy intern activities must be documented by the supervising pharmacist as pertaining to chart review.]~~

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

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

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

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

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

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

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

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

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

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

11.6.5 If the nursing home has a Pharmacy and Therapeutics Committee or Quality Assurance or



Assessment Committee, the CP shall serve on that Committee.

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

~~[11.6.6.1]~~ Nursing station inspections must include, but are not limited to the following~~[documentation of]~~: ~~[11.6.6.1.1]~~ (1) Documentation of medication storage area(s) (59 to 86 ~~[degrees]~~ Fahrenheit) and refrigerator temperatures (36 to 46 ~~[degrees]~~ Fahrenheit), ~~[11.6.6.1.2]~~ (2) Documentation of security of all drugs (e.g. medication room cabinets, carts, Board approved drug boxes), ~~[11.6.6.1.3]~~ (3) proper labeling, including any accessory or cautionary instructions, ~~[11.6.6.1.4]~~ (4) proper expiration ~~[dating]~~ dates, ~~[11.6.6.1.5]~~ (5) cleanliness, ~~[11.6.6.1.6]~~ (6) accountability of all medication and ~~[interim, emergency, IV, anaphylactic boxes or kits are properly maintained, 11.6.6.1.7]~~ (7) interim, emergency, IV, anaphylactic boxes or kits are properly maintained. ~~accountability of all medication, which includes complete documentation for a minimum of 15% of all patients on each unit with a minimum of 5 patients, whichever is greater. Complete documentation includes: date audited, patient identification, listing of all patient medications, and a report of overages and shortages with an explanation, if known. 11.6.6.2]~~ A copy of these inspection reports must be maintained at the facility ~~[for two years]~~.

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

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

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

~~11.6.7.3 Nursing unit inspections and a~~

~~summary report of patient drug regimen reviews must be submitted to the Director of Nursing and the Administrator.]~~

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

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

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

Effective Date: October 11, 1996

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

## 12.0 Health Care Facilities

### 12.1 Definition

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

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

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

## 13.0 Nuclear Pharmacy Regulations

### 13.1 Purpose and Scope

13.1.1 The purpose of this regulation is to recognize the practice of nuclear pharmacy as a specialty of pharmacy practice to be regulated by the Delaware State Board of Pharmacy. As such, the following rules are included to address those areas specific to this specialty practice.

13.1.2 Nuclear Pharmacy practice refers to a patient oriented service that embodies the scientific

knowledge and professional judgment required to improve and promote health through the assurance of the safe and efficacious use of radiopharmaceuticals and other drugs.

13.2 Definitions

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

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

**“Authorized User”** means any individual or institution named on a radioactive materials licensed.

**“Nuclear Pharmacy”** is a pharmacy which provides radiopharmaceutical services.

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

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

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

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

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

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

**“Restricted Area”** means any area the access to which is controlled by the license for purpose of protection

of individuals from exposure to radiation and radioactive materials.

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

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

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

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

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

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

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

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

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

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

- 13.3.8.1 the name of the authorized user or his agent;
- 13.3.8.2 the date of distribution and the time of administration of the radiopharmaceutical;
- 13.3.8.3 the name of procedure;
- 13.3.8.4 the name of the radiopharmaceutical;

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

13.3.8.6 any specific instructions; and

13.3.8.7 the initials of the person who received the order.

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

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

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

13.3.9.1 the name and address of the pharmacy;

13.3.9.2 the name of the prescriber;

13.3.9.3 the name of the procedure;

13.3.9.4 the standard radiation symbol;

13.3.9.5 the words "caution Radioactive material";

13.3.9.6 the prescription number of the radiopharmaceutical;

13.3.9.7 the radionuclide and chemical form;

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

13.3.9.9 the calibration date and time;

13.3.9.10 the expiration date and time;

13.3.9.11 if a liquid, the volume;

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

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

13.3.9.14 molybdenum-99 content to USP limits; and

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

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

13.3.10.1 the standard radiation symbol

13.3.10.2 the words "Caution Radioactive Material"

13.3.10.3 the radionuclide;

13.3.10.4 the amount of radioactivity in mCi or uCi;

13.3.10.5 the calibration date and time

13.3.10.6 the prescription number of the radiopharmaceutical; and

13.3.10.7 the pharmacy name; and

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

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

#### 13.4.1 Physical Facilities

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

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

#### 13.4.2 Equipment:

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

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

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

13.4.2.4 Dose calibrator;

13.4.2.5 Well scintillation counters;

13.4.2.6 Area rate meters;

13.4.2.7 Geiger-Mueller (GM) Survey meters;

13.4.2.8 Refrigerator;

13.4.2.9 Microscope;

13.4.2.10 Hemacytometer

13.4.2.11 Leaded glass syringe shields;

13.4.2.12 Personal radiation detection

#### 13.4.3 Supplies:

13.4.3.1 Syringes and vials required to

perform practice;

13.4.3.2 Disposable gloves and protective lab coats;

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

13.4.3.3 Supplies to perform thin layer chromatography;

13.4.3.4 Lead transport shields for syringes and vials;

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

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

13.4.4.1 NRC Title 10 CFR, Code of Federal Regulations;

13.4.4.2 NRC Title 21 CFR, Code of Federal Regulations;

13.4.4.3 NRC Title 49 CFR, Code of Federal Regulations;

13.4.4.4 NABP Nuclear Pharmacy Practice Guidelines;

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

13.4.4.6 A copy of the procedure manual.

13.4.4.7 Delaware Radiation Control Regulations

13.5 Records.

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

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

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

13.6 Training Qualifications

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

13.6.2 Qualifications for a nuclear pharmacist are as follows:

13.6.2.1 A pharmacist shall:

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

13.6.2.1.2 submit to the Board either:

13.6.2.1.2.1 Certification that he or she has successfully completed a minimum of four months on the job training providing radioactive drug services under the supervision of a nuclear pharmacist;

13.6.2.1.2.2 certification that he or she has successfully completed a nuclear pharmacy training program in an accredited college; or

13.6.2.1.2.3 an application, in affidavit form, along with such other information the Board may require, requesting partial or equivalent credit for education and experience gained in programs not sponsored by an accredited college of pharmacy.

13.6.2.2 A qualified pharmacist seeking licensure as a nuclear pharmacist in the state shall submit to the Board of Pharmacy a course outline from an accredited college of pharmacy or other program recognized by the Delaware Board of Pharmacy (a program comparable to those offered by accredited colleges of pharmacy for the training of nuclear pharmacists), and a certificate of training which provides a minimum of 200 clock hours of formal didactic training, which includes:

13.6.2.2.1 Radiation protection (45 hours);

13.6.2.2.2 Radiation physics and instrumentation (85 hours);

13.6.2.2.3 Mathematics of radioactivity (20 hours);

13.6.2.2.4 Radiation biology (20 hours); and

13.6.2.2.5 Radiopharmaceutical chemistry (30 hours).

13.6.2.3 Proof of attaining a minimum of 500 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist. The training and experience shall include, but shall not be limited to the following:

13.6.2.3.1 Procurement

13.6.2.3.2 Compounding

13.6.2.3.3 Quality Assurance

13.6.2.3.4 Dispensing

13.6.2.3.5 Distribution

13.6.2.3.6 Health and Safety

13.6.2.3.7 Provisions of Information

and Consultation

13.6.2.3.8 Monitoring patient outcome

13.6.2.3.9 Research and Development

13.7 Nuclear Pharmacist Continuing Education

13.7.1 Proof satisfactory that a nuclear pharmacist licensed pursuant to this section, has met the requirements necessary for biennial renewal of this license shall be constituted by the following:

13.7.1.1 The licensee has completed no less than ten (10) out of the total requirements of 30 hours of coursework each two-year period by or through a

committee-approved provider (e.g. ACPE), instructionally designed to provide in-depth treatment of nuclear pharmacy practice.

13.7.1.2 Content of nuclear pharmacist continuing education program can include, but not be limited to the following:

13.7.1.2.1 Formulation and quality control issues in nuclear pharmacy

13.7.1.2.2 Radionuclide therapy in nuclear pharmacy

13.7.1.2.3 Radiopharmaceutical updates for target organs

13.7.1.2.4 Current concepts in radiation physics, radiation biology and exposure.

13.7.1.2.5 Current principles of radiation safety

13.7.1.2.6 Current principles of nuclear pharmacy management

13.7.1.2.7 Advances in drug, radiopharmaceutical, or related technology (including but not limited to monoclonal antibodies, peptides, magnetic resonance imaging, positron emission tomography, novel radionuclide therapy and other applicable issues.

Effective 09/23/95

#### 14.0 Administration of Injectable Medications

The purpose of this regulation is to implement provisions relating to the training, administration, and documentation of injectable medications, biologicals, and adult immunizations by pharmacists, pursuant to Chapter 25, Title 24 of the Delaware Code relating to Pharmacy.

##### 14.1 Educational Requirements

14.1.1 In order to administer injectable medications, biologicals, and adult immunizations a licensed pharmacist shall provide proof that the following requirements have been satisfied:

14.1.1.1 The satisfactory completion of an academic and practical curriculum approved by the Board of Pharmacy which includes, but is not limited to, disease epidemiology, vaccine characteristics, injection technique, emergency response to adverse events, and related topics.

14.1.1.2 A current Cardio-Pulmonary Resuscitation (CPR) certificate acceptable to the Board of Pharmacy.

14.1.2 A registered pharmacist may only administer injections consistent with public health and safety and in a competent manner consistent with the academic curriculum and training completed.

14.1.3 Continued competency shall be maintained. A minimum of two hours (0.2 C.E.U.) of the thirty hour requirement for continuing education, every licensure period, must be dedicated to this area of practice.

14.1.4 Documentation of the satisfactory completion of the proper academic and practical training

requirements shall be listed in a policy and procedures manual available for inspection by the Board of Pharmacy. Maintaining such a policy and procedures manual shall be the responsibility of each registered pharmacist administering injections.

##### 14.2 Practice Requirements

14.2.1 The pharmacist must maintain a manual with policies consistent with OSHA (Occupational Exposure to Bloodborne Pathogens) and procedures for dealing with acute adverse events.

14.2.2 Prescriptions and/or physician-approved written protocols will be maintained and available for inspection by the Board of Pharmacy.

14.2.3 The pharmacist, before administering an injectable medication, biological, or immunization, must counsel the patient and/or the patient's representative about contraindications and inform them in writing in specific and readily understood terms about the risks and benefits. A signed copy of the patient's consent shall be filed and available for inspection by the Board of Pharmacy.

14.2.4 The pharmacist must document all injections made and have such documentation available for inspection by the Board of Pharmacy. Documentation shall include:

14.2.4.1 Patient's name, address, phone number, date of birth, and gender.

14.2.4.2 Medication or vaccine administered, expiration date, lot number, site of administration, dose administered.

14.2.4.3 Date of original order and the date of administration(s).

14.2.4.4 The name of the prescribing practitioner and the pharmacist administering the dose.

14.2.5 The pharmacist must document fully and report all clinically significant adverse events to the primary-care provider and to the Vaccine Adverse Event Reporting System (VAERS) when appropriate.

14.2.6 The pharmacist shall provide documentation to each person receiving immunizations and when appropriate to the Immunization Section of the Department of Health and Social Services so the names of those individuals can be added to the Vaccination Registry.

14.2.7 All documentation and records required by this Regulation must be maintained for a period of not less than three years.

14.3 Classes and Indications of Approved Medications. Classes of medications shall include injectable medications, immunizations, and biologicals contained in the list of Approved Drug Products with Therapeutic Equivalence Evaluations or drugs under clinical study when administered in accordance with indications approved by the Food & Drug Administration.

14.4 Authorization. Only those registered pharmacists meeting the requirements of this Regulation

shall administer injectable medications, biologicals, and adult immunizations. The Board of Pharmacy shall maintain a current list of those pharmacists so authorized. It is the responsibility of each registered pharmacist to maintain his or her current status on such list.

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

Effective Date: September 11, 1999

**15.0 Automated Pharmacy Systems**

**15.1 Purpose and Scope**

15.1.1 The purpose of this regulation is to recognize the use of automated pharmacy systems in community, institutional, and long term care pharmacy settings.

**15.2 Definitions**

15.2.1 "Automated Pharmacy Systems" include, but are not limited to, mechanical systems that perform operations or activities, other than compounding or administration, relative to storage, packaging, dispensing, or distribution of medications, and which collects, controls, and maintains all transaction information.

**15.3 Automated Pharmacy Systems – General Requirements**

**15.3.1 Personnel**

**15.3.1.1 Duties and Responsibilities of the Permit Holder**

15.3.1.1.1 The Permit Holder has the following responsibilities:

15.3.1.1.1.1 Assuring that the Automated Pharmacy System is in good working order and accurately dispenses the correct strength, dosage form, and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards.

15.3.1.1.1.2 Developing and implementing an ongoing quality assurance program that monitors performance of the Automated Pharmacy System, which is evidenced by written policies and procedures developed by the pharmacy.

15.3.1.1.1.3 Providing the Board with 60 days prior written notice of the installation, removal, substantive change of Automated Pharmacy Systems. Such notice must include, but is not limited to:

15.3.1.1.1.3.1 the name and address of the pharmacy;

15.3.1.1.1.3.2 the location of the automated equipment; and

15.3.1.1.1.3.3 the identification of the responsible pharmacist.

15.3.1.1.1.3.4 policies and procedures for system operations (for initial installations).

15.3.1.1.1.4 Obtaining written approval and authorization from the Board of Pharmacy prior to implementation.

**15.3.2 Pharmacy Practice**

**15.3.2.1 Automated Pharmacy Systems**

15.3.2.1.1 Automated Pharmacy Systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Board of Pharmacy, and licensed health care facilities where legally permissible and shall comply with the following provisions:

15.3.2.1.1.1 Documentation as to type of equipment, serial numbers, content, policies and procedures, and location shall be maintained on-site in the pharmacy for review by an agent of the Board of Pharmacy. Such documentation shall include, but is not limited to:

15.3.2.1.1.1.1 Name and address of the pharmacy and/or licensed health care facility where the Automated Pharmacy System(s) is being used;

15.3.2.1.1.1.2 Manufacturer's name and model;

15.3.2.1.1.1.3 Description of how the device is used;

15.3.2.1.1.1.4 Quality assurance procedures to determine continued appropriate use of the automated device; and

15.3.2.1.1.1.5 Policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access, and malfunction.

15.3.2.1.1.2 Automated pharmacy Systems shall be used only in setting where there is an established program of pharmaceutical care that ensures medication orders are reviewed by a pharmacist in accordance with established policies and procedures and good pharmacy practice.

15.3.2.1.1.1.3 All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

15.3.2.1.1.1.4 Automated Pharmacy Systems shall have adequate security systems and procedures, evidenced by written policies and procedures, to:

15.3.2.1.1.1.4.1 Prevent unauthorized access and to comply with Federal and State regulations; and

15.3.2.1.1.1.4.2 Maintain patient confidentiality.

15.3.2.1.1.1.5 Records and/or electronic data kept by Automated Pharmacy Systems shall meet the following requirements:

15.3.2.1.1.1.5.1 All events involving the contents of the Automated Pharmacy System must be recorded electronically; and

15.3.2.1.1.1.5.2 Records must be maintained by the pharmacy and must be readily available to the Board. Such records must be maintained for a period of three (3) years and shall include:

15.3.2.1.1.1.5.2.1 identity of system accessed;

15.3.2.1.1.1.5.2.2 identification of the individual accessing the system;

15.3.2.1.1.1.5.2.3 type of transaction;

15.3.2.1.1.1.5.2.4 name, strength, dosage form, and quantity of the drug accessed;

15.3.2.1.1.1.5.2.5 name of the patient for whom the drug was ordered; and

15.3.2.1.1.1.5.2.6 such additional information as the pharmacist-in-charge may deem necessary.

15.3.2.1.1.1.6 Access to and limits on access (e.g., security levels) to the Automated Pharmacy System must be defined by policy and procedures and must comply with State and Federal regulations.

15.3.2.1.1.1.7 The pharmacist-in-charge or authorized designee shall be responsible for:

15.3.2.1.1.1.7.1 Assigning, discontinuing, or changing access to the system.

15.3.2.1.1.1.7.2 Ensuring that access to the medication complies with State and Federal regulations.

15.3.2.1.1.1.7.3 Ensuring that the Automated Pharmacy System is filled/stocked accurately and in accordance with established, written policies and procedures that ensure accuracy.

15.3.2.1.1.1.7.4 Checking the automated pharmacy system for accurate dispensing of medications at appropriate periodic intervals.

15.3.2.1.1.1.8 The filling/stocking of all medication in the Automated Pharmacy System shall be accomplished by qualified personnel under the supervision of a licensed pharmacist.

15.3.2.1.1.1.8.1 Community/ Outpatient Pharmacy –A final check by the pharmacist is required after the medication is placed in the final container prior to dispensing and administration to the patient.

15.3.2.1.1.1.8.2 Hospital/ Institution – Unit based or centralized dispensing requires the same level of supervision required in Regulation IX - B3 which states: “Supportive personnel may be utilized in assisting the pharmacist. These persons must be supervised by a registered pharmacist who is present within the hospital and is responsible for the activities of those persons”. ~~Pharmacy technicians may be utilized in assisting the pharmacists. These persons must be supervised by a registered pharmacist who is present within the hospital and is responsible for the activities of those persons. There will be a final check by a licensed pharmacist prior to the dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.~~

15.3.2.1.1.1.9 A record of medication filled/stocked into an Automated Pharmacy System shall be maintained and shall include identification of the persons filling/ stocking and checking for accuracy.

15.3.2.1.1.1.10 All containers of medications stored in Automated Pharmacy System shall be packaged and labeled in accordance with Federal and State laws and regulations.

15.3.2.1.1.1.11 All aspects of handling controlled substances shall meet the requirements of all State and Federal laws and regulations.

15.3.2.1.1.1.12 The Automated Pharmacy System shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the Automated Pharmacy System, all in accordance with existing State and Federal law.

15.3.2.1.1.1.13 The Automated Pharmacy System shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing State and Federal law.

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

## **DIVISION OF PROFESSIONAL REGULATION REAL ESTATE COMMISSION**

24 DE Admin. Code 2925

Statutory Authority: 24 Delaware Code,  
Section 2905(a)(1) & 2911(b),  
(24 Del.C. §2905(a)(1), §2911(b))

### **ORDER ADOPTING GUIDELINES FOR FULFILLING THE DELAWARE REAL ESTATE EDUCATION REQUIREMENTS**

**AND NOW**, this 12th day of September, 2002, in accordance with 29 Del.C. § 10118 and for the reasons stated hereinafter, the Real Estate Commission of the State of Delaware (“the Commission”) enters this Order adopting amendments to its Guidelines for Fulfilling the Delaware Real Estate Education Requirements.

#### **I. Nature of the Proceedings**

Pursuant to the Commission’s authority under 24 Del.C. §§ 2905(a)(1), and 2911(b), the Commission proposed to revise its existing Guidelines for Fulfilling the Delaware Real Estate Education Requirements by deleting guideline 8.2 in its entirety and presenting a new guideline that reorganizes the original content with some further clarifications. Substantive changes include defining what constitutes “faithful and complete attendance” and clarifying that sponsors or providers of all continuing education shall

be responsible for conduct of their courses. Notice of the public hearing to consider the proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements was published in the Delaware *Register of Regulations* dated July 1, 2002, and two Delaware newspapers of general circulation, in accordance with 29 *Del. C.* § 10115. The public hearing was held on August 8, 2002, at 9:00 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Commission was present. The Commission deliberated and voted on the proposed revisions to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements. This is the Commission's Decision and Order ADOPTING the amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements as proposed.

## II. Evidence and Information Submitted

The Commission received no written comments in response to the notice of intention to adopt the proposed revisions to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements. The Commission received no oral comment at the public hearing held on August 8, 2002.

## III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements and offered an adequate opportunity to provide the Commission with comments. The Commission received no written or oral comments with regard to the adoption of the proposed revisions.

2. The proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements are necessary to define what constitutes "faithful and complete attendance" and clarify that sponsors or providers of all continuing education shall be responsible for conduct of their courses.

3. The Commission concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del.C.* § 2905(a)(1), and to publish guidelines as to acceptable courses of instruction, seminars and lectures in accordance with 24 *Del. C.* § 2911(b).

4. For the foregoing reasons, the Commission concludes that it is necessary to adopt amendments to its Guidelines for Fulfilling the Delaware Real Estate Education Requirements, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* Chapter 29.

## IV. Decision and Order to Adopt Amendments

**NOW, THEREFORE**, by unanimous vote of a quorum of the Commission, **IT IS ORDERED**, that the Guidelines

for Fulfilling the Delaware Real Estate Education Requirements 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 REAL ESTATE COMMISSION  
(As authenticated by a quorum of the Commission)

John R. Giles, Chairperson, President, Professional Member

Mary B. Parker, Public Member

Joseph P. Connor, Jr., Professional Member

Harry W. Kreger, Professional Member

James D. McGinnis, Professional Member

Judy L. Bennett, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the July 2002 issue of the Register at page 8 (6 DE Reg. 8). Therefore, the final regulation is not being republished. Please refer to the July 2002 issue of the Register or contact the Division of Professional Regulation.**

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## DEPARTMENT OF AGRICULTURE

Statutory Authority: 3 Delaware Code,  
Section 1101 (3 *Del.C.* § 1011)

### Forest Service Regulations

## ORDER ADOPTING & PROMULGATING REGULATIONS

### I. NATURE OF PROCEEDINGS

Pursuant to its authority under 3 *Del.C.* §1101, the Department proposed to amend its regulations concerning erosion and sedimentation control from silvi-cultural activities. The Department's purpose in proposing these amendments is to streamline the procedures for responding to potential or actual water quality problems caused by timber harvesting activities and to establish an enforcement and penalty scheme for those who fail to obtain and file the necessary permits before commencing such activities.

Notice of the public hearing on the Department's proposed amendments was published in the Delaware *Register of Regulations* for August 1, 2002 as well as in two Delaware newspapers in general circulation in accordance with 29 *Del.C.* §10115. Thereafter, the public hearing was held as noticed on Friday, September 6, 2002 before the Department's designee, E. Austin Short, and at which time,



no public comments either written or oral having been received, Mr. Short resolved to recommend to the Secretary of the Department that the proposed amended regulations be adopted. This is the Department's Decision and Order adopting the proposed amended regulations.

## II. EVIDENCE SUBMITTED AT PUBLIC HEARING

The Department received no written comments in response to the notice of intention to adopt the proposed amended regulations. No public comments were received at the September 6, 2002 public hearing.

## III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Department's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Department with comments opposing the Department's plan. Thus, the Department concludes that its consideration of the proposed amended regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to do so.

## IV. ORDER

**NOW THEREFORE**, it is hereby ordered that:

1. The proposed amendments to the Department's erosion and sedimentation control regulations are adopted;
2. The text of the regulations shall be in the form attached hereto as Exhibit A;
3. 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(e); and
4. The Department reserves unto itself the authority to issue such other and further orders in this matter as may be just and proper.

Michael T. Scuse,  
Secretary Delaware Department of Agriculture, 9/11/02

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2002 issue of the Register at page 127 (6 DE Reg. 127). Therefore, the final regulation is not being republished. Please refer to the August 2002 issue of the Register or contact the Division of Professional Regulation.**

## DEPARTMENT OF EDUCATION

### PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 101

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

### REGULATORY IMPLEMENTING ORDER REGULATION 1511 ISSUANCE AND RENEWAL OF CONTINUING LICENSE

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to adopt this regulation. This regulation concerns requirements for the issuance and renewal of a continuing license. This regulation shall apply to the issuance and renewal of a continuing license as established by 14 Del.C. § 1211 and § 1213. This regulation is necessary to comply with changes in statute regarding the licensure and certification of educators.

Notice of the proposed adoption of the regulation was published in the News Journal and the Delaware State News on July 24, 2002, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

## II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute regarding the licensure and certification of educators.

## III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code §1511 in the *Regulations of*

*the Department of Education.*

### **V. EFFECTIVE DATE OF ORDER**

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

#### **APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 22ND DAY OF AUGUST, 2002.**

Charles Michels, Chair	Mary Ellen Kotz, Vice Chair
Patricia Clements	Barbara Grogg
Michele Hazeur-Porter	Sherie Hudson
Tony Marchio	Mary Mirabeau
John Pallace	Joanne Reihm
Harold Roberts	Karen Schilling Ross
Teresa Schooley	Carol Vukelich
Jacquelyn Wilson	

#### **FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:**

Valerie A. Woodruff, Secretary of Education

#### **IT IS SO ORDERED THIS 19TH DAY OF SEPTEMBER, 2002**

#### **STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Robert Gilsdorf  
Mary B. Graham, Esquire  
Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith

**1.0 Content:** This regulation shall apply to the issuance and renewal of a continuing license for educators, pursuant to 14 Del. C. § 1211 and § 1213.

**2.0 Definitions:** The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“College credit” means graduate or undergraduate level coursework and continuing education units (CEUs) completed at, or through, a regionally accredited college or university.

“Clock-hour” means actual time spent in professional development, not credit hours.

“Cooperating teacher or intern supervisor” means an individual working with student teachers or graduate or undergraduate interns as part of a state-approved educator preparation program.

“Clusters” means focused groups of approved professional development activities that lead to measurable and observable knowledge and skills. Clusters must be

approved by the Standards Board and the State Board.

“Curriculum or assessment development” means work with a local, state, national, or international education agency or organization designing curriculum or assessments for improved educational practice in an area related to an individual’s professional responsibilities.

“Delaware Administrator Standards” means standards for education administrators approved by the Secretary of Education and the State Board of Education, as per 14 Del. Admin Code 394, Delaware Administrator Standards.

“Delaware Professional Teaching Standards” means standards of teaching approved by the Secretary of Education and the State Board of Education, as per 14 Del. Admin Code 393, Delaware Professional Teaching Standards.

“Department” means the Delaware Department of Education.

“Educational project” means an individual professional growth project of 15 or more clock hours, including a research project not related to a course for which credit is claimed, completed to enhance the individual’s professional practice, with the development of a final product or report.

“Educational travel” means a travel experience including 15 or more clock hours of work time directly related to the individual’s professional responsibilities, including a final project to be used to enhance the individual’s work.

“Educator” means an employee paid under 14 Del. C. §1305.

“Exigent circumstances” means unanticipated circumstances or circumstances beyond the educator’s control, including, but not limited to, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator’s temporarily leaving active service.

“Formal study group” means documented participation in a study group, related to an individual’s professional responsibilities, such as reviewing, discussing, and implementing strategies from a book or creating a group product as part of an action research project, as a form of professional development.

“Initial License” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

“Knowledge and skills” means understandings and abilities that, when acquired by educators, lead to more effective instruction.

“Mentoring” means training and service in providing mentoring support or assistance through a formally organized and approved state or district mentoring program to educators during the initial licensure period.

“NBPTS or similar national certification” means a certificate from the National Board for Professional Teaching Standards, or similar body as approved by the Standards Board, verifying completion of all requirements in

an individual's job-related area of the profession or, in the case of an individual seeking, but not earning, the national certificate, verification of the clock hours devoted to completing the requirements for the national certificate.

"Peer coaching" means training and service as a peer coach or peer assistant in a formally organized and approved state or school district peer-coaching or peer assistance program.

"Presentation" means preparation and presentation as a workshop or conference presenter or course instructor on a topic related to the individual's professional responsibilities.

"Professional conference, workshop, institute, or academy" means a program offered either within, or outside, the state that contributes to the participant's professional knowledge or skills in effectively conducting his/her work in education.

"Professional development" means classes, seminars, workshops, collaborative work groups, learning communities, cohort school or district teams which result in the acquisition of knowledge and skills which lead to more effective instruction.

"Professional development activities" means activities designed to enhance knowledge and skill to promote continuous professional growth and to improve educator performance.

"Professional development cluster" or "cluster" means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

"Professional portfolio" means a formal collection of artifacts and exhibits that include required examples of an individual's professional work based upon specific performance tasks or standards.

"Professional programs or committees" means job related service, designed to enhance the profession.

"Publication" means the preparation of a formally published book, article, report, study, or grant that contributes to the education profession or adds to the body of knowledge in an individual's specific field, but does not include such items prepared as part of a course for which an individual is also claiming credit.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del. C., § 104.

"State" means State of Delaware.

"State Board" means the State Board of Education of the State of Delaware established in response to 14 Del. C. § 104.

**3.0 Issuance of Initial Continuing License:** In accordance with 14 Del. C. § 1211, the Department shall issue, upon application, a continuing license to an educator who has successfully completed the requirements under the initial licensure as set forth in 14 Del. C. § 1210 and § 1211. A continuing license is valid for 5 years unless extended pursuant to 14 Del. C. §1216 or revoked for cause, as

defined in 14 Del. C. §1218.

3.1 An applicant for a continuing license shall submit the approved application form to the Department. Copies of DPAS II annual summative evaluations for the period of initial licensure shall be submitted with an initial application for a Continuing License. An applicant with more than one (1) unsatisfactory DPAS II annual summative evaluation during the period of initial licensure is ineligible to be issued a continuing license. Incomplete applications will not be processed.

**4.0** The Department may issue a continuing license to an educator who previously held a valid Delaware certificate that has expired.

4.1 An educator returning to employment and holding a current standard or professional status certificate will be issued a continuing license upon employment.

4.2 An educator who previously held a valid Delaware standard or professional status certificate which has expired and who has been out of the profession for less than three (3) years may be issued a continuing license, valid for 5 years, upon employment and application on the approved form and evidence of previous Delaware certification.

4.3 An educator who holds a continuing license which has expired who has been out of the profession for more than three (3) years may be issued a continuing license, but must, within the first year of employment, ~~engage in~~ **successfully complete**] a district-sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards.

4.4 An educator holding a limited standard or temporary certificate and currently employed as an educator in a Delaware public school will be issued a continuing license upon completing all requirements for the current standard certificate. Requirements must be completed by the expiration date of the limited standard or temporary certificate.

4.5 An educator holding a current or expired professional status or standard certificate assigned to work outside the area covered by the professional status or standard certificate will be issued a continuing license, with an emergency certificate for the new area issued one year at a time for a maximum of three years to enable the educator to fulfill the requirements for the standard certificate in the area of the new assignment. Professional status or standard certificates held by an educator at the time of reassignment will be added to the continuing license as standard certificates.

**5.0 Renewal of a Continuing License:** In accordance with 14 Del. C. §1212, the Department shall renew a continuing license, valid for an additional 5 years, to an educator who

has fulfilled the 90-clock hour requirement for professional development. [At least one-half of the required hours (45 hours every five years) for educators must be in activities to relate to the educator’s work with students or staff.] Satisfactory evidence of such completion, as set forth in Section 3.1, shall be submitted to the Department with the application for renewal. The 90-clock hours of professional development must have taken place during the term of the

continuing license.

### 5.1 Options for Relicensure

### Re-licensure Options – Specifications – Teachers/ Specialists/Administrators

<u>OPTION</u>	<u>MAX. HOURS</u>	<u>HOURLY VALUE</u>	<u>VERIFICATION</u>	<u>CRITERIA</u>
<u>College Credit</u>	<u>No limit</u>	<u>1 semester hour = 15 clock hours.</u> <u>1 quarter hr./CEU = 10 clock hours.</u>	<u>Official Transcripts.</u> <u>Original Grade Slips.</u> <u>Original Certificate of Completion for CEUs.</u>	<u>Must be completed at a regionally accredited college.</u> <u>Must be taken for credit with grade of "C" or better or a "P" in pass/fail course.</u>
<u>“Clusters” of skills &amp; knowledge. Planned school Prof. Dev. Day if activities Part of Approved Cluster</u>	<u>No limit</u>	<u>Verified clock hours in completion of cluster activities.</u>	<u>Approval Slip or Form Verifying Completion.</u>	<u>Cluster must be prior-approved by Professional Development &amp; Associated Compensation Committee, the Professional Standards Board and the State Board of Education.</u>
<u>Professional Conference/ Workshop/ Institute or Academy</u>	<u>30 clock hours per year</u> <u>45 clock hours per cycle</u>	<u>Verified clock hours actively involved in workshop or conference sessions</u>	<u>Original Certificate of Attendance or Completion OR Letter from Supervisor/Conference Staff.</u> <u>Copies/ Exhibits of products developed by Applicant.</u> <u>Course Attendance Slip</u>	<u>Must include only time spent in those portions of the workshop or conference program that contribute to the participant's knowledge, competence, performance, or effectiveness in education.</u>
<u>Mentoring</u>	<u>30 per year</u> <u>45 per cycle</u>	<u>Verified clock hours involved in mentoring activities</u>	<u>Activity Documentation Form. (No prior approval required)</u>	<u>Must be mentoring of teacher, administrator, or specialist.</u> <u>Must be part of a formal state/local program.</u>
<u>Cooperating Teacher/ Intern Supervisor</u>	<u>30 per year</u> <u>45 per cycle</u>	<u>Verified clock hours involved in support of student teacher or intern</u>	<u>Activity Documentation Form completed by higher education director of field-based clinical studies. (No prior approval required)</u>	<u>Must be supervision of graduate or undergraduate intern or student teacher in a state-approved educator preparation program.</u>
<u>Presentation</u>	<u>10 per 3 clock hour course; 30 per longer course; 45 per cycle</u>	<u>Verified clock hours preparing and presenting</u>	<u>Activity Documentation Form* (Prior approval required)</u>	<u>Must include only actual time preparing and presenting a course, workshop, or presentation. (Clock hours limited to first preparation and presentation of individual course, workshop, or presentation.)</u>
<u>Educational Project</u>	<u>30 per year</u> <u>45 per cycle</u>	<u>Verified clock hours completing project. Minimum of 15 clock hours</u>	<u>Activity Documentation Form* (Prior approval required)</u>	<u>Project must have been prior approved by the Professional Development &amp; Associated Compensation Committee.</u> <u>Must have obtained final approval after completion and verification by PDAC</u>
<u>Curriculum/ Assessment Development</u>	<u>30 per year</u> <u>45 per cycle</u>	<u>Verified clock hours of service; Minimum of 3 clock hours</u>	<u>Original documentation from committee chair verifying actual clock hours of participation</u>	<u>Must be service on formal committee organized by local, state, national, or international education agency or organization.</u>

# FINAL REGULATIONS

<u>Educational Travel</u>	<u>3 per day 30 per cycle</u>	<u>Verified clock hours of experience. Minimum of 15 clock hours per travel activity. Final Project.</u>	<u>Activity Documentation Form* (Prior approval required)</u>	<u>Must be prior approved by Professional Development &amp; Associated Compensation Committee. Must have obtained final approval after completion and verification by PCAC.</u>
<u>Professional Programs/ Committees</u>	<u>30 per year 45 per cycle</u>	<u>Verified clock hours of service or experience.</u>	<u>Original documentation from committee chair or activity leader verifying actual clock hours of participation.</u>	<u>Must be a formal activity provided through a recognized local, state, national, or international education agency or organization</u>
<u>Peer Coaching</u>	<u>30 per year 45 per cycle</u>	<u>Verified clock hours of service or experience.</u>	<u>Activity Documentation Form. (No prior approval required)</u>	<u>Must be part of a formal program.</u>
<u>Publication</u>	<u>30 per year 45 per cycle</u>	<u>30 clock hours for book. Up to 15 clock hours per other publication.</u>	<u>Copy of Publication or Document.</u>	<u>Must contribute to the education profession or add to the body of knowledge in the individual's specific field. Must be commercially published or a formally approved document or formally published in a medium sanctioned by a recognized state or national agency or organization. If a grant, must be approved for funding.</u>
<u>Professional Portfolio (to be developed by Standards Board).</u>	<u>30 per year 45 per cycle</u>	<u>45 clock hours for completed and approved portfolio.</u>	<u>The Completed/Approved Portfolio.</u>	<u>Must satisfy the standards established for teaching portfolios. Must be submitted to DOE by December 31 of the final year of the certificate for assessment and approval.</u>
<u>NBPTS Certification or similar National Certification</u>	<u>30 per year 45 per cycle</u>	<u>45 clock hours for attaining national certification  Not complete – verified clock hours completing portfolio activities.</u>	<u>A Valid Copy of the National Certificate. For candidate not completing certificate - Activity Documentation Form. (No prior approval required)</u>	<u>Holds a certificate indicated by NBPTS as related to an individual's work or assignment. Certificate or participation as a candidate must be completed and verified by the expiration date of the Delaware certificate.</u>
<u>Formal Study Groups</u>	<u>30 per year 45 per cycle</u>	<u>Verified clock hours working as a member of a study group.</u>	<u>Activity Documentation Form and The Product of the Study.* (Prior approval required)</u>	<u>Must relate to the individual's work or assignment. Must include a product.</u>

## 5.2 Documentation of Clock Hours for Relicensure

5.2.1 For renewal of the continuing license, educators may complete and document clock hours for the variety of activities described under relicensure options. When college or university courses are used to fulfill the requirements, the following equivalencies will be used: 1 semester hour = 15 clock hours, 1 quarter hour = 10 clock hours, 1 CEU = 10 clock hours. To be documented for clock hours, activities must meet the criteria set forth in the regulations and must be appropriately verified and applied for. Activities requiring prior approval must be approved by the educator's immediate supervisor. Professional development activities that are part of a DPAS II assistance plan may be used to satisfy this requirement.

5.2.2 Criteria for determining if activities are acceptable for clock hour credit include the following:

5.2.2.1 The activity enhances the knowledge and skills in the educator's job or contributes to his/her school or profession.

5.2.2.2 The activity meets one of the relicensure options.

5.2.2.3 The activity addresses one of the standards for the educator's area of the profession.

5.2.2.4 The activity is completed during the term of the educator's current continuing license.

5.2.2.5 The activity addresses specific Professional Teaching or Administrator Standards.

5.2.2.6 Participation in, or completion of, the activity can be documented.

5.3 The Re-Licensure Application, Activity Documentation Form, and, where required, original or official documents will be used to verify activities for renewal of a continuing license. Official transcripts or original grade slips are required documentation for successful completion of college courses.

5.4 For applicants who change positions (grade levels, content areas, areas of supervisory responsibility, etc.)

during the five-year term of a continuing license, clock hours documented must have been appropriate to the educator's position at the time the clock hours were completed.

**6.0** To obtain renewal of a continuing license, educators are required to participate in professional development activities totaling 90 clock hour every five years. The 90 clock hours must be completed during the five-year term of the license. ~~At least one half of the required hours (45 hours every 5 years) for educators must be in activities that relate to the educator's work with students or staff.~~ All activities must relate to the 14 Del Admin. Code 393, Delaware Professional Teaching or 14 Del. Admin Code 394, Delaware Administrator Standards.

**7.0** Candidates for renewal of a continuing license may select from a variety of professional development options, as set forth in the relicensure options approved by the Professional Standards Board, set forth in Section 5.1 and contained in the Guidelines for Issuance and Renewal of a Continuing License. The activities selected must be beyond the normal or specified requirements of the position. Professional development activities which fulfill the criteria for relicensure for which educators receive compensation may be submitted in fulfillment of the 90-clock hour requirement for relicensure. Graduate credits used to satisfy the 90 clock hour requirement for license renewal may, if part of a matriculated program, also be used for a salary increment on the state salary schedule. The activities or options used to satisfy the 90 clock hour requirement for license renewal may be part of an approved professional development cluster eligible for a salary supplement.

**8.0** The Department may extend a continuing license for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

**9.0** An educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the continuing license.

**10.0** An applicant shall disclose his or her criminal conviction history upon application for a continuing license. Failure to disclose a criminal conviction history is grounds for denial or revocation of a continuing license as specified in 14 Del. Code, § 1219.

**11.0** This regulation shall apply to all requests for continuing license, issuance and renewal, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate expiring on June 30, 2001 shall have until June 30, 2007 to meet the new continuing license renewal standards. All administrators in instructional areas issued a continuing

license as of July 1, 2001, shall have until June 30, 2007 to meet the new continuing license renewal standards. Educators holding a Professional Status Certificate or a Standard Certificate expiring July 1, 2001 or thereafter shall be required to satisfy the new continuing license renewal standards as set forth herein.

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

**REGULATORY IMPLEMENTING ORDER**  
**REGULATION 1517 CERTIFICATION CAREER AND**  
**TECHNICAL SPECIALIST**

**I. SUMMARY OF THE EVIDENCE AND**  
**INFORMATION SUBMITTED**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to adopt this regulation. This regulation concerns requirements for the certification of teachers in specific career and technical specialty areas. This regulation shall apply to the issuance of a standard certificate for a career and technical specialist in a specialized career and technical education program to an individual who holds a bachelor's degree from an accredited college and Delaware licensure/certification in a secondary content area pursuant to 14 Del.C. §1220. This regulation is necessary to help ensure that all educators demonstrate high standards for the issuance of a certificate for a career and technical speciality area.

Notice of the proposed adoption of the regulation was published in the News Journal and the Delaware State News on July 24, 2002, in the form hereto attached as Exhibit "A". The notice invited written comments. Written comment was received from the State Council for Persons with Disabilities and from the Governor's Advisory Council for Exceptional Citizens suggesting that the inclusion of a special education course be mandatory and replace History and Philosophy/Foundation and Organization of Career/Technical Education. Since the educators seeking this certification must already be certified/licensed in Delaware, they would already have had at least one course in special education. This certification does not apply to Trade and Industry teachers. Therefore, no change is recommended in response to the comments received.

**II. FINDINGS OF FACTS**

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this

regulation because the regulation allows individuals who hold a bachelor's degree from an accredited college and Delaware licensure/certification in a secondary content area to seek certification as a career and technical specialist, which is a critical needs area.

### III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 Del.C. § 1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 Del.C. § 122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

### IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code §1517 in the *Regulations of the Department of Education*.

### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 22ND DAY OF AUGUST, 2002.**

Charles Michels, Chair	Mary Ellen Kotz, Vice Chair
Patricia Clements	Barbara Grogg
Michele Hazeur-Porter	Sherie Hudson
Tony Marchio	Mary Mirabeau
John Pallace	Joanne Reihm
Harold Roberts	Karen Schilling Ross
Teresa Schooley	Carol Vukelich
Jacquelyn Wilson	

**FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:**

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED THIS 19TH DAY OF SEPTEMBER, 2002**

**STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Robert Gilsdorf  
Mary B. Graham, Esquire

Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith

### **1517 Career And Technical Specialist In** **(Insert CIP & Course Title)**

1.0 Content: This regulation shall apply to the issuance of a standard certificate for a career and technical specialist in a specialized career and technical education program, pursuant to 14 Del. C. § 1220.

2.0 The following shall be required for the Standard Certificate for a career and technical specialist.

2.1 Bachelor's degree from an accredited college; and

2.2 Licensure/Certification in a secondary content area.; and

2.3 Professional Education, which consists of 15 credit hours, as set forth herein, which may be satisfied by providing evidence of having fulfilled the requirement through alternative coursework.

2.3.1 Six (6) credit hours consisting of Methods of Teaching Career and Technical Education or Methods of Materials and Approaches to Career and Technical Education and History and Philosophy/Foundation and Organization of Career/Technical Education; and

2.3.2 Nine (9) credit hours in professional education may be fulfilled by selecting from among the following: Leadership for Career and Technical Educators; Career/ Technical Lab Safety, Organization, and Management; Student Testing and Assessment in Career/ Technical Education; Assessment of Career/Technical Education Program, Issues in Career/Technical Education; Practices and Problems in Integrating Academic and Career/ Technical Education; Career/Technical Occupation Analysis/ Needs Assessment; Career/Technical Student Organizations and Activities; Modern Technology in Career/ Technical Education; Career/Technical Education, Community and Industry Relations; Guidance, Placement and Follow-up in Career/Technical Education Career/ Technical Education for Special Education Students, and

2.4 Two years of successful, full-time employment, within the last five (5) years, in an occupation directly related to the specialty area for which the applicant is being employed, or

2.5 Two years of full-time, post-secondary teaching experience within the last five (5) years, in the specific area in which the applicant is to be employed, or

2.6 A minimum of 15 credit hours, at least 6 of which must have been completed within the last three (3) years, of relevant course work in the specialty area for which approval is sought.

**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 for Assisted Living Facilities**

**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 Assisted Living Facilities. On February 1, 2002, DLTCRP published proposed regulations in the Register of Regulations and received numerous written and verbal comments at public hearings on March 11 and March 15, 2002.

Upon review of the comments received, the Division of Long Term Care Residents Protection issued revised regulations which were published in the August 1 Register of Regulations and were the subject of further public hearings on September 4 and September 5, 2002. No comments proposing further changes in the regulations were received at the September hearings.

Therefore, the proposed regulations are attached and are being promulgated as final regulations. A discussion of the comments received during the March public hearings which were not incorporated into the regulations is in the accompanying Summary of Evidence.

**Findings of Fact:**

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Assisted Living Facilities are adopted effective October 10, 2002.

Vincent P. Meconi, Secretary, September 16, 2002

**Summary of Evidence:**

Comments on the proposed regulations have been received and evaluated as follows:

One comment took issue with the definition of "Assistance With Self-Administration of Medication," suggesting that it should be clarified to extend beyond facility personnel. The suggestion has not been adopted because the regulations in Section 63.7 address medication management in detail, including the requirement that

facilities develop written policies and procedures addressing the issue.

A comment was received proposing that reactions and side effects be noted in the Medication Log. That proposal was not included because professional practice is to note reactions and side effects in the Nurses' Notes and the 24-Hour Report.

A comment indicated that incontinence products should be characterized as "DME-special needs equipment" in addition to their description in these regulations as a "personal care supply." That is unnecessary as the use of "incontinence products" as an example of a personal care supply does not exclude the use of another term to describe incontinence products in another context.

One commenter suggested adding references to specific subsections of 16 Del. C., Chapter 11 in the definition of "representative." However, the entire set of regulations is promulgated in accordance with the chapter, and individual subsections do not need to be referenced in the regulations. Similarly, several comments suggested that various regulations contain restatements of the statute. These regulations are intended to clarify the statute and deliberately do not partially restate or paraphrase the statute which should be referred to in its entirety.

A comment suggested that the disqualification of eligibility for assisted living in Section 63.409A may be overly broad because it proscribes admission if a resident requires care by a nurse "for more than a limited period of time." While the same regulation takes into consideration individuals needing certain types of continuing care by including "intermittent" care as acceptable, and the regulations also permit limited waivers, it is the intent of these regulations to clarify that assisted living is not a setting in which skilled care can be adequately delivered. The proscription cited above is intended to achieve that objective.

The same concern about a regulation being too broad was expressed regarding the ineligibility of an individual with "a stable tracheostomy of less than six months' duration." As these regulations were being developed, much debate centered around the advisability of permitting any residents with tracheostomies in assisted living. After hearing medical opinion expressing the pros and cons, the regulation was drafted to permit such residents only after the stability of the tracheostomy was well-established. As with the regulation discussed above, this regulation recognizes that assisted living facilities do not provide skilled care.

One comment suggested amending Section 63.8 to require reporting of communicable diseases. That matter is addressed in Section 63.804.

A comment questioned the differential treatment of tuberculosis as compared with other communicable diseases. Under Centers for Disease Control guidelines as adopted by the Division of Public Health, these regulations conform to



requirements for the treatment of tuberculosis and other communicable diseases.

A commenter proposed adding the phrase “temperature appropriate” to refer to meal services in Section 63.1101. That same section requires compliance with the Delaware Food Code which addresses many related matters including the temperature of foods served.

With reference to the definition of “assisted living,” a commenter suggested adding “promotes quality of life” to the definition. That phrase was regarded as vague and has been replaced with the numerous specific regulations intended to assure that appropriate care is delivered in assisted living facilities.

One comment proposed adding the phrase “but is not limited to” in the definition of “incident.” The definition as written is intended to clarify and standardize reporting requirements. Adding the suggested phrase will reintroduce the uncertainty the definition is intended to reduce.

A commenter suggested that family members be barred from medication management. Given the widely varying medication needs of residents and the widely varying participation of family members in the care of residents, such a proscription would be too broad and would increase costs to residents who may not wish or need to purchase medication management services from the facility.

One proposal suggested that the use of the term “entity” in describing licensure requirements was inadequate and should be supplemented by the addition of “person.” The regulation, as written, is intended to apply to all ownership arrangements.

A comment indicated that partial closure of a facility should be addressed in more detail. The regulation as written addresses both partial and full closure of facilities. This comment and others seem to presuppose a desire on the part of facilities to readily discharge residents. In fact, the opposite is the case: the reluctance of facilities to discharge residents has resulted in numerous instances of residents in need of skilled care who remain in assisted living when their needs can no longer be satisfactorily met.

One comment suggested that if an exception to the exclusion of a resident in need of “skilled monitoring, testing, and aggressive adjustment of medications and treatments” is permitted if an RN is present, the RN should be employed by the facility. Such a requirement would unnecessarily restrict a resident or family from hiring a private-duty nurse.

A proposal that “immediate discharge” be removed from the regulation pertaining to residents who exhibit threatening behaviors partly misreads the intent of that regulation. One purpose of the regulation is to clarify that individuals exhibiting such behaviors should not be admitted to assisted living facilities because the danger they may pose to themselves or others is not within the capacity of such a facility to safely manage. If a resident develops such

behaviors, immediate discharge must be an option for the protection of other residents. Again, the seeming presumption that facilities are anxious to discharge residents ignores the reality that the financial incentives lead to retention, and not discharge, of residents whose needs are beyond the ability of the facility to meet.

A proposal indicated that residents should be able to appeal the denial of a waiver. The regulations include consultation with the resident and consideration of any hardship to the resident. However, the resident is not in a position to know the ability or lack of ability on the part of the facility to provide the needed care nor to know the possible existence of other waivers for residents at the same facility which may further preclude the provision of adequate care.

One comment proposed the removal of the provision requiring that the resident acknowledge having reviewed all the pertinent documents pertaining to the conditions the facility will impose. That is a minimal protection for a resident and should not be removed.

A comment urged that termination of a contract should not be permitted if one member of a couple dies or is discharged. Clearly, provisions for a new contract must be provided when residency and services are changing. Some residents will want or need to terminate the contract and move. The inference of the commenter that contract termination equates with involuntary discharge is incorrect and fails to acknowledge the financial pressure on facilities to keep units occupied.

The provision that the contract include the obligations of both the facility and the resident for arranging medical care elicited a comment that the resident’s obligations should be excluded. The regulation remains as written: the obligations of both parties to the contract are required to clarify who will take responsibility for specific medical services.

A comment suggested that a specific provision be added to the contract specifying a time period regarding the disposition of a deceased resident’s possessions. The regulation is limited to specifying the responsible party in any of the several circumstances listed, and the proposal of the commenter is not relevant to identifying responsibility.

The regulations require a contract provision specifying 60 days notice of a rate increase except in the case of a change in care necessitated by the resident’s medical condition. A comment proposed that 30 days notice be provided when a resident’s medical condition has changed. That proposal is not accepted because arrangements to cover the cost of medical care must begin at the time the care is needed to assure adequate provision of such care.

A comment suggested that a reference to the care a facility “can provide” be changed to “is licensed to provide.” The comment is not adopted as it seems to presume multiple levels of licensure which are not in these regulations.

One commenter suggested that initial training for residential assistants and temporary agency staff should specify a minimum number of hours. However, the regulation to which the comment refers does not pertain to initial training but rather to facility orientation.

On the matter of residents sharing a bedroom, a comment suggested that the regulations specify that such sharing should be by mutual consent. That issue is addressed in the statute, and the particular regulation to which the comment refers pertains to environmental and physical plant issues only.

A comment addressed the question of whether the reference to compliance with the Fair Housing Act might be in conflict with the conditions which exclude admissions to an assisted living facility. After consultation with the Justice Department, the purpose of the regulations was clarified with the addition of the sentence in the "Purpose" section which reads, "The essential nature of assisted living is to offer living arrangements to medically stable persons who do not require skilled nursing services and supervision." Repeated instances of individuals in serious need of skilled nursing services or exhibiting inadequately treated medical conditions who are being admitted to or retained in assisted living facilities are a source of considerable concern to the Division. When the individuals' needs and physical safety cannot be met because they require services beyond those available in assisted living, the Division intends to implement these regulations to protect those individuals.

Several comments were received proposing that assisted living facilities that are a part of Continuing Care Retirement Communities (CCRC) be exempt from the requirement that an assisted living facility with more than 25 beds have a full-time registered nurse as a director of nursing. Such an exemption has been proposed under the assumption that the duties of the registered nurse in the assisted living facility would be covered by a registered nurse who otherwise would be providing care in the skilled facility portion of the CCRC. Since skilled facilities must comply with the staffing requirements of Eagle's Law, the same registered nurse could not perform both functions and be in compliance with both Eagle's Law and these regulations.

One comment suggested that a registered nurse consultant working four hours per week should be substituted for the registered nurse requirements in the regulations because skilled care is not being provided. While the commenter is correct, virtually every assisted living resident is receiving some form of medical care, and the observations and ongoing assessments of a registered nurse are necessary for the well-being of those residents.

These regulations also include a requirement that the Uniform Assessment Instrument (UAI) be completed by a registered nurse. A comment suggested that a licensed practical nurse could complete the UAI because an initial assessment is only a "gathering of information" rather than a

nursing assessment. Such a perception is incorrect; the requirement for an assessment by a registered nurse is in the regulations specifically to ensure that the assessment is a nursing assessment and not simply a gathering of information.

A comment proposed further restrictions in these regulations pertaining to assistance with self-administration of medications (AWSAM). The AWSAM program operates under regulations of the Board of Nursing which has a task force reviewing those regulations. When those regulations are revised, to the extent that they are relevant to assisted living, they will be incorporated into the assisted living regulations.

One comment found the numbering of the regulations confusing and suggested that the numbering system was duplicative. However, the numbering is as intended with each separate section numbered in sequence, and the numbers within each section in hundredths to permit up to 99 subsections following the section number.

The regulation which requires a fire and safety orientation for residents, which by extension includes their families, was questioned by one commenter who expressed the view that orientation for family members was not reasonable since family members are not present at all times. While family members are not always present, the knowledge of the appropriate fire and safety procedures is nonetheless helpful and could make a critical difference in an emergency.

The same comment included a suggestion that the regulation include an acknowledgment that residents with dementia may not remember the training. The limitations of individuals with dementia are sufficiently known to all involved with long term care so that such an acknowledgment in the regulations is not necessary.

Another comment proposed a more detailed waiver provision. However, the regulation as written adequately covers all circumstances.

A comment expressed unfamiliarity with the term "Instrumental Activities of Daily Living" and questioned whether "Activities of Daily Living" and "Instrumental Activities of Daily Living" were identical or different terms. They are different terms, and the examples cited in the definitions are intended to convey those differences.

A comment proposed setting out staffing requirements similar to those for nursing facilities. Given the nursing shortage, such a requirement could exacerbate current difficulties nursing facilities and other facilities are experiencing in meeting their nursing needs. Therefore, the emphasis in these regulations is the effort to ensure that individuals who need the level of care provided in nursing facilities are not admitted or retained in assisted living facilities where such care is not provided.

Finally, one comment was received which questioned why this order did not appear when the proposed regulations

were published for a second set of public hearings. As this order is the final order adopting the regulations, it accompanies the final regulations rather than proposed regulations.

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 1, 2002 issue of the Register at page 141 (6 DE Reg. 141). Therefore, the final regulation is not being republished. Please refer to the August 2002 issue of the Register or contact the Division of Professional Regulation.**

### DIVISION OF SOCIAL SERVICES

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

#### ORDER

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to implement changes to the Division of Social Services Manual (DSSM). The proposed change amends TANF policy as it relates to time limits for the receipt of benefits. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the August, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposed Change: DSSM 3002 - Time Limit, Temporary Welfare Program

Under the current waiver by which Delaware’s operates its TANF program, time limits for receipt of benefits for heads of households begin at age 19. As of September 30, 2002, Delaware’s waiver for operating its TANF program will expire. At that time, the State of Delaware will need to comply with existing TANF regulations.

TANF regulations require that time limits for receipt of benefits for heads of households begin at age 18. In order to comply with this regulation, the Division of Social Services proposes to change existing policy at Sections 3002, 3002.1, 3002.2, 3002.3 and 3002.8, indicating that time limits for receipt of benefits begin for heads of households at age 18.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor’s Advisory Council For Exceptional Citizens (GACEC) and the State Council for Persons With Disabilities (SCPD) provided similar observations and comments: Specifically, the TANF program is important for persons with disabilities and that, in general, low income persons on SSI (and occasionally SSDI) may qualify for TANF and be exempt from work requirements. Further, the summary indicates that the DSS waiver (under which the time limits for receipt of benefits for heads of households begin at age 19) is expiring. Therefore, it proposes to adopt the normal Federal standard under which the time period commences to run when the head of household is age 18.

GACEC and SCPD observation/comment is that DSS is also deleting regulations which defer application of the time limits if the Delaware “unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.” Such unemployment rate deferrals are not unusual. The Administrative Procedures Act contemplates that agencies will provide an accurate synopsis of the substance of the regulations and identify other regulations that may be affected by the proposal. See Title 29 Del.C. Sec. 10115(a)1. The GACEC does not understand the rationale or basis for deleting the unemployment rate provisions in its proposal. If the unemployment rate provisions are another part of the waiver that is expiring, and are unauthorized under general Federal TANF law, DSS should articulate that justification. Otherwise, it would make sense to retain the unemployment rate provisions. If jobs are not readily available, there is less justification for penalizing beneficiaries who are willing to work but unable to secure employment.

**DSS Response:** The Division had to make this decision because our waiver expire September 30, 2002 and the exemption was part of the waiver.

DSS initiated revision shows language deleted in Section 3002.2 and indicated by ~~[Bracketed Bold text]~~.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August, 2002 Register of Regulations, and herein revised, should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulations related to TANF Time Limits are adopted and shall be final effective October 10, 2002.

Vincent P. Meconi, Secretary, July 15, 2002

REVISIONS:

**3002 Time Limit, Temporary Welfare Program**

Cash benefits will be time-limited for households headed by two employable adults age ~~19~~ 18 or older who are included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. Families will receive these benefits only through participation in a pay-after-performance work experience position or if the adults are working and the family's countable income is below the need standard.

~~Time Limits will not apply when Delaware's unemployment rate exceeds the national average by 2% or when the Delaware unemployment rate is greater than 7.5%.~~

Time limits apply when ~~four~~ three conditions are met:

- the caretaker is included in the grant,
- the caretaker is age ~~19~~ 18 or older,
- the caretaker is employable, and
- ~~the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.~~

~~Time limits apply when four three conditions are met:~~

When one or more of the conditions listed above is not met, the family receives benefits in the non-time limited program known as the Children's Program.

During the time-limited period, employable adult recipients will receive full cash benefits only as long as they fulfill their Contract of Mutual Responsibility, and participate in a pay-after-performance work experience program or they are working and family income is below the need-standard of 75% of the Federal Poverty level.

The pay-after-performance work experience position is intended for families who do not have unsubsidized employment. Determine the number of hours of work required by dividing the DABC benefit by the minimum wage. In addition, participants will be required to conduct up to ten (10) hours of job search each week. Failure to comply with the job search requirements will result in an employment and training sanction being applied as described in Section 3011.2.

**Periodic Alerts to Families Regarding Time Remaining before the Family Reaches the Time Limit**

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

**3002.1 Two-Parent Families - Time Limit, Temporary Welfare Program**

A.) Delaware's A Better Chance (DABC) Welfare Reform, cash benefits are time-limited for households headed by two employable adults age ~~19~~ 18 or older who are included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. Families will receive these benefits

only through participation in a pay-after-performance work experience position or if the adults are working at least 20 hours per week and the family has countable income is below the need standard.

~~Time Limits will not apply when Delaware's unemployment rate exceeds the national average by 2% or when the Delaware unemployment rate is greater than 7.5%.~~

Time limits apply when ~~four~~ three conditions are met:

- the caretaker is included in the grant,
- the caretaker is age ~~19~~ 18 or older,
- the caretaker is employable, and
- ~~the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.~~

~~Time limits apply when four three conditions are met:~~

When one or more of the conditions listed above is not met, the family receives benefits in the non-time limited program known as the Children's Program.

B.) During the time-limited period, employable adult recipients will receive full cash benefits only as long as they fulfill their Contract of Mutual Responsibility, and participate in a pay-after-performance work experience program or they are working and family income is below the need-standard of 75% of the Federal Poverty level.

The pay-after-performance work experience position is intended for families who do not have unsubsidized employment. Determine the number of hours of work required by dividing the DABC benefit by the minimum wage. In addition, participants will be required to conduct up to ten (10) hours of job search each week. Failure to comply with the job search requirements will result in an employment and training sanction being applied as described in Section 3011.2.

**C.) Periodic Alerts to Families Regarding Time Remaining before the Family Reaches the Time Limit**

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

**3002.2 Single Parent / Non-Parent Caretaker Families**

Delaware's A BETTER CHANCE WELFARE REFORM PROGRAM (DABC), cash benefits are time-limited for households headed by an employable adult age ~~19~~ 18 or older who is included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. Families will receive benefits ~~{for an additional twenty-four (24) cumulative months}~~ only through participation in a pay-after-performance work experience position or if the adult is working at least 20 hours per week and the family has countable income is below the need standard.

~~Time limits will not apply when Delaware's unemployment rate exceeds the national average by 2% or when the Delaware unemployment rate is greater than 7.5%.~~

Time limits apply when ~~four~~ three conditions are met:

- the caretaker is included in the grant;
- the caretaker is age ~~19~~ 18 or older;
- the caretaker is employable; and
- ~~the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.~~

When one or more of the conditions listed above is not met, the family receives benefits in the non-time-limited program known as the Children's Program.

### 3002.3 Time Limits For Those On Assistance Prior To 01/01/2000

If a family was headed by an employable adult age 18 or older who was included in the grant and received Delaware's A Better Chance (ABC) Welfare Reform cash benefits prior to 01/01/2000 they had a forty-eight (48) cumulative month time limit. This lifetime limit will still apply for those families. After twenty-four (24) cumulative months these families can only receive benefits if the adult is working at twenty hours per week or through participation in a pay-after-performance work experience position. The family must still have countable income that is below the need standard. Families with a forty-eight (48) month time limit who reapply for assistance on or after 01/01/2000 can only receive benefits if the adult is working at least twenty hours per week or if through participation in a pay-after-performance work experience position.

### 3002.8 Re-Application after the Time Limit

Assistance will be denied to employable caretakers reapplying for benefits after ~~the 48 cumulative month~~ time limit has expired, unless the caretaker proves that grounds exist for an extension.

Benefits will be provided to these families only in the pay-after-performance component, up to the federal maximum of sixty (60) cumulative months in the time-limited program (See 3002.9 Exceptions To The Time Limit Counter.) DSS will conduct an assessment and notice the family prior to termination of benefits (See 3002.5 Assessment Prior to Termination of Benefits).

Families headed by unemployable caretakers can receive assistance under the Children's Program.

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## DIVISION OF SOCIAL SERVICES

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

### ORDER

Delaware Health and Social Services ("Department") /  
Division of Social Services / Food Stamp Program initiated

proceedings to implement changes to the Division of Social Services Manual (DSSM). The proposed change amends the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to the provisions of the Farm Bill, Title IV of the Farm Security and Rural Investment Act of 2002, enacted on May 13, 2002. These mandatory provisions must be implemented on October 1, 2002. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the August, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### SUMMARY OF PROPOSED CHANGES

**1) DSSM 9007.1 - Citizenship and Alien Status:** restores food stamp eligibility to qualified aliens who are otherwise eligible and who are receiving disability benefits regardless of date of entry. Current law requires them to have been in the country on August 22, 1996.

**2) DSSM 9045 - Maximum Allowable Resources:** increases the resource limit for households with a disabled member from \$2,000 to \$3,000, which is the same for households with an elderly member.

### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council For Exceptional Citizens (GACEC) and the State Council for Persons With Disabilities (SCPD) provided similar comments, as follows:

GACEC and SCPD endorse the proposed regulations for the following reasons:

- First, the resource limit for households with a member with a disability is currently \$2,000. See current Sec. 9045. DSS proposes to increase the resource limit for households with a member with a disability to \$3,000, the same as the limit for households with an elderly member.
- Second, the current regulation allows aliens lawfully admitted on August 22, 1996 and receiving disability benefits to be eligible for food stamps. The proposed regulation deletes the date so a lawfully admitted alien with a disability may be eligible for food stamps regardless of date of entry.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the August, 2002 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulations of the Food Stamp Program related to the Farm Bill enacted on May 13, 2002 are adopted and shall be final effective October 10, 2002.

Vincent P. Meconi, Secretary, September 16, 2002

**REVISIONS:****9007.1 Citizenship and alien status**

(273.4)

Household members meeting citizenship or alien status requirements.

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if at least one of the parents is a citizen;

2. Naturalized citizens or a United States non-citizen national (person born in an outlying possession of the United States, like American Samoa or Sawin's Island, or whose parents are U.S. non-citizen nationals);

3. Individuals who are:

(A) An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply;

(B) A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U. S. to Indians because of their status as Indians;

(C) Lawfully residing in the U. S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U. S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

(i) The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or

(ii) An unmarried dependent child of such Hmong or Highland Laotian who is under the age of 22; an unmarried child under the age of 18 or if a full-time student under the age of 22 of such a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18th birthday.

4. Individuals who are eligible indefinitely due to being:

(A) lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased. A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouse's quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

(B) lawfully in US on 8/22/96 and is now under 18 years of age;

(C) lawfully in US ~~on 8/22/96~~ and is ~~now~~ receiving disability or blind (payments listed under DSSM 9013.1);

**9045 Maximum Allowable Resources**

[273.8]

Resource standards of eligibility apply to all applicant households, including Public Assistance, General Assistance, and SSI households. The maximum allowed resources, including both liquid and non-liquid assets of all members of all applicant households may not exceed \$2,000, except that, for households including a member(s) age 60 or over or disabled per DSSM 9013.1, such resources will not exceed \$3,000. Households ~~which that~~ are categorically eligible as defined in DSSM 9042 ~~Categorically Eligible Households~~ do not have to meet the resource limits or definitions in this section.

**DIVISION OF SOCIAL SERVICES**

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

**ORDER**

Delaware Health and Social Services (“Department”) / Division of Social Services / Medicaid/Medical Assistance Programs initiated proceedings to implement changes to the Division of Social Services Manual (DSSM). The proposed changes amends policies related to Third Party Liability, Diamond State Partners and the Breast and Cervical Cancer Group. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the August, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary of Proposed Change: DSSM 14600, 16110, 16210, 16220.4, 16310.3, 18200.2 - Third Party Liability**

Change the name from CHAMPUS to Military Health Insurance for Active Duty, Retired Military and their Dependents. Add this to the list of comprehensive health insurance under Delaware Healthy Children Program.

**Summary of Proposed Change: DSSM 14810, 14900, 15160, 15505, 16210, 16220.4, 16220.5, 16500.2 - Diamond State Partners (DSP)**

Add information about Diamond State Partners being a Medicaid only managed care organization.

**Summary of Proposed Change: DSSM 15503 - Breast and Cervical Cancer Group**

Clarify that there are only two screening categories for the Breast and Cervical Cancer Group.

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The Governor's Advisory Council For Exceptional Citizens (GACEC) and the State Council for Persons With Disabilities (SCPD) provided similar observations and recommendations.

This regulation would effect some technical and substantive amendments to managed care regulations affecting the Medicaid and Delaware Healthy Children (Federal “CHIP”) programs. The GACEC and SCPD have the following observations and recommendations:

The Councils' main concern is with retroactivity. Prior to the inception of the Diamond State Health Plan (DSHP), DSS authorized retroactive coverage of Medicaid to medical bills accruing 3 months prior to the month of application. Such retroactive coverage was eliminated for managed care enrollees in 1996 when the DSHP was adopted. See Secs. 14920.1 and 14920.2. It was retained for persons excluded from managed care (e.g. ICF/MR residents; HCBS waiver enrollees). Id. Proposed Sec. 16220.5 provides that covered adults are eligible for Medicaid coverage effective with the date of MCO enrollment. Unfortunately, an applicant may be determined eligible for Medicaid and actual enrollment in an MCO could be delayed by several factors (e.g. investigation of different optional coverages between First State and Diamond State Partners; investigation of whether beneficiary’s PCP or health care providers are part of networks of First State or Diamond State Partners; MCO processing delays; delays in notifying applicant of approval of application). Moreover, although DSS generally has 45-90 days to determine Medicaid eligibility [42 C.F.R. Sec. 435.911], this time period is not uniformly met. For example, the Delaware CarePlan Trust reports several instances of lengthy delays in approving Medicaid applications for DDDS clients. This can result in inability to access medical care (due to lack of Medicaid) or accumulation of legitimate bills that Medicaid will never cover. As DSS notes in Sec. 14900, this program is designed to meet the needs of “Delaware’s most vulnerable populations.”

GACEC and SCPD encourage DSS to reconsider its retroactive coverage approach. At a minimum, the following options could be considered. Medicaid coverage could begin:

- 1) the date of approval of the application;
- 2) the first of the month in which the application is approved;
- 3) the first of the month in which the beneficiary enrolls in the MCO; or
- 4) the earlier of the date of enrollment in the MCO or approval of the application contingent upon the beneficiary’s prompt enrollment in an MCO within 10 days of notification of approval. In each of these scenarios, the applicant is not penalized by delays in notification of approval or delays in processing MCO enrollment.

**DSS Response:** As noted in your letters, retroactive Medicaid coverage was eliminated in 1996 with the inception of the Diamond State Health Plan. The proposed regulations make no changes to this policy, but announce the implementation of a Medicaid only managed care organization, Diamond State Partners. In conjunction with the July 1, 2002, implementation of Diamond State Partners,

DSS has introduced a bimonthly-managed care enrollment process to assure that individuals are enrolled as quickly as possible. Further, except for the adult expansion group, an eligibility category established as a result of the 1115 Managed Care Waiver, Medicaid eligibility begins on the first of the month of application.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the August, 2002 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulations of the Medicaid/Medical Assistance Programs related to Third Party Liability, Diamond State Partners, and the Breast and Cervical Cancer Group are adopted and shall be final effective October 10, 2002.

Vincent P. Meconi, Secretary, September 16, 2002

#### **REVISIONS:**

##### **14600 Third-Party Liability**

Some Medicaid recipients are covered by other medical insurance plans. Examples of other resources are Medicare, employment related health insurance, Union Health & Welfare Funds, national Blue Cross and Blue Shield plans, CHAMPUS, Military Health Insurance for Active Duty, Retired Military, and their dependents, workmen's compensation, and no-fault automobile coverage. When a recipient receives payment from an insurance carrier, court settlement, etc. for any medical services paid by Medicaid, the recipient is obligated to reimburse the program for those related services. All such cases must be referred to the Third Party Liability Unit at the Medicaid State Office.

##### **14680 Third Party Liability Guide**

To aid in turning up other possible sources of coverage, the following guide has been prepared.

If You Find:	Then A Case Member May Be Eligible For:
A case member, spouse of a case member, absent parent or step-parent is ACTIVE DUTY MILITARY or a VETERAN	<u>CHAMPUS, Military Health Insurance for Active Duty, Retired Military, and their dependents,</u> VA Health coverage

##### **14810 Continuously Eligible Newborns**

An infant born to a woman eligible for and receiving Delaware Medicaid (including emergency services and labor and delivery only coverage) on the date of the child's birth is deemed to have filed an application and been found eligible

on the date of birth and to remain eligible for 1 year provided:

- the child resides continuously in the mother's household, and
- for children born on or after January 1, 1991, the mother remains eligible for Medicaid or would have remained eligible if she were still pregnant.

For purposes of deemed eligibility, the newborn will be considered to be a member of the mother's household even if the baby is continuously hospitalized after birth, unless the mother has legally relinquished control of the child.

A mother (who is not required to enroll in the Diamond State Health Plan or Diamond State Partners) can apply after a child is born and we will determine three month retroactive coverage. If the mother is determined retroactively eligible in a month prior to the birth (still pregnant), or in the month of birth, the baby will be deemed eligible for one year.

**EXCEPTION:** If the mother is eligible for enrollment in the Diamond State Health Plan or Diamond State Partners she cannot apply for retroactive coverage. She must apply for and be found eligible for Medicaid in the month of birth or in a month prior to the month of birth (while still pregnant) in order for the newborn to be deemed eligible. If the newborn is not deemed eligible, a separate eligibility determination must be made.

##### **14900 Enrollment In Managed Care**

On May 17, 1995, Delaware received approval from the Health Care Financing Administration for a Section 1115 Demonstration Waiver that is known as the Diamond State Health Plan. The basic idea behind this initiative is to use managed care principles and a strong quality assurance program to revamp the way health care is delivered to Delaware's most vulnerable populations. The Diamond State Health Plan is designed to provide a basic set of health care benefits to current Medicaid beneficiaries as well as uninsured individuals in Delaware who have income at or below 100% of the Federal Poverty Level (FPL). The demonstration waiver will mainstream certain Medicaid recipients into managed care to increase and improve access to medical service while improving cost effectiveness and slowing the rate of growth in health care costs.

Effective July 1, 2002, a Medicaid only managed care organization, Diamond State Partners, is implemented. Individuals may enroll in either the Diamond State Health Plan or Diamond State Partners.

The majority of the Medicaid population receiving non institutional services will be enrolled into the Diamond State Health Plan or Diamond State Partners. Recipients in the cash assistance programs (TANF/AFDC, SSI, and GA) as well as the TANF/AFDC-related groups, SSI-related groups, and poverty level groups will be included in the managed care program. The following individuals cannot enroll in Diamond State Health Plan or Diamond State



**Partners:**

- a. Individuals entitled to or eligible to enroll in Medicare
- b. Individuals residing in a nursing facility or intermediate care facility for the mentally retarded (ICF/MR)
- c. individuals covered under the home and community based waivers
- d. non lawful and non qualified non citizens (aliens)
- e. individuals who have CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents

**14920.1 Retroactive Coverage Limitations**

Effective January 1, 1996, Retroactive Medicaid coverage is NOT available to any individual who, in the month of application, is eligible for enrollment under the Diamond State Health Plan or Diamond State Partners. Individuals who are excluded from the Diamond State Health Plan or Diamond State Partners may be found eligible for retroactive Medicaid coverage. These individuals include:

- [a] those entitled to or eligible to enroll in Medicare,
- [b] those receiving long term care services (nursing facility and the home and community based waivers),
- [c] those living out of state but considered Delaware residents, such as a child placed out of state by DSCYF, and
- [d] individuals who have coverage under CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents.

**14920.2 Retroactive Coverage Of Unpaid Bills**

Individuals or families who apply for MAO (Medical Assistance Only), TANF/AFDC, GA, or SSI and who are excluded from the Diamond State Health Plan or Diamond State Partners may be eligible for retroactive Medicaid coverage of any unpaid medical bills incurred in any of the three months prior to the month in which they applied. However, certain requirements must be met in order for these bills to be paid under Medicaid.

**14920.3 Retroactive Coverage Time Limits**

There is no time limitation on requests for retroactive coverage. They may be processed at any time. Individuals who are eligible to enroll in Diamond State Health Plan or Diamond State Partners in the month of application, will never be eligible for the 3 month retroactive time period prior to that application.

**14920.5 Retroactive Eligibility Determination**

If the client is potentially eligible for or enrolled in the Diamond State Health Plan or Diamond State Partners, the worker will not do an eligibility determination.

**14920.6 Retroactive Eligibility For Newborns**

A baby born to a woman eligible for and receiving Medicaid on the date of the child's birth is deemed to have filed an application. Also, a mother (who is excluded from Diamond State Health Plan or Diamond State Partners) can apply after a child is born and we will determine three month retroactive coverage. If the mother is determined retroactively eligible in a month prior to the birth (still pregnant), or in the month of birth, the infant is deemed eligible at birth and remains eligible for 1 year provided:

- the child lives continuously in the mother's household; and
- if the child was born on or after January 1, 1991, the mother remains eligible for Medicaid or would have remained eligible if she were still pregnant.

NOTE: Remember that retroactive coverage is only available to individuals excluded from managed care. A woman who is eligible for enrollment in the Diamond State Health Plan or Diamond State Partners cannot apply after the month of birth and be determined retroactively eligible. In this case, there is no deemed newborn eligibility and a separate determination of eligibility must be made for the baby.

**15160.1 Eligibility Determination**

Eligibility will be determined using Medicaid under Section 1931 technical and financial criteria. There is no medical eligibility criterion. (See DSSM 15120)

If the applicant is eligible, the Medicaid may be opened retroactive to the date of admission to the hospital. In no case can coverage be effective more than 3 months prior to the application date.

EXCEPTION: There is no 3 month retroactive coverage from the application filing date, if in the month of application, the individual is eligible for enrollment in the Diamond State Health Plan or Diamond State Partners.

**15503 Screening Requirement**

The woman must have been screened for breast or cervical cancer under the CDC Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and found to need treatment for either breast or cervical cancer (including a pre-cancerous condition).

A woman is considered to have met the screening requirement if she comes under any of the following three categories:

1. CDC Title XV funds paid for all or part of the costs of her screening services.
2. The woman is screened under a state Breast and Cervical Cancer Early Detection Program which her particular clinical service has not been paid for by CDC Title XV funds, but the service was rendered by a provider and/or an entity funded at least in part by CDC Title XV funds; the

service was within the scope of the grant, sub-grant or contract under that State program; and the State CDC Title XV grantee has elected to include such screening activities by that provider as screening activities pursuant to CDC Title XV.

~~3. The woman is screened by any other provider and/or entity and the state CDC Title XV grantee has elected to include screening activities by that provider as screening activities pursuant to CDC Title XV.~~

**15505 Uninsured Requirement**

The woman must be uninsured. The woman is not eligible if she has:

(a) Medicaid or is eligible under any of the Mandatory Categorically Needy coverage groups. The mandatory groups include Section 1931, Transitional or Prospective, IV-E Foster Care, IV-E Adoption Assistance, Low Income Pregnant Woman or Child, SSI, or Deemed SSI.

(b) Medicare

(c) Comprehensive health insurance

~~(d) CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents~~

**16110 Adult Expansion Population**

Section 1902(a)(10)(A)(i) of the Social Security Act requires states to provide medical assistance to certain mandatory categories of individuals and allows states to cover optional categories. On May 17, 1995, HCFA approved a Section 1115 Demonstration Project, entitled Diamond State Health Plan. This demonstration waiver extends Medicaid coverage to uninsured individuals age 19 or over with income at or below 100% of the FPL who are not categorically eligible. Individuals who receive long term care services (nursing facility and home and community based waivers), who have comprehensive health insurance as defined in this section, who are entitled to or eligible to enroll in Medicare, or who have coverage through CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents are excluded from this category of assistance created under the demonstration waiver. Medicaid coverage for this new group is effective March 1, 1996. Adults are not eligible for Medicaid benefits until ~~the first of the month in which~~ they are enrolled in a Managed Care Organization (MCO). (See DSSM 16220.5) Enrollment in a MCO is a technical eligibility requirement for these adults under the demonstration waiver. Adults will not receive Medicaid services until they are enrolled in a MCO.

**16210 Limitations on Retroactive Coverage**

Retroactive Medicaid eligibility is discussed in the common eligibility section of the Medical Assistance Manual. The demonstration waiver eliminates prior quarter eligibility. Retroactive Medicaid coverage is NOT available

to any individual who, in the month of application, is eligible for enrollment under the Diamond State Health Plan or Diamond State Partners.

Certain individuals, who are excluded from the Diamond State Health Plan or Diamond State Partners, may be found eligible for retroactive Medicaid. Individuals who may be found eligible for retroactive Medicaid are:

- those who are entitled to or eligible to enroll in Medicare,
- those receiving long term care services (nursing facility and the home and community based waivers),
- those living out-of-state but considered Delaware residents, such as a child placed out-of-state by DSCYF, and
- individuals who have coverage under CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents.

**16220.4 Uninsured Requirement for Adult Expansion Population**

This is a separate technical eligibility requirement for the noncategorically related adults age 19 or over, including those who receive General Assistance. The individual must be uninsured. An uninsured individual is defined as an individual who does not have Medicare, CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents, or other comprehensive health insurance. (See DSSM 16220.4.1) An adult who is entitled to or eligible to enroll in Medicare or who has CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents or who has any comprehensive health insurance, cannot be eligible for Medicaid as a non categorical adult under the demonstration waiver. The Third Party Liability Unit will determine if an individual has comprehensive health insurance.

**16220.5 Enrollment in Managed Care - Special Requirement for Adult Expansion Population**

Enrollment in a Diamond State Health Plan or Diamond State Partners MCO is a separate technical eligibility requirement for the non categorically related adults including adults who are receiving General Assistance. The adult must join a MCO ~~before the 20<sup>th</sup> day of the approval month~~ in order for Medicaid coverage to begin. ~~the first day of the next month.~~ ~~If the adult joins a MCO after the 20<sup>th</sup> day of the approval month, Medicaid coverage will start the second month following the approval month.~~ ~~The approval month is the month in which the notice to approve Medicaid is sent to the applicant.~~ The adult, if otherwise eligible, cannot receive Medicaid coverage until he or she is enrolled in a Diamond State Health Plan or Diamond State Partners MCO.

**16310.3 Adults**

Non categorically related adults will remain eligible as long as the family income is at or below 100% FPL. These adults may lose Medicaid eligibility due to disenrollment from a managed care organization because of:

- non-compliance,
- threatening or abusive behavior, or
- falsification of application or enrollment material determined after a fair hearing on the issue.

If the adult becomes entitled to or eligible to enroll in Medicare or acquires CHAMPUS Military Health Insurance for Active Duty, Retired Military, and their dependents or comprehensive health insurance, redetermine eligibility promptly. If the adult is not eligible for Medicaid under another eligibility group or if benefits are reduced (e.g. to QMB), terminate or reduce benefits after giving at least 10 days advance notice.

**16500.2 Procedures for Determining Eligibility**

This program is an extension of benefits like the Transitional Medicaid program. A separate application is not required. When a female of childbearing age loses Medicaid eligibility, DSS staff will contact the woman to see if she wants to receive Family Planning services. The woman's response will be documented. The woman may request Family Planning services anytime during the 24 months after the Medicaid case is closed. These recipients will receive a Medicaid card that indicates they are eligible for Family Planning Package including Family Planning and Related Services.

Women eligible under this program are excluded from enrollment into the Diamond State Health Plan or Diamond State Partners. When the Medicaid case is closed, system processing will automatically disenroll women from managed care using the Medicaid closing effective date. Family planning and related services will be paid on a fee-for-service basis.

**18200.2 Uninsured Requirement**

The DHCP is limited to uninsured, low-income children. The following children are not eligible for DHCP:

- a. Children who are eligible for Medicaid.
- b. Children who have Medicare
- c. Children who, at the time of application, have insurance coverage that meets the definition of comprehensive health insurance.
- d. Children who have had comprehensive health insurance (other than Medicaid) within the six months preceding the month of application unless good cause exists for the loss of health insurance. The month of application is the month in which a signed application is received by DSS.
- e. Children who are eligible for or who have access to coverage under a state health benefits plan on the basis of a family member's employment with a public agency in the

state.

f. Children who have Military Health Insurance for Active Duty, Retired Military, and their dependents.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 103(a)(1) and (b),  
(7 Del.C. 103(a)(1) and (b))

**Secretary's Order No.: 2002-F-0050  
Amendments to Wildlife and Non-Tidal Fishing  
Regulations**

**I. Background**

The Department of Natural Resources and Environmental Control, Division of Fish and Wildlife ("Department") initiated proceedings to amend the Wildlife and Non-Tidal Fishing Regulations. The Department's proceedings were initiated pursuant to 29 Del.C. §10114 and its authority as prescribed by 7 Del.C. §§103 and 601.

On August 1, 2002, the Department published in the Delaware Register of Regulations its notice of proposed regulation changes pursuant to 29 Del. § 10115. The notice requested that written comments from the public concerning the proposed amendments be delivered to the Department by August 31, 2002 or at the public hearing on August 27, 2002.

After the close of the public comment period, the Hearing Officer prepared his report and recommendations in the form of a memorandum to the Secretary dated September 3, 2002 and that memorandum is expressly incorporated herein by reference.

**Findings and Conclusions**

1. On January 29, 2002, February 26, 2002, March 26, 2002 and April 30, 2002, presentations were made to the Council on Fish and Wildlife on various aspects of these regulatory changes.
2. Proper notice of the public hearing held on August 29, 2002 was provided as required by law.
3. All of the findings and conclusions contained in the Hearing Officer's Report, dated September 3, 2002 are expressly incorporated herein.
4. The proposed amendments include modifications from those published in the Delaware Register of

Regulations on August 1, 2002, based on comments received during the public notice period.

5. The changes made to the proposal after it was published in the Delaware Register of Regulations do not constitute substantive changes with respect to republishing this regulatory proposal.
6. The proposed amendments should be made in the best interest of the general public of the State of Delaware.

**III. Order**

In view of the findings and conclusions, it is hereby ordered that the proposed amendments to the Wildlife and Non-Tidal Fishing Regulations be adopted in the manner and form provided for by law. This order shall become effective October 10, 2002.

Nicholas A. DiPasquale, Secretary

**WR-2. Method Of Take**

**Section 1. General.**

Unless otherwise provided by law or regulation of the Department, it shall be unlawful to hunt any protected wildlife with any weapon or firearm other than a longbow or shotgun (10 gauge or smaller), except that:

- (1) A crossbow may be used in lieu of a shotgun to hunt deer during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzle loader deer season open in December or January;
- (2) A muzzle-loading rifle with a barrel length of at least twenty inches may be used to hunt deer during the primitive firearms season;
- (3) A .22 caliber rimfire pistol may be used to hunt raccoons and opossums and to take wildlife lawfully confined in a trap;
- (4) A hook, spear or gig may be used to take frogs; and
- (5) A spear, gig, trap or fyke net may be used to take snapping turtles.
- (6) [A single shot] an antique or authentic reproduction black powder Sharps rifle [of 45 to 60 caliber] shall be lawful for use during shotgun deer seasons using paper patched bullets.

**WR-3. Federal Laws And Regulations Adopted**

**Section 1. Federal Laws.**

It shall be unlawful for any person to hunt, buy, sell or possess any protected wildlife or part thereof, except in such manner and numbers as may be prescribed by the following federal laws and regulations promulgated thereunder: Airborne Hunting Act (16 USC § 742j-1 et seq.), Eagle Act (16 USC § 668 et seq.), Endangered Species Act

(16 USC 1531 et seq.), Lacey Act (16 USC § 3371 et seq.), Marine Mammal Protection Act (16 USC § 1361 et seq.), and the Migratory Bird Treaty Act (16 USC § 703 et seq.). Notwithstanding the foregoing, the federal laws and regulations shall be superseded by more stringent restrictions prescribed by State law or regulation of the Department.

**Section 2. Sea Ducks.**

Scoters, eiders and old squaw ducks may be taken during their special season not less than 800 yards seaward from the Delaware Bay shore beginning at an east/west line between Port Mahon and the Elbow Cross Navigation Light south to the Atlantic Ocean or in the Atlantic Ocean.

**Section 3. Non-toxic Shot.**

(a) *Required Usage.* – Non-toxic shot, as defined by federal regulations, shall be required for waterfowl hunting in Delaware. It shall be unlawful for any person to possess shells loaded with lead shot while waterfowl hunting.

(b) *Maximum Shot Size.* – It shall be unlawful for any person to hunt, except for deer, in Delaware with any size non-toxic shot (as defined by federal regulations) pellet(s) larger than size T (.20 inches in diameter).

**Section 4. Special Mallard Release Areas.**

The Division may issue permits to allow the taking of captive-reared mallards during the established waterfowl season under applicable federal regulations. Permits shall only be issued to persons who: control at least 100 acres of land on which there is suitable waterfowl habitat; agree to follow a management plan and federal regulations; and maintain a log of guests and birds harvested. Failure to follow the management plan or a violation of State or federal laws may result in the revocation of a Special Mallard Release Area Permit. Waterfowl may only be hunted on Special Mallard Release Areas from one-half hour after sunrise to one hour before sunset.

**Section 5. Mute Swans**

Mute swans shall be considered an exotic, invasive species that is not subject to state protection.

**WR-4. Seasons**

**Section 4. Beaver.**

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through March 20, landowners (or their agents) may take up to eight beavers from their property without a permit, provided **[the beavers are causing crop or property damage.]**

- ~~(1) Beavers are damaging crops or other property;~~
- ~~(2) The property damage is certified by the landowner; and~~
- ~~(3) The number of beavers taken is reported to the Division by April 1.~~

~~beavers from their property without a permit, provided the beavers are causing crop or property damage.~~

(b) Beaver hides and the meat of lawfully taken beaver harvested anywhere within or outside of Delaware may be sold.

#### **WR-7. Deer**

##### **Section 1. Limit.**

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to:

(1) Kill or take or attempt to kill or take more than two antlerless deer in any license year;

(2) Kill or take two deer in any license year without at least one of the two deer being an antlerless deer; or

(3) Possess or transport any deer that was unlawfully killed.

(4) Kill any antlered deer without first purchasing a Hunter's Choice tag ~~for \$10~~, except that persons exempt from purchasing a hunting license shall be entitled to take one Hunter's Choice deer at no cost.

(b) For the purposes of this section, a person "driving deer" and not in possession of any weapon or firearm shall not be treated as if they are hunting deer, provided they are assisting lawful hunters.

(c) It shall be unlawful for any person to purchase, sell, expose for sale, transport or possess with the intent to sell, any deer or any part of such deer at any time, except that hides from deer lawfully killed and checked may be sold when tagged with a non-transferable tag issued by the Division. Said tag must remain attached to the hide until it leaves the State or is commercially processed into leather. This subsection shall not apply to venison approved for sale by the United States Department of Agriculture and imported into Delaware.

(d) Notwithstanding subsection (a) of this section, a person may purchase an Antlerless Deer Tag for \$10 to kill or take an additional antlerless deer during the open season, provided:

(1) The tag is valid for the season in which it is used; and

(2) The tag is valid in the deer management zone from which the deer is taken.

(e) Notwithstanding subsection (a) of this section, a person may ~~purchase one Quality Buck Tag for \$10 to take a second antlered deer with a minimum outside antler spread of fifteen inches, provided the tag is valid for the season in which it is used.~~ use one Quality Buck tag to take an antlered deer with a minimum antler spread of fifteen inches, provided the tag is valid for the season in which it is used. Hunters exempt from the requirement to purchase a hunting license must purchase a Quality Buck tag in order to take a second antlered deer in any one license year.

##### **Section 2. Tagging and Designated Checking Stations.**

(a) *Attaching Tags.* – Each licensed person who hunts and kills a deer shall, immediately after the killing and before removing the deer from the location of the killing, attach an approved tag to the deer. An approved tag shall mean an Antlerless Deer Tag, a Quality Buck Tag, a Hunter's Choice Tag, a Deer Damage Tag, a Sportsmen Against Hunger Tag or a tag detached from a Delaware hunting license. Any unlicensed person not required to secure a license shall make and attach a tag to the deer that contains the person's name, address and reason for not having a valid Delaware hunting license.

(b) *Retention of Tag.* – The tag required by subsection (a) of this section shall remain attached to the deer until the deer is presented to an official checking station for examination and tagging or registered by phone [or over the internet], as prescribed by subsection (c) of this section.

(c) *Checking Stations.* – Each person who hunts and kills a deer shall, within 24 hours of killing said deer, present the deer to a checking station designated by the Division or to an authorized employee of the Division or register the deer by phone. Hunters may also check deer by phone or over the internet through systems authorized by the Division.

(d) *Dressing.* – It shall be unlawful for any person to remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts, until such deer has been examined by an authorized employee of the Division or a checking station, as prescribed by subsection (c) of this section.

#### **WR-14. Falconry**

##### **Section 1. Federal Regulations Adopted.**

It shall be unlawful for any person to practice the sport of falconry, except in such a manner as prescribed by regulations promulgated under provisions of 50 CFR (Code of Federal Regulations) §§ 21.28, 21.29 and 21.30. Such regulations are hereby made part of the regulations of the Department as prescribed in § 725 of Title 7. Notwithstanding the foregoing, the federal regulations governing falconry shall be superseded by more stringent restrictions prescribed by law or regulation of the Department.

##### **Section 2. Permits.**

(a) Residents wishing to practice falconry shall apply to the Division for a falconry permit. To be issued a falconry permit, the person shall successfully pass a written test and have their facilities and equipment inspected as prescribed by the federal regulations.

(b) Nonresidents ~~wishing to practice falconry shall apply to the Division for a falconry permit. To be issued a falconry permit, the person~~ must purchase a nonresident hunting license and be properly permitted to practice

falconry in the state in which he or she resides.

(c) Falconry permits shall be effective, unless revoked, for a period of up to three years and coincide with the license period for the hunting license. The Division shall participate in any joint state/federal permit system available.

(d) The issuance of Apprentice Class permits shall be limited to persons 15 years of age or older.

**WR-15. Collection Or Sale Of Nongame Wildlife**

**Section 1. Commercial Collection.**

It shall be unlawful for any person to collect or possess any North American nongame wildlife species or any part thereof for commercial purposes without a permit from the Director. The permit shall limit the terms and conditions for collecting or possessing said wildlife within the State. Endangered species or a species classified as a threatened species in accordance with the Endangered Species Act of 1973, as amended may not be collected, possessed or sold without appropriate federal/state permits. Species that are exotic to Delaware and regulated by the Delaware Department of Agriculture shall be exempt from the provisions of this section.

**Section 2. Collection and Possession of Reptiles and Amphibians.**

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to remove from the wild or possess any reptile or amphibian, their eggs or parts without a permit from the Director.

(b) For noncommercial purposes, one individual of any single species of reptile or amphibian, other than State Heritage Program ranked S1, S2, S3, SX or SH, may be collected and possessed without a permit.

(c) Federally listed threatened and endangered species may not be collected or possessed without federal permits.

(d) It shall be unlawful to remove reptiles or amphibians from the wild and later release said animals back to the wild if they have been held in captivity for 30 days more.

**Section 3. Captive Breeding.**

(a) It shall be unlawful for any person to breed in captivity any North American nongame wildlife species without a nongame breeders permit from the Director, except for species that are regulated by the Delaware Department of Agriculture. Said permit shall limit the terms and conditions for captive breeding of said wildlife.

(b) It shall be unlawful for any person to release captive-bred species into the wild. A signed bill of sale shall accompany any captive-bred species that are sold. Federally listed threatened and endangered species may not be collected or possessed without the appropriate federal permits.

(c) This section shall not apply to accredited zoos or to raptors regulated by federal and State falconry or raptor

propagation regulations.

**Section 4. Sale or Possession of CITES Listed Species.**

It shall be unlawful for any person to sell or possess bear gall bladder, or other viscera from any species of bear, or any part of other species listed as prohibited by the Convention on International Trade in Endangered Species (CITES). The possession of any part of a bear must be in conformance with CITES.

**Section 5. Take of Turtles**

Turtles can only be taken by hand, turtle trap or dowel-and-line. Turtle traps can have only one throat or funneling device. Turtle traps must have an escape hole provided below the water surface and the hole must measure a minimum of seven and one-half inches in all directions. Hoop-type turtle traps must have the area from the last hoop to the tail-line covered by nylon web having a mesh size of three and one half inches square measure or greater. All turtle traps must be lifted and emptied of catch at least once every 48 hours.

**WR-16. Endangered Species**

**Section 2. Designation of Species by Division**

(a) Pursuant to § 601 of Title 7, the Division may designate species of fish and wildlife that are seriously threatened with extinction as endangered species. The Division will review the state list of endangered species and add species suggested by the public that have sufficient documentation for listing.

**WR-17. Species Of Special Concern**

**Section 1. List of Species**

The following species or groups of species shall be considered Species of Special Concern for the purpose of qualifying for federal funds for wildlife restoration: Endangered species as designated by state or federal regulations; species designated by WR-16, Section 2, colonial nesting birds; shorebirds; wading birds; neotropical migrant birds; beach nesting birds; bald and golden eagles; peregrine falcons; [other raptors, grassland nesting birds; birds of early successional habitat; bobwhite quail; wild turkey; freshwater mussels; bats; nutria; and] overly abundant species [such as including] deer, beavers, southern nesting Canada geese, and red fox. ~~bobwhite quail, wild turkey; freshwater mussels and bats.~~

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council of Substance Abuse and Mental Health	Ms. Penny D. Chelucci	8/26/05
Board of Accountancy	Ms. Norma L. Rohleder	8/26/05
Board of Dental Examiners	Dr. Wanda Gardiner Smith, D.D.S.	8/29/05
Board of Directors of the Riverfront Development Corporation	Mr. Philip G. Heasley	Pleasure of the Governor
Board of Geologists	Mr. Theodore W. Ressler Mr. Eric J. Trinkle	7/29/05 7/29/05
Board of Landscape Architects	Mr. Paul DeVilbiss	7/29/05
Board of Podiatry Examiners	Edwin M. Mow, DPM	7/29/05
Child Death Review Commission	Ms. Kathy A. Janvier Ms. Lani L. Nelson-Zlupko Mr. Michael J. Szczerba	9/5/05 9/5/05 9/5/05
Child Placement Review Board-Kent	Ms. Gail L. Allen Ms. Mary Austria Ms. Evelyn Figueroa Ms. Dana S. Stonesifer	7/29/05 7/29/05 7/29/05 7/29/05
Child Placement Review Board-New Castle	Ms. Constance P. Cecil Ms. Mary R. Morgan Mr. Charles E. Brogdon Ms. Natalie M. Crawford Ms. Michele C. Gott Ms. Kay D. Haubois Ms. Mary Jane Johnson Ms Ann Southmayd Ms. Helen Willauer	7/29/05 7/29/05 7/29/05 7/29/05 7/29/05 7/29/05 7/29/05 7/29/05 7/29/05
Council on Housing	Ms. Constance C. McCarthy	9/4/05
Council on Transportation	Mr. Harry H. Isaacs, Jr.	7/17/05
Delaware Board of Examiners for Nursing Home Administrators	Ms. Patricia McLaughlin	4/22/05
Delaware College Investment Plan Board for Sussex County	Mr. A. Glenn Barlow, Jr.	8/19/05
Delaware State University Board of Trustees	Mr. Norman M. Oliver	8/19/08
Dental Hygiene Advisory Committee	Ms. Elizabeth Garey Ms. Fay S. Rust	7/29/05 7/29/05

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Greater Wilmington Convention and Visitors Bureau	Mr. Stephen T. Bruni	9/4/05
	The Honorable Joseph G. DiPinto	9/4/05
Riverfront Development Corporation of Delaware	Mr. Philip G. Heasley	Pleasure of the Governor
Employees' Charitable Campaign Steering Committee	Ms. Sheila J. Stevens	Pleasure of the Governor
Statewide Independent Living Council	Mr. Peter K. Mitchell	8/26/05
	Ms. Jamie L. Wolfe	8/26/05
Sussex County Vocational-Technical School Board of Education	Mr. John E. Oliver	8/20/09
Technology Investment Council	Ms. Susan Foster	Pleasure of the Governor
	Mr. Justin A. Kershaw, III	Pleasure of the Governor
	The Honorable Jack A. Markell	Pleasure of the Governor
	Mr. Kristofer A. Younger	Pleasure of the Governor
Tourism Advisory Board	Ms. Norma Lee Derrickson	8/20/05



## DEPARTMENT OF EDUCATION

State Board of Education  
Procedures Manual

## IMPLEMENTING ORDER

September 1998  
(Revised: 2001 and 2002)

STATE BOARD OF EDUCATION PROCEDURES  
MANUAL

## Legal Basis and Related Issues

## Background and Context of the Regulation

The State Board of Education's *Procedures Manual* includes descriptions of the Board's organization and operations, its meeting procedures and its rules of hearing practice, among other items.

The State Board concludes it is necessary to amend the *Procedures Manual* to: (1) clarify how groups or individuals may address the State Board on issues on the agenda; (2) eliminate a duplicate listing to the "Order of Business" for formal public comment; (3) change the normal starting time of regular State Board meetings; (4) correct and update references to the *Delaware Code*; and (5) change references to the Delaware Secondary School Athletic Association to the Delaware Interscholastic Athletic Association within the rules of hearing practice.

These changes are exempted from the procedural requirements of the *Administrative Procedures Act* pursuant to 29 **Del.C.** 10113(b)(1), (2), (4) and (5). As a result, the State Board may adopt these changes informally.

## ORDER ADOPTING REGULATIONS

The State Board of Education concludes that it is appropriate to amend the *Procedures Manual* as described above. The amended regulations are attached as Exhibit "A" and are hereby adopted by the State Board of Education as its *Procedures Manual*, effective immediately.

**IT IS SO ORDERED** this 19<sup>th</sup> day of September 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

## Statutory Basis

The State Board exists pursuant to 14 **Delaware Code**, §104(a), which states the following:

- (a) The State Board of Education shall be composed of 7 members who shall be citizens of the State and shall be appointed by the Governor and confirmed by the Senate. The Governor shall name the President of the Board who shall serve at the Governor's pleasure. Each of the remaining members of the Board shall be appointed to serve for 6 years and until his or her successor qualifies.

## Board Structure

## Membership

In accordance with 14 **Delaware Code**, §104(a), the State Board is composed of 7 members.

## Appointment

In accordance with 14 **Delaware Code**, §104(a), the State Board members are appointed by the Governor and confirmed by the Senate.

## Qualifications

The qualifications for membership on the State Board of Education are specified in 14 **Delaware Code**, §104(d), which states the following:

- (d) The members of the Board shall be appointed solely because of their character and fitness subject to the following qualifications: At least 2 members of the Board shall have had prior experience on a local board of education; no more than 4 members of the Board shall belong to the same political party; no person shall be eligible to appointment who has not been for at least 5 years immediately preceding appointment a resident of this state; and no person shall be appointed to the Board who is in any way subject to its authority.

Any member of the Board shall be eligible for reappointment unless otherwise disqualified by this title. In constituting the Board, the President shall be appointed from the State at large, but the appointments of the remaining 6 members shall be made so that there shall be on the Board at least 1 resident of the City of Wilmington, 3 residents from New Castle County outside the City of Wilmington, 1 from Kent County and 1 from Sussex

County.

### Terms

The President of the Board serves at the pleasure of the Governor 14 **Del.C.** §104(a). The terms for the remaining 6 members are “6 years and until his or her successor qualifies.” 14 **Del.C.** §104(a). However, §104(f) provides that the “Governor may appoint members for confirmation by the Senate for terms shorter than 6 years where that is necessary to ensure that Board members’ terms expire on a rotating annual basis.”

### Compensation

The compensation of State Board members is specified in 14 **Delaware Code**, §104(h), which states the following:

(h) The members of the Board shall receive \$100 for each day’s attendance at the meetings of the Board not to exceed 24 days’ attendance in any 1 calendar year; and they shall be reimbursed for the actual travel and other necessary expenses incurred in attending meetings and transacting the business of the Board.

### Vacancies

“Vacancies on the Board for any cause shall be filled by the Governor for the unexpired term and until a successor shall qualify” 14 **Del.C.** §104(e).

### Powers, Duties and Responsibilities

The powers, duties, and responsibilities of the State Board of Education are delineated primarily in **Delaware Code**, Title 14. The general powers are specified in 14 **Delaware Code**, §104(b), which follows. However, the specific powers, duties, and responsibilities, as cited in the **Code**, are detailed more fully in Appendix A, where the specific citations and a brief paraphrase of the statutes are given.

(b) The State Board of Education shall have powers, duties, and responsibilities as specified in this title. Included among the powers, duties and responsibilities are those specified in this subsection. The State Board of Education shall:

(1) Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide guidance on new initiatives, which may from time to time be proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the

stability which a citizens’ board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;

(2) Provide the Secretary of Education with advice and guidance on the Department’s annual operating budget and capital budget requests;

(3) Provide the Secretary of Education with guidance in the preparation of the annual report specified in §124 of this title, including recommendations for additional legislation and for changes to existing legislation;

(4) Provide the Secretary of Education with guidance concerning the implementation of the student achievement and statewide assessment program specified in §122(b)(4) of this title;

(5) Decide, without expense to the parties concerned, certain types of controversies and disputes involving the administration of the public school system. The specific types of controversies and disputes appropriate for State Board resolution and the procedures for conducting hearings shall be established by rules and regulations pursuant to §121 (12) of this title;

(6) Fix and establish the boundaries of school districts, which may be doubtful or in dispute, or change district boundaries as provided in §§1025, 1026, and 1027 of this title;

(7) Decide on all controversies involving rules and regulations of local boards of education pursuant to §1058 of this title;

(8) Subpoena witnesses and documents, administer and examine persons under oath, and appoint hearing officers as the State Board finds appropriate to conduct investigations and hearings pursuant to paragraphs (5), (6), and (7) of this subsection;

(9) Review decisions of the Secretary of Education, upon application for review, where specific provisions of this title provide for such review. The State Board may reverse the decision of the Secretary only if it decides, after consulting with legal counsel to the Department, that the Secretary’s decision was

contrary to a specific state or federal law or regulation, was not supported by substantial evidence, or was arbitrary and capricious. In such cases, the State Board shall set forth in writing the legal basis for its conclusion;

(10) Approve such Department rules and regulations as require State Board approval, pursuant to specific provisions of this title, before such regulations are implemented;

(11) Approve rules and regulations governing institutions of postsecondary education that offer courses, programs of courses, or degrees within the State or by correspondence to residents of the State pursuant to §§121(16) and/or 122(b)(7).

### Conduct of Members

**Delaware Code**, Title 29, Chapter 58 provides the laws regulating the conduct of officers and employees of the State of Delaware. Members of the State Board of Education are subject to certain of the provisions of that statute in that they are included in the definition of “state agency” 29 **Del.C.** §5804(10) and the definition of “honorary state official” 29 **Del.C.** §5804(13). For that reason, members of the Board are encouraged to become familiar with the provisions of that chapter. The following issues are of particular concern.

#### Conflicts of Interest

Section 5805 details the State’s conflict of interest provisions, which apply to members of the State Board of Education. As applied to State Board that means that a member may not participate on behalf of the State in the review or dispositions of any matter pending before the State in which he or she has a personal or private interest 29 **Del.C.** §5805(a). There are also restrictions on representing another’s interest §5805(b); against contracting with the State for goods or services §5805(c); or for representing or assisting private enterprise within two years after appointed service §5805(d). The code of conduct is further detailed in 29 **Delaware Code**, §5806.

#### Financial Disclosure

Subchapter II, Chapter 58, 29 **Delaware Code** contains the requirements for financial disclosure of public officers. Because State Board of Education members are not included in the definition of “public officer” contained in §5812, it would appear that members are not required to file the annual disclosure reports mandated by this statute. However, nothing would prohibit a member who chose to do so from voluntarily completing such a report.

#### Dual Compensation

“There are numerous elected state officials and other paid appointed officials who are also employed by state agencies, educational and other institutions, and other jurisdictions of government within the State” 29 **Del.C.** §5821(a). The statute prohibits such individuals from

receiving dual compensation for their time. Thus, State Board members, who are employed by the agencies and organizations specified, are encouraged to acquaint themselves with the specific provisions of this statute.

### Organization

#### Officers

##### President

The Governor shall name the President of the Board who shall serve at his/her pleasure **Delaware Code**, §104(a). The President is responsible for the integrity of the Board process. Integrity includes the efficient, orderly deliberation of Board issues and conduct of Board affairs.

The President has no authority over Department of Education activities. However, the President does have authority, subject to any applicable Board policy, to (1) call special meetings of the Board; (2) represent, in person or through a designee, Board positions and symbolize the Board image in public and at ceremonial events; and (3) decide mechanics of Board procedures. Subject to Board approval, the President (1) determines Board agendas and committee charges, and (2) makes Board appointments to committees. The President shall be an ex officio member of all committees, and shall have all privileges of membership but shall not be counted in the committee quorum.

The President shall have the same right to make or second motions and to vote on pending questions as any other member of the Board.

The President shall determine the appropriate action to take in reference to any uncertainty regarding any expense statement submitted by a member of the State Board.

The President shall be responsible for initiating the annual evaluation of the Board’s progress toward achieving the goals delineated in the five-year plan (See Vision, Mission, and Goals).

##### Vice President

The Vice President shall be elected at the annual meeting and shall serve until the next annual meeting or until a successor has been named 14 **Delaware Code**, §105(a). The Vice President shall assist the President in the duties of the President’s office, as the President may direct, and shall preside at meetings and appoint members of committees during the President’s absence. In the event of the President’s death, resignation, incapacity, or disqualification, the Vice President shall act in place of the President in all respects until the vacancy shall be filled or the incapacity removed.

##### Executive Secretary

Pursuant to 14 **Delaware Code**, §104(c):

The Secretary of Education, in addition to his or her other duties of office, shall serve as Executive Secretary of the State Board.

The Executive Secretary is responsible for keeping of the minutes and other official records of the State Board, either in person or by an assistant.

#### **Legal Counsel**

Legal counsel to the State Board of Education is provided by the State Department of Justice and the Attorney General's Office in accordance with 29 **Delaware Code**, §2504. (In accordance with 29 **Delaware Code**, §2507, no agency board, or commission shall employ legal counsel except with approval of the Attorney General and Governor.)

#### **Staff Assistance**

Section 104(c), 14 **Delaware Code**, provides in part, that: "The Department, through the Secretary, shall provide reasonable staff support to assist the State Board in performing its duties pursuant to this title ...". In addition, the annual appropriations act provides funding for a single independent staff person to provide support and policy advice to the State Board of Education.

### **Committees**

#### **Subcommittees of the Board**

The Board may, from time to time, establish temporary committees to help carry out its responsibilities. To preserve Board holism, committees will be used sparingly, only when other methods have been deemed inadequate or to improve efficiency of operations. Board committees, whether external or internal, may not speak for the Board. No more than three Board members may serve on a Board committee. Board members may express their interest and willingness to serve on any committee. Subject to Board approval, the President will identify the charge of the committee and appoint a committee chair and members of the committee. It is expected that committees will report back to the full Board on a regular basis.

#### **Special Board Committees**

The Board may, from time to time, create special committees to advise the Board on specific issues, and shall vote to do so at a formal meeting of the Board. Such committees may include membership outside the Board or Department of Education.

#### **Other Committees**

Under **Delaware Code**, a member of the State Board must serve on each of the following committees:

- Equalization Committee 14 **Del.C.** §1707(i)
- Higher Education Commission, Executive Order #97, 1991
- President of the State Board serves ex-officio on the Board of Trustees of the University of Delaware 14 **Del.C.** §5105

Traditionally, Board members also serve on numerous external boards and committees at both the State and national level. Examples include the following:

- Delaware School Boards Association Board of Directors
- Delaware School Boards Association Legislative Committee
- Education Consortium
- Committees and study groups of the National Association of State Boards of Education
- Education Task Forces and Committees established by Executive Orders and Legislation.

#### **Committees Appointed by the Secretary of Education**

In accordance with 14 **Delaware Code**, §103(a)(11), the Secretary must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval. The Board's view shall be expressed in the form of a vote on the proposed committee membership.

Examples of such committees include the Statewide Student Assessment Committee and the DOE Strategic Planning Committee

#### **New State Board Member Orientation**

The State Board of Education is responsible for the orientation of new members to the State Board. A subcommittee of the Board shall be responsible for planning the orientation of new members. The Secretary of Education shall be an ex-officio member of this committee.

#### **Board Member Development**

The State Board of Education shall be responsible for its own development as a Board. This development shall take place through membership and participation in organizations such as the National Association of State Boards of Education, Delaware School Boards Association, the National School Boards Association, and other activities such as Board retreats, conferences, conventions, workshops, or committees.

#### **Self Evaluation**

The Board will monitor its own process and performance to ensure continuity of Board improvements, integrity of Board actions and progress toward Board goals. The Board will be accountable to the public for competent, conscientious, and effective accomplishment of its obligations as a Board.

As part of the self-evaluation, the Board shall conduct an annual evaluation in at least the following areas:

- Roles and responsibilities of Board members;
- Board operations; and
- Progress toward achieving Board goals as delineated in the Board's five-year plan.

The Board may seek the input from others regarding the

effectiveness or impact of Board initiatives as part of the evaluation process, and may utilize the services of an independent consultant in doing so.

### Consultants

The Board may, within available financial resources, hire consultants as needed. The Board shall formally approve the consultant and fee.

### State Board Appropriations

Reimbursement to Board members for the normal mileage and incidental expenses are paid by the Department of Education from funds appropriated to the Board and budgeted for that purpose. Reimbursement requests for expenses for conferences or meetings outside the state must be initialed by the Board president. For other expenditures in excess of \$1,000 Board approval is required.

### Meetings

#### Annual Meeting

Pursuant to 14 **Delaware Code**, §105(a), the annual meeting of the State Board of Education shall be held in Dover during the month of July. Election of the Vice President of the Board shall occur at this meeting.

#### Regular Meetings

Regular meetings of the State Board of Education are held once a month in the Cabinet Room of the John G. Townsend Building, Dover. The meetings are normally scheduled on the third Thursday of each month beginning at ~~2:00~~ 1:00 p.m. but may vary as need dictates.

#### Special Meetings

Special meetings of the State Board of Education may be held to address emergency issues, conduct hearings, develop goals, evaluate board operations, or for in depth study and review of an issue. Special meetings are held at a time and place agreed upon by the Board.

#### Executive Sessions

The State Board of Education may meet in executive session for the reasons specified in 29 **Delaware Code**, §10004. The Board must vote in a public meeting to go into executive session stating the purpose for the executive session.

#### Board Meeting Procedures

##### Public Notice of Meetings

As specified in 29 **Delaware Code**, §10004(e)(1) the State Board is required to give public notice of all meetings, including executive sessions closed to the public, at least 7 days prior to the meeting. The notice must include the agenda and the date, time, and place of the meeting. The

notice is posted on the bulletin board outside the Cabinet Room of the Townsend Building, Dover.

In addition, notices of all regular meetings are mailed to the district superintendents, state officials, the media, heads of state education organizations and other interested parties. Persons and organizations may request that they be placed on the mailing list by contacting Dani Moore at the Department of Education. Telephone 302/739-4603. Fax 302/739-7768. Email: damoore@state.de.us

##### Agenda Format - Order of Business

The order of business for regular meetings is as follows:

- I. Opening
  - A. Call to Order
  - B. Approval of Agenda
  - C. Approval of Minutes
- II. Formal Public Comment
- III. State Board Business
  - A. Reports/Discussions
  - B. Budget Items
  - C. Other
- IV. Presentations
  - A. Department of Education
  - B. Secretary's Report, Review and Discussion
  - C. Other Presentations
- V. Action Items
  - A. Policy, Rules and Regulations
  - B. Higher Education
  - C. Charter Schools
  - D. Other Action Items
  - E. Appeals and Reviews
- VI. Information Items
- ~~VII. Formal Public Comment (if needed)~~

#### Agenda Preparation and Dissemination

Items included on the Board's agenda for regular meetings are recommended jointly by the Policy Analyst to the State Board and the Cabinet of the Department of Education. The final agenda is subject to the approval of the Board President. Any member of the Board may request that an item be placed on the agenda.

Agendas with all background materials are distributed to Board members at least 5 days prior to the meeting. Board agendas are also distributed to district and state officials and to others on a request basis. \_

The State Board Agenda is also posted on the Department of Education Web Site prior to the meeting at [www.state.doe.de.us](http://www.state.doe.de.us).

#### Rules of Order

The Board uses the rules of parliamentary procedure to conduct its meetings, but it is not strictly bound by Robert's Rules of Order. The general conduct of the meeting is determined by the Board President with input

from other board members and advice from the Board's legal counsel.

**Quorum**

Four (4) members of the State Board must be present to conduct the business of the Board 14 **Delaware Code**, §105(a).

**Voting Method**

Votes by the State Board are taken by voice. When the vote is not a unanimous one, a roll call vote is taken in alphabetical order with the President voting last. All questions before the Board must be approved by a majority (4) of the members of the whole Board.

**Minutes**

As prescribed in 29 **Delaware Code**, §10004(f) the State Board maintains minutes of all its meetings including executive sessions. The minutes must include the names of board members present and a record, by individual member, of all votes taken and action agreed upon. The minutes, along with the printed agenda and its backup materials, shall constitute the official record of the Board.

Highlights of the State Board meetings are available on the Department of Education Website within 10 days of the State Board meeting at [www.state.doe.de.us](http://www.state.doe.de.us). Official Board Minutes are posted on the web site within five days of their approval at the subsequent monthly meeting of the Board.

**Public Participation at Board Meetings**

There are three ways that individuals and groups may address the Board at its regular meetings:

1. An individual or group may request time on the Board's agenda to make a formal presentation to the Board. Such a request should be in writing, and be submitted to the President of the State Board of Education, John G. Townsend Building, 401 Federal Street, Suite 2, P.O. Box 1402, Dover, DE 19903-1402, at least 20 days prior to the meeting. The decision to include the presentation will be made by the Board President. (Such presentations are included in Section IV.C. of the agenda.)

2. Time will be allocated at the beginning of the meeting (Section II) for individuals or groups to address the State Board on general issues. In addition, individual and/or groups may address the State Board on agenda items at the time that they are before the Board for discussion. Persons wishing to make comments should sign up on the appropriate form at least 15 minutes prior to the call to order. Each group should choose one representative to speak and comments should be limited to five minutes. Speakers will be recognized by the Board President in the order their names appear. If a large number of people sign up to speak, the Board President may at his/her discretion, limit the number of persons allowed to speak as well as designate the appropriate time for comments.

Normally the Board will not respond to questions or comments at the meeting but will respond in writing to each

person or group. Written responses will not be made to persons/groups addressing action items on the agenda.

**Appeals and Reviews**

The State Board of Education has several responsibilities under the Code to hear appeals and to review decisions of the Secretary of Education. Those responsibilities are outlined in 14 **Delaware Code**, §104(b)(5), (b)(6), (b)(7), and (b)(9). The types of controversies and disputes appropriate for Board resolution and the procedures for conducting such hearings are contained in Appendix B.

**Policy Development**

One of the primary functions of the State Board of Education is to assist the Secretary of Education in the development of policy. Subsection 104(b)(1), **14 Delaware Code** states:

- (1) Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide guidance on new initiatives, which may from time to time be proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;

In order to meet that responsibility, the State Board has set aside time at each regular meeting for discussions of State Board initiatives (Section III.A.), presentations from the Department of Education and the Secretary of Education's Report (Sections IV A. and B., respectively) and for Board action on policy, rules, and regulations (Section V.).

It is the expectation of the Board that the Secretary and the Department of Education will use those opportunities to obtain advice and counsel from the board as a whole in keeping with the spirit of the statute quoted above.

### Appendix A

The following is a list of the powers, duties, and responsibilities of the State Board of Education. Each pertinent section of the Code is paraphrased and annotated. A general description of the powers, duties, and responsibilities can also be found in 14 **Delaware Code**, §104(b), which is quoted in its entirety in the body of this document.

#### Advisory Board to the Secretary

The State Board shall participate in meetings of the Advisory Board to the Secretary of Education 14 **Del.C.** §106.

#### Alternative Assessments

The State Board of Education must approve any alternative assessment administered pursuant to §151 ~~(g)(h)~~ (i) of Title 14 **Del.C.**

#### Approval of Charter Schools

The State Board of Education must approve charter schools authorized by the Department 14 **Del.C.** §503 and §511(c). The State Board is also involved in any charter revocation under 14 **Del.C.** §515 ~~and/or~~ and §516.

#### Approval of Rules and Regulations of the Professional Standards Board

The State Board of Education must approve rules and regulations promulgated by the Professional Standards Board before they become effective 14 **Del.C.** §1203. Such rules and regulations cover a number of areas including the following:

1. Qualifications and certification of educators in the public schools 14 **Del.C.** §1092, §1201, §1230, §1260, §1261, §1264(b), and §3310(4).
2. Establishment of a special institute for teacher certification 14 **Del.C.** §1250.
3. Regarding alternative routes for teacher certification 14 **Del.C.** §1230.
4. Regarding the Delaware Performance Appraisal System II 14 **Del.C.** §1270.
5. Regarding professional development activities that qualify for Skills and Knowledge Salary Supplements 14 **Del.C.** §1305(l).
6. Regarding activities that qualify for Additional Responsibility Salary Supplements 14 **Del.C.** §1305(m).

#### Approval of Regulations of the Higher Education Commission

The State Board of Education must approve rules and regulations promulgated by the Higher Education Commission before they become effective 14 **Del.C.** §104 (b) ~~(42)~~ (13).

#### Approval of Rules and Regulations

The State Board of Education must approve rules and regulations promulgated by the Department of Education before they become effective. Such rules and

regulations cover a number of areas including the following:

1. Issuance of certificates and diplomas for the public schools 14 **Del.C.** §122(b)(3).
2. Statewide assessment of student achievement and the assessment of the educational attainments of the public school system 14 **Del.C.** ~~§122(b)(4)~~ §151(i).
3. Minimum courses of study for all public elementary schools and public high schools 14 **Del.C.** §122(b)(5).
4. Licensing of any institution of higher education, public or private, which is not incorporated in the State or is not established according to Delaware law 14 **Del.C.** §122(b)(7).
5. Instruction in driver education in the nonpublic high schools 14 **Del.C.** §122(b)(13).
6. Statewide student testing program 14 **Del.C.** §151 (i).
7. Excusal of educational hour requirements specified in 14 **Del.C.** §122 (b)(8) and §1049(1) .
8. Enforcement of school attendance laws 14 **Del.C.** §122(b)(9) and 10 **Del.C.** §901(14).
9. Instruction in driver education during summer months 14 **Del.C.** §122(b)(13).
10. Conduct of interscholastic athletics 14 **Del.C.** §122(b)(14).
11. Mandatory drug and alcohol educational programs 14 **Del.C.** §122(b)(16).
12. Operation of adult education and family literacy programs 14 **Del.C.** §122(b)(17).
13. Conduct of the teacher scholarship loan program in critical curriculum areas 14 **Del.C.** §1106 and the student loan program in critical curriculum areas (14 **Del.C.** §1108).
14. Concerning the employment of school principals 14 **Del.C.** §1307(2).
15. Regarding the employment of school nurses 14 **Del.C.** §1310(b).
16. Concerning parent advisory committees, a peer review committee, a human rights committee, and an autistic program monitoring board 14 **Del.C.** §1332(f).
17. Relating to related services for handicapped students 14 **Del.C.** §1716A(c) and §1716A(d).
18. Regarding truancy and excused absences from school 14 **Del.C.** ~~§2706-2705~~ (b).
19. Governing the design and operation of school buses 14 **Del.C.** §2901, and the transportation of students of nonpublic nonprofit schools 14 **Del.C.** §2905.
20. Qualifications and certification of vocational educators in the public schools 14 **Del.C.** §3310(4).
21. Regarding the creation and operation of programs designed to serve exceptional students, primarily the disabled (numerous citations throughout 14 **Del.C.**

Chapter 31).

22. Regarding the extent and content of the instruction in the public schools in the Constitution of the United States, the Constitution and government of Delaware and the free enterprise system 14 **Del.C.** §4103.

23. Regarding interstate agreements on the qualifications of education personnel 14 **Del.C.** §8212.

#### **Approval of Shared School Decision Making Grants**

The State Board of Education must approve guidelines for district transition grants for shared decision making 14 **Del.C.** §803(b); must approve guidelines for school transition grants 14 **Del.C.** §805(b); and must approve guidelines for school improvement grants 14 **Del.C.** §806(a).

#### **Approval of Vocational Centers**

The State Board of Education must approve the creation of vocational-technical centers or schools (14 **Del.C.** §205).

#### **Committee Appointments**

The Secretary of Education must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval 14 **Del.C.** §103(a)(11).

#### **Critical Curriculum Areas**

The State Board of Education must approve areas, which are to be designated as critical curriculum areas 14 **Del.C.** §1101; approve academic year programs 14 **Del.C.** §1104; and approve summer inservice programs 14 **Del.C.** §1105.

#### **Deciding Certain Controversies**

The State Board of Education shall decide without expense to the parties concerned certain controversies and disputes involving the administration of the public school system 14 **Del.C.** §121(12) and 14 **Del.C.** §104(b)(5). Rules and regulations regarding such hearings by the Board are contained in Appendix B.

#### **Deciding Controversies Concerning Local Rules and Regulations**

The State Board of Education shall decide controversies involving rules and regulations of local school boards 14 **Del.C.** §1058.

#### **Drug/Alcohol Education Programs**

The State Board of Education must approve of statewide alcohol/substance abuse programs established and implemented by the Department of Education 14 **Del.C.** §4116(a).

#### **Employment of Aides in Autistic Program**

The State Board of Education may review decisions of the Department and Secretary of Education regarding requests to employ aides in lieu of teachers in the autistic program 14 **Del.C.** §1332(e).

#### **Establishment of Programs for the Disabled**

The State Board of Education must approve the establishment of schools, classes or programs for the

disabled 14 **Del.C.** §203, §1703(d), §1703(k), §1703(l), §1703(m), §1703(n) and §1721.

#### **Number and Length of School Days**

The State Board of Education must approve a reduction in the number of school days hours and the length of full workdays for employees of the school system 14 **Del.C.** 1305(i)(j).

#### **Reorganization of School Districts**

The State Board of Education determines and establishes appropriate reorganized school districts through consolidation, division, or a combination of the two as well as establishing tax rates and tax districts for the same. 14 **Del.C.** §1025, §1026, §1027, §1028, §1065, §1924, and §1925

#### **Review of Decisions Regarding Exceptional Students**

The State Board of Education may review a variety of decisions made by the Department regarding services to disabled students (numerous citations in 14 **Del.C.** Chapter 31).

#### **Qualifications of Food Service Managers**

The State Board of Education must approve the qualifications of food service managers 14 **Del.C.** ~~§4332~~ 1322(a).

#### **School Profiles**

The State Board of Education appoints members of the School Profiles Advisory Committee, receives recommendations from the Committee.

#### **Standards for Interpreter/Tutors**

The State Board of Education must approve standards prescribed for interpreter/tutors 14 **Del.C.** ~~§4332(a)~~ 1331(b).

#### **Statewide Programs for the Disabled**

The State Board of Education must approve the designation of a district to serve as administrative agency for the deaf-blind program 14 **Del.C.** §1321(e)(15)a.; to administer a program for the physically impaired 14 **Del.C.** §1321(e)(16); the establishment of intensive learning centers 14 **Del.C.** §1321(e)(17); and the designation of an administering district for the autistic program 14 **Del.C.** §1332(a).

#### **Use of Cash Options in Lieu of Salary Funds**

The State Board of Education may review decisions of the Department and Secretary of Education regarding district requests to elect cash options in lieu of receiving salary funds from the State 14 **Del.C.** §1321(e)(11), §1321(e)(12), §1321(e)(15)b., §1321(e)(16), §1332(d), and §1332(e).

#### **Use of Special Education Funds**

The State Board of Education may review decisions on the use of special education funds that a district seeks to use in another way if an objection is made to the Department's decision 14 **Del.C.** §1703(o) and §1716A(h).

#### **Vacancies on Local School Boards**

The State Board of Education appoints interim



members to a local board of education in the event a majority or the entire membership vacates the seats at the same time. The Board may also set the date for a special election to fill the vacancies 14 Del.C. §1054.

#### **Waiver of a Regulation**

The State Board may, within 30 days or at its next meeting, deny any waiver of a regulation granted by the Department of Education 14 Del.C. §122(g)(2).

#### **Waiver of Rules Under School Discipline Programs**

The Department of Education is authorized to waive certain rules and regulations in the implementation of school discipline programs. The State Board of Education may deny the waiver within a fixed period of time 14 Del.C. §1606.

### **Appendix B**

#### **HEARING PROCEDURES AND RULES**

**RULE MAKING HISTORY:** Initial adoption date (see Register of Regulations at [www.legis.state.de.us/onlinepublications](http://www.legis.state.de.us/onlinepublications) :

#### **1.0 Scope and Purpose of Rules**

The State Board of Education (“the State Board”) is authorized by several sections of the Education Code (Title 14 of the **Delaware Code**) to adopt or approve rules and regulations, resolve disputes, hear appeals, and review decisions of the Secretary of Education. The State Board is also governed by the Administrative Procedures Act (Chapter 101 of Title 29 of the **Delaware Code**), except where specifically exempted by other law.

These Hearing Procedures and Rules (“Rules”) shall govern the practice and procedure before the State Board in hearings, appeals, and regulatory proceedings.

#### **2.0 General Provisions**

2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the State Board’s statutory responsibilities and with the Administrative Procedures Act.

2.2 The State Board may for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.

2.3 Whether a proceeding constitutes an evidentiary hearing, an appeal or regulatory action shall be decided by the State Board on the basis of the applicable laws. A party’s designation of the proceeding shall not be controlling on the State Board or binding on the party.

2.4 The State Board may appoint a representative to act as a hearing officer for any proceeding before the State

Board. Except as otherwise specifically provided, the duties imposed, and the authority provided, to the State Board by these Rules shall also extend to its hearing officers.

2.5 Notwithstanding any part of these Rules to the contrary, the State Board, or its counsel, designee or hearing officer, may conduct pre-hearing conferences and teleconferences to clarify issues, confer interim relief, specify procedures, limit the time available to present evidence and argument, and otherwise expedite the proceedings.

2.6 The State Board may administer oaths, issue subpoenas, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

2.7 The State Board may elect to conduct joint hearings with the Department of Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.

2.8 Any party to a proceeding before the State Board may be represented by counsel. An attorney representing a party in a proceeding before the State Board shall notify the Executive Secretary of the State Board (“Executive Secretary”) of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the State Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.

2.9 The State Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the State Board shall be submitted to the Executive Secretary in writing at least three (3) business days before the date scheduled for the proceeding. The President of the State Board shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.

2.10 A copy of any document filed with or submitted to the State Board or its hearing officer shall be provided to all other parties to the proceeding, or to their legal counsel. Where a local or other school board participates in a proceeding, copies of filed documents shall be directed to the executive secretary of the board, unless that board appoints a different representative for such purpose.

2.11 For purposes of these Rules, unless otherwise specified “day” shall mean a calendar day. “Business day” shall mean weekdays Monday through Friday, except when those days fall on a legal holiday.

#### **3.0 De Novo and Other Evidentiary Hearings**

3.1 Section 3.0 governs proceedings where a statute or

regulation provides the right to an original or to a de novo hearing before the State Board to decide a specific controversy or dispute.

### 3.2 Petitions for Hearing

3.2.1 A party may initiate a hearing on matters within the State Board's jurisdiction by delivering a petition for hearing to the Executive Secretary. The petition shall be in writing and shall be signed by the party making the request (or by the party's authorized representative). It shall set forth the grounds for the action in reasonable detail and shall identify the source of the State Board's authority to decide the matter.

3.2.2 The petition for hearing shall be filed within a reasonable time after the controversy arises, but in no event shall a petition be filed more than thirty (30) days after the petitioning party's receipt of notice that official action has been taken by an authorized person, organization, board or agency.

3.2.3 A copy of the petition for hearing shall be delivered to all other parties to the proceeding at the time it is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board or its hearing officer shall, at the time of filing, also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

3.2.4 Upon receipt of an adequately detailed petition for hearing, the Executive Secretary shall place the matter on the agenda of the next State Board meeting. At the next meeting, the State Board will either assign the matter to a hearing officer or determine a hearing date for the matter. The parties shall be given at least twenty (20) days notice of the hearing date.

3.2.5 A party shall be deemed to have consented to an informal hearing (as that term is used in Section 10123 of the Administrative Procedures Act) unless the party notifies the Executive Secretary in writing that a formal public hearing is required. Such notice must be delivered to the Executive Secretary within three (3) days of the receipt of the notice scheduling the hearing.

### 3.3 Record of Prior Proceedings

3.3.1 If proceedings were previously held on the matters complained of in the petition, the agency which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Secretary.

3.3.2 The record shall contain any written decision, a certified copy of any rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a certified, verbatim transcript of the proceedings conducted by the agency below and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

3.3.3 The record shall be filed with the Executive Secretary within ten (10) days of the date the Executive Secretary notifies the agency that the petition has

been filed, unless directed otherwise. A copy of the record shall be sent to the petitioner when it is submitted to the Executive Secretary.

### 3.4 Record Review

3.4.1 If a hearing was previously held on the matters complained of in the petition, the parties to the proceeding before the State Board may agree to submit the matter to the State Board or its hearing officer on the existing record without the presentation of additional evidence.

3.4.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The parties' written statements shall be submitted according to a schedule determined by the State Board.

3.4.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument by notifying the Executive Secretary in writing at least ten (10) days before the date written statements are due. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.

3.4.4 If the parties agree to submit the matter for decision on the existing record, the State Board's decision shall be based on the existing record, the written statements and oral argument, if any.

### 3.5 Evidentiary hearings

3.5.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the State Board or its hearing officer otherwise decide to receive additional evidence.

3.5.2 The hearing will proceed with the petitioner first presenting its evidence and case. The responding party may then present its case. The petitioner will then have an opportunity to present rebuttal evidence.

3.5.3 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the State Board or hearing officer.

3.5.4 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the State Board or its hearing officer.

### 3.6 Evidence

3.6.1 Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

3.6.2 The State Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the Administrative Procedures Act.

3.6.3 Objections to the admission of evidence

shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.

3.6.4 Any document introduced into evidence at the hearing shall be marked by the State Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties and to each of the State Board members present for the hearing unless otherwise directed.

3.6.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Secretary in writing at least fifteen (15) days before the date of the hearing, unless additional time is allowed for good cause. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

### 3.7 Creation of Record before State Board

3.7.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing or oral argument. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

3.7.2 If a stenographic reporter is not present at the hearing or argument, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing.

### 3.8 State Board Decision

3.8.1 When the State Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

3.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within a reasonable time of the conclusion of the proceedings before the hearing officer.

3.8.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order.

3.8.4 To the extent possible, the State Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties' submissions, if any, or the end of the comment period, whichever comes first.

3.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and written comments thereto, if any, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and

mailed to the parties.

## 4.0 Appeals

4.1 Section 4.0 governs proceedings where a statute or regulation provides the right to appeal to the State Board a decision which resolved a specific controversy or dispute. These proceedings include, but are not limited to, appeals of school district decisions involving rules and regulations of the school board 14 **Del.C.** §1058 and appeals of decisions of the ~~Delaware Secondary School Athletic Association (DSSAA)~~ Delaware Interscholastic Athletic Association (DIAA).

4.2 For purposes of Section 4.0:

4.2.1 "Party" shall mean any person or organization who participated in the proceedings before the agency which rendered the decision being appealed.

4.2.2 "Decision" shall mean the official action taken to resolve the dispute presented below and shall include the factual findings, the rule involved and the agency's conclusion. "Decision" shall not include policy making or the adoption of rules and regulations of future applicability.

4.3 For purposes of determining the State Board's jurisdiction under Section 1058 of the Education Code, "controversies involving the rules and regulations of the school board" shall mean the presentation before the local school board of a dispute involving the application of rules and regulations of the local board in a particular factual context. Certain decisions involving the application of rules and regulations of the local board may not be appealed to the State Board, including:

4.3.1 Decisions involving student disciplinary actions where a student is suspended from school for ten (10) or fewer days, except where a request to expunge the disciplinary action from the student's record has been denied by the local board.

4.3.2 Personnel actions which are covered under a collective bargaining agreement or are otherwise subject to adjudication by the Public Employment Relations Board.

4.3.3 Termination of employees conducted in accordance with Chapter 14 of the Education Code.

4.3.4 Termination or nonrenewal of public school administrators and confidential employees, as those terms are defined in Section 4002 of the Education Code, at the conclusion of an employment contract.

### 4.4 Notice of appeal

4.4.1 A party may initiate an appeal by filing a notice of appeal with the Executive Secretary. The notice shall be in writing, shall be signed by the party making the request (or by the party's authorized representative), and shall be delivered to the Executive Secretary by registered or certified mail.

4.4.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or

regulation involved in the decision, the names of the parties, and the grounds for the appeal.

4.4.3 The notice of appeal must be postmarked within thirty (30) days of the receipt of the written notice of the decision from which the appeal is taken.

4.4.4 A copy of the notice of appeal shall be sent to the agency which made the decision at the same time the original notice of appeal is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board shall be provided to all parties to the proceeding at the time of filing.

4.4.5 Upon receipt of an adequately detailed notice of appeal involving a student disciplinary decision or a decision of the ~~Delaware Secondary School Athletic Association (DSSAA)~~ Delaware Interscholastic Athletic Association (DIAA), the Executive Secretary shall assign the matter to a hearing officer from a roster of hearing officers approved by the State Board. The Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting.

4.4.6 Upon receipt of an adequately detailed notice of appeal involving any matter other than a student disciplinary decision or a decision of ~~DSSAA~~ DIAA, the Executive Secretary shall consult with the President of the State Board to determine whether the matter should be assigned to a hearing officer or placed on the State Board's next meeting agenda. The President shall have the authority to authorize the Executive Secretary to assign a hearing officer to the matter from a roster of hearing officers approved by the State Board. In such case, the Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting. Nothing in this subsection shall prevent the State Board from later assigning the matter to a hearing officer.

#### 4.5 The record on appeal

4.5.1 Unless instructed otherwise, within ten (10) days of the receipt of the notice of appeal, the agency which made the decision under appeal shall forward the record of the proceedings below to the Executive Secretary. A copy of the record shall be sent to the party filing the appeal at the same time.

4.5.2 The record shall include the agency's written decision, a certified copy of any rule or regulation involved, the minutes of the meeting(s) at which the decision was made, a certified, verbatim transcript of the hearing conducted by the agency or party below, and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

4.5.3 If a certified transcript of the proceedings below is not or cannot be provided to the State Board, the Executive Secretary shall remand the case to the agency with an instruction that the agency hold a new hearing within ten (10) days.

#### 4.6 Proceedings on appeal

4.6.1 The State Board of Education or its hearing officer shall establish and notify the parties of the date when the State Board or its hearing officer will consider the appeal, hereafter referred to as the consideration date. The parties shall be given at least twenty (20) days notice of the consideration date. The parties may agree to shorten or waive the notice of the consideration date.

4.6.2 Written statements of position and legal briefs or memoranda, if any, shall be filed no later than (10) days prior to the consideration date. Failure to file a written statement by the time specified may result in a postponement of the consideration date until the statement is filed, or a consideration of the appeal without the written statement, at the discretion of the State Board or its hearing officer.

4.6.3 The written statement must clearly identify the issues raised in the appeal. Briefs or legal memoranda shall be submitted with the written statement if the appeal concerns a legal issue or interpretation.

#### 4.6.4 Oral argument

4.6.4.1 A party may request that oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted.

4.6.4.2 Oral argument, if requested, shall be limited to fifteen (15) minutes per side with five additional minutes for rebuttal.

4.6.4.3 Any party may request the presence of a stenographic reporter at oral argument by notifying the Executive Secretary at least ten (10) days prior to the date of the argument. The requesting party shall be liable for the expense of the reporter. If a stenographic reporter is not present at the argument, the State Board or hearing officer shall cause an electronic transcript of the hearing to be made by tape recorder or other suitable device. Electronic transcripts shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the appeal.

4.6.4.4 If the State Board or hearing officer permits a party to present oral argument on an issue which was not identified by the party in their written statement, briefs or legal memoranda, or if in the course of the argument, the State Board or hearing officer raises an issue which was not previously raised by either party, the parties shall have a reasonable opportunity to comment in writing within five (5) business days of the oral argument.

4.6.4.5 The State Board or its hearing officer may limit or restrict argument that is irrelevant, insubstantial or unduly repetitive.

#### 4.7 Standard and Scope of Review

4.7.1 The appellate review of the State Board shall be limited to the record of the proceedings below. Neither the State Board nor the hearing officer will consider testimony or evidence which is not in the record. If the State

Board determines that the record is insufficient for its review, it shall remand the case to the agency below with instructions to supplement the record.

4.7.2 The standard of review shall be determined by the law creating the right of appeal. In the absence of a specific statutory standard, the substantial evidence rule will be applied, that is, neither the State Board nor the hearing officer will substitute its judgment for that of the agency below if there is substantial evidence in the record for its decision and the decision is not arbitrary or capricious. The State Board will make an independent judgment with respect to questions of law.

#### 4.8 State Board Decision

4.8.1 After considering the record from the proceedings below, the written submissions and the arguments made by the parties, if any, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

4.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within fifteen (15) days of the consideration date or the filing of any post argument submissions.

4.8.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional comment. When the parties consent to the hearing officer's recommendation, they shall so advise the Executive Secretary.

4.8.4 The State Board shall consider the appeal at its next regular meeting following receipt of the parties' exceptions, comments, and arguments, if any, or the end of the comment period, whichever occurs first.

4.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and any written comments thereto, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

#### 4.9 Student Discipline Appeals

4.9.1 To the extent possible, appeals of decisions involving student discipline will be scheduled for consideration by the hearing officer within thirty (30) days of the receipt of the notice of appeal.

4.9.2 If an appeal involves disciplinary action against a student receiving special education and related services, the record must include evidence that a Manifestation Determination Review was conducted pursuant to the Department of Education's Administrative Manual for Special Education Services. Failure to provide such evidence may result in reversal or remand to agency for

additional proceedings.

4.9.3 An appeal of or dispute about the Manifestation Determination Review must be made to the Department of Education as provided in the Administrative Manual for Special Education Services. The State Board of Education will not review such determinations.

### 5.0 Public Regulatory Hearings

5.1 Section 5.0 governs public hearings before the State Board or its hearing officers where the State Board is required to hold, or decides to hold, such hearings before adopting or approving rules and regulations or taking other regulatory action. See Note 1.

5.2 Notice that the State Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the Administrative Procedures Act. Notice of the public hearing shall also be circulated to individuals and agencies on the State Board's mailing list for meeting agendas. The notice of the hearing shall indicate whether the State Board will conduct the hearing, or designate a hearing officer for that purpose.

#### 5.3 Creation of record of public hearing

5.3.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

5.3.2 If a stenographic reporter is not present at the hearing, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.

#### 5.4 Subpoenas

5.4.1 The State Board or its hearing officer may issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) days prior to the public hearing.

5.4.2 The State Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Secretary at least fifteen (15) days prior to the date of the hearing, unless additional time is allowed for good cause.

5.4.3 The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

#### 5.5 Documents

5.5.1 The State Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any

documents it has received from the public as comment and any other documents which it will consider in reaching its decision. Documents received during the hearing shall also be marked as exhibits.

5.5.2 Any person or party submitting a document before or during the public hearing shall provide at least eight (8) copies of the document to the State Board, unless directed otherwise.

#### 5.6 Witnesses

5.6.1 The order of witnesses appearing at the hearing shall be determined by the State Board or its hearing officer. The State Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at the public hearing.

5.6.2 The State Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious comment and information.

5.6.3 Any person who testifies at a public hearing shall be subject to examination by the State Board or its hearing officer. The State Board or its hearing officer may in their discretion allow cross examination of any witness by other participants in the proceedings.

5.7 At the conclusion of the public hearing, the State Board shall issue its findings and conclusions in a written order in the form provided in Section 10118(b) of the Administrative Procedures Act. The Board's order shall be rendered within a reasonable time after the public hearing.

**Note 1:** The State Board is not subject to the Administrative Procedures Act when approving (or refusing to approve) regulations or regulatory action of the Department of Education, provided that the Department has complied with applicable portions of the Act. See 14 Del. C. '105(b).

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## **DEPARTMENT OF INSURANCE**

### **DOMESTIC/FOREIGN INSURERS BULLETIN NO. 12**

#### **REGULATION 11 REGISTER OF NON-EXEMPT HEALTH INSURANCE PLANS**

Issued: September 17, 2002

Regulation 11 relating to the arbitration of health insurance claims and internal review processes of medical insurance carriers became effective on March 11, 2002.

With respect to 18 **Del.C.** §§ 3349(b) and 3565(b)<sup>1</sup>, Section 4.2 of Regulation 11 recognizes that Regulation 11 would not apply to the arbitration of claims arising under health insurance policies exempt from state regulation under federal law or regulation.

The intent of section 4.2 was to provide an accommodation to health insurers and medical service providers so that providers would be able to efficiently determine whether particular plan identifiers numbers referred to exempt or non-exempt plans. The maintenance of the register was not intended to constitute a conclusive determination on the legal status of a plan. By maintaining such a register, Delaware Insurance Department ("Department") will not conduct any independent inquiry to verify the information provided for the register by any insurer.

The Department will create a register known as the "**Register of Non-Exempt Health Insurance Plans**". At the end of each quarter starting on September 30, 2002, insurers subject to the provisions of Regulation 11 are to provide to the Department a list of non-exempt plan numbers to which Regulation 11 would apply. Except for plans that are added or deleted between each report, these plan numbers will be the same group and identification numbers plan members present to providers at the time of treatment. The Department will section the register alphabetically by insurer and either numerically or alpha-numerically for the plan identifiers for each insurer.

Insurers shall submit the quarterly list by the fifteenth of the month following the end of each quarter. The list should be provided in Excel format as an attachment to an e-mail transmission or by sending a 3.5" diskette or CD-ROM to the Department. The quarterly report shall include the name of the Insurer's contact person and that person's email address. Any format changes required by the Department shall be provided to the named contact person.

The contact person at the Delaware Insurance Department is Ms. Carol Jones. The e-mail address for submissions is [cjones@deins.state.de.us](mailto:cjones@deins.state.de.us). The mail address is Delaware Insurance Department, 841 Silver Lake Boulevard, Dover, DE 19904-2465. Questions relating to the register may be directed to Ms. Jones at 302-739-4251.

Donna Lee H. Williams Insurance Commissioner

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1. Regulation 11 referred to 18 *Del. C.* §§ 3348(b) and 3559E(b). Those sections were renumbered by the Delaware Code revisers to 3349(b) and 3565(b) respectively.

**DEPARTMENT OF PUBLIC SAFETY****BOARD OF EXAMINERS OF CONSTABLES**

Statutory Authority: 10 Delaware Code, Ch. 27  
(10 Del.C. Ch. 27)

Pursuant to the Guidelines in 29 Del.C. Section 10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing held on May 20, 2002 on the proposed adoption of promulgated rules and regulations 5.0 Firearm's Policy, 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 adoption.
2. The Board expressed its desire to adopt the rule to clarify the use of firearms on patrol.

**Findings of Fact**

3. The public was given notice and the opportunity to provide the Board with comments, in writing, on the adoption of the rule. The written comments received are described in paragraph 1.
4. The Board finds that the adoption of this rule will clarify the use of firearms on patrol.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the adoption is well written and describes its intent to adopt the rule to clarify the use of firearms on patrol.

**Conclusion**

7. The proposed rule was promulgated by the Board in accord with the statutory duties and authority as set forth in 10 Del.C. Section 2701 et seq. and, in particular, 10 Del.C. Section 2702(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 Del.C. Section 2701 et seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts this rule pursuant to 10 Del.C. Section 2702(b) and guidelines of 29 Del.C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be July 17,

2002.

13. Attached hereto and incorporated herein this order is the adopted rule marked as exhibit A and executed simultaneously by the Board on the 20th day of May, 2002.

Colonel L. Aaron Chaffinch, Chairman  
August 28, 2002

W. Michael Tupman, Esquire, Deputy Attorney General  
August 28, 2002

- 1.0 Experience
- 2.0 Appeal
- 3.0 Law Enforcement Exemption
- 4.0 Employment
- 5.0 Firearm's Policy

**1.0 Experience**

1.1 A constable must meet the minimum training standards for a full-time police officer as established by the Council on Police Training.

Adopted 09/10/86 Amended 05/16/00

**2.0 Appeal**

2.1 Any applicant who is rejected for a commission as a constable may, within 20 days of such notice of rejection, submit a written notice of appeal.

2.2 A hearing date, to be determined by the Board, will be convened to take relevant evidence on the appeal.

2.3 Such proceedings shall be conducted in accordance with the administrative procedures act (Title 20).

2.4 The Board decision, in writing, will be mailed to the applicant within ten working days after the hearing.

Adopted 09/10/86

**3.0 Law Enforcement Exemption**

3.1 Applicants, who were prior law enforcement officers in any jurisdiction and have been away from police work for not more than five (5) years, will be considered for commissions on a case-by-case basis.

3.2 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five (5) years, will be required to take an MMPI (Minnesota Multiphasic Personality Inventory), under the conditions noted in Rule 4.0, and a comprehensive, multiple-choice examination, equivalent to the C.O.P.T. exam to identify weaknesses in their knowledge of law enforcement. Once those shortcomings have been identified, the individual officer will be required to take the requisite training where the deficiency was noted.

Adopted 10/16/96 Amended 05/16/00

**4.0 Employment**

4.1 All applicants must submit written testimony from

five (5) reputable citizens attesting to good character, integrity, and competency.

4.2 All applicants must submit to an MMPI (Minnesota Multiphasic Personality Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position, that the applicant is psychologically fit to function as a competent Constable.

4.3 All applicants shall be required to submit an application and their fingerprints to the Director of Detective Licensing on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.

4.4 No full-time police officer may apply for a commission as a constable.

4.5 All applicants seeking a new commission as a constable shall be required to submit a \$100.00 application fee.

4.6 A \$50.00 annual renewal fee shall be required to accompany the renewal application each year thereafter.

Adopted 05/16/00

### **5.0 Firearm's Policy**

5.1 No person licensed under Title 24 Chapter 13 Sections 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 (3), there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.

5.2 Firearms - approved type of weapons

5.2.1 9mm

5.2.2 .357

5.2.3 .38

5.2.4 .40

5.3 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.

5.4 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.

5.5 All individuals must qualify with the same type of weapon that he/she will carry.

5.6 All ammunition will be factory fresh (no re-loads).

5.7 The minimum passing score is 75%. All licenses are valid for a period of one (1) year.



**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
BOARD OF ARCHITECTS**

**Notice of Public Hearing**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Chapter 3, Section 306 (1), the Delaware Board of Architects proposes to revise its Rules and Regulations. The proposed Rules and Regulations are a comprehensive revision to the existing Rules and Regulations of the Board of Architects. The purpose of these revisions is to update the rules and regulations, to conform with changes in practices and procedures of the examination and licensing of architects and changes in the applicable statutes.

A Public Hearing will be held on the proposed Rules and Regulations on Wednesday, November 6, 2002 at 2:00 p.m. in Conference Room A, second floor, 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 Gayle Melvin 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 make comments at the Public Hearing should notify Gayle Melvin at the above address or by calling (302) 744-4518.

**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF OCCUPATIONAL THERAPY**

The Delaware Board of Occupational Therapy in accordance with 24 Del. C. §2006(a)(1) proposes changes to its rules and regulations. The changes in Rules 2.0 and 5.0 institute continuing education as a refresher for applicants who delay licensure after passing the NBCOT exam and clarify the continuing education requirements for licensees.

A public hearing will be held at 4:00 p.m. on November 20, 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 Occupational Therapy, c/o Vicki Gingrich, 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.

**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

The Harness Racing Commission issues these proposed rules pursuant to 3 Del. C. §10005 and 29 Del. C. §10115. The Commission will accept written comments from October 1, 2002 through October 30, 2002. The Commission will hold a public hearing on the proposed amendments on October 21, 2002 at 12:00 p.m. at Harrington Raceway, Harrington, DE. Written comments should be submitted to John Wayne, Administrator of Racing, Delaware Harness Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901.

The Commission proposes to amend the Rules as follows: 1)amend Rule 6.2.9 to prohibit trailing horses on a half-mile track; 2)amend Rule 8.3.6 to further clarify that the use of phenylbutazone in two year old horses is prohibited and the penalty for violations; 3)enact a new Rule 8.7 to prohibit the possession or use of drugs or substances for which there is no analytical method to detect such as erythropoietin, darbepoietin, and perfluorocarbon, and prohibit the possession or use of any drug or substance not approved by the FDA; 4)amend Rule 10.2.7.4 to require written notice to licensees of license and disciplinary decisions.

**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, October 17, 2002 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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

**PUBLIC NOTICE**

**Delaware Medicaid/Medical Assistance Programs**

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, the 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 establish a client co-pay amount for non-emergency medical transportation services.

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 October 31, 2002.

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

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**DIVISION OF SOCIAL SERVICES**

**PUBLIC NOTICE**

**Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, the Delaware Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement policy changes to Section 9060 of the Division of Social Services Manual. The purpose of this regulatory action is to mandate the use of utility standards.

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 October 31, 2002.

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

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**DIVISION OF SOCIAL SERVICES**

**PUBLIC NOTICE**

**Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5,

Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement policy changes to Section 9085 of the Division of Social Services Manual. This regulatory action is related to the six-month reporting requirements for certified food stamp households.

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 October 31, 2002.

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

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**DEPARTMENT OF JUSTICE**

**DELAWARE SECURITIES ACT**

**Notice Of Proposed Revisions To The Rules And Regulations Pursuant To The Delaware Securities Act**

In compliance with the State's Administrative Procedures Act (APA-Title 29, Chapter 101 of the Delaware Code) and section 7325(b) of Title 6 of the Delaware CODE, the Division of Securities of the Delaware Department of Justice hereby publishes notice of proposed revisions to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division proposes hereby to amend sections 600, 601, 608, and 700 of the Rules and Regulations Pursuant to the Delaware Securities Act and to add a new section 610.

Persons wishing to comment on the proposed regulations may submit their comments in writing to:

James B. Ropp  
Securities Commissioner  
Department of Justice  
State Office Building, 5th Floor  
820 N. French Street  
Wilmington, DE 19801

The comment period on the proposed regulations will be held open for a period of thirty days from the date of the publication of this notice in the Delaware Register of Regulations.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES****DELAWARE RIVER BASIN  
COMMISSION  
25 STATE POLICE DRIVE  
P.O. BOX 7360  
WEST TRENTON, NJ 08628-0360****REGISTER NOTICE****Brief Synopsis of the Subject, Substance and Issues**

The Department of Natural Resources and Environmental Control, Division of Water Resources, Surface Water Discharges Section, held a public hearing on August 29, 2000 to receive comments on proposed amendments to the Regulations Governing the Control of Water Pollution. The proposed amendments and a notice of the August 29, 2000 public hearing were published in the Delaware Register of Regulations on July 1, 2000. The Department responded to the comments entered into the public hearing record in a Response Document dated March 8, 2002. The Hearing Officer's Report to the Secretary recommended adoption of the revisions as discussed in the Response Document. On August 26, 2002, the Secretary ordered that the Regulations be amended as proposed with the revisions outlined in the response document. Under 29 Del C. no agency can adopt a regulation if more than 12 months has elapsed since the end of the public comment period, therefore these regulations are being published in their modified form to provide the public an additional opportunity to submit comments before the amendments are promulgated in the manner required by law.

**Notice Of Public Comment:**

The Department of Natural Resources and Environmental Control, Division of Water Resources, Surface Water Discharges Section, held a public hearing on August 29, 2000 to receive comments on proposed amendments to the Regulations Governing the Control of Water Pollution. The Department responded to the comments entered into the public hearing record in a Response Document sent to the Hearing Officer dated March 8, 2002. In his report, the Hearing Officer recommended the adoption of the revisions as discussed in the Response Document. The Department is publishing the Secretary's Order and the revised version of the Regulations Governing the Control of Water Pollution for public comment before final promulgation of the amendments in the manner required by law. The public comment period will remain open until October 31, 2002. Comments should be sent in writing to Paul Janiga, Surface Water Discharges Section, Division of Water Resources, DNREC, 89 Kings Hwy., Dover, DE 19901. Copies of the Department's Response Document are available by contacting Paul Janiga at (302) 739-5731.

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The Delaware River Basin Commission will meet Wednesday, October 16, 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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