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# Delaware Register of Regulations

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Volume 7 - Issue 3

Pages 232 - 375

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## IN THIS ISSUE:

Regulations:

Proposed

Final

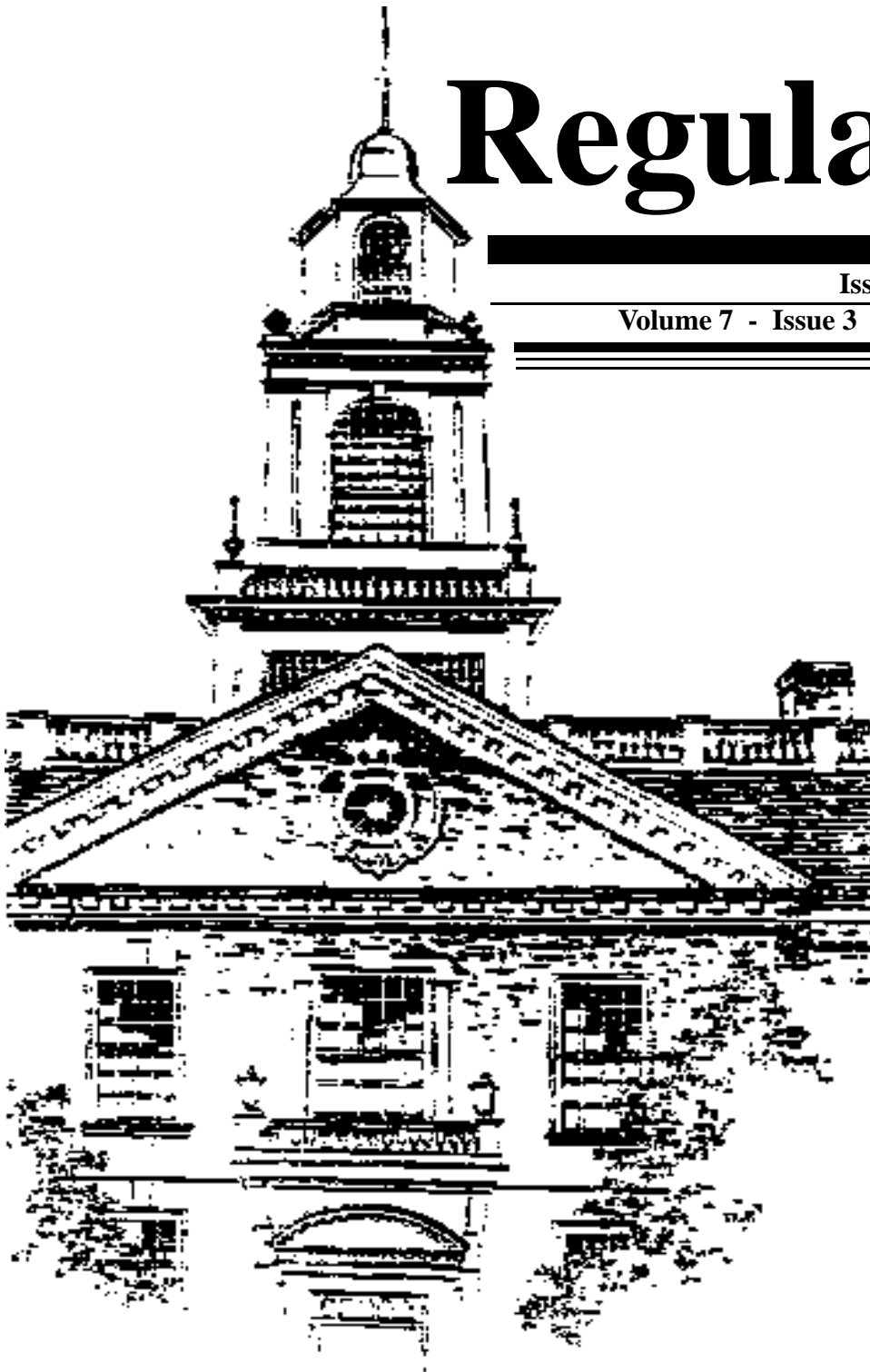
Governor

Appointments

General Notices

Calendar of Events &

Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before August 15, 2003.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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233

## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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### CITATION TO THE DELAWARE REGISTER

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

6 DE Reg. 1541-1542 (06/01/03)

Refers to Volume 6, pages 1541-1542 of the Delaware Register issued on June 1, 2003.

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### SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section,

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

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

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ISSUE DATE	CLOSING DATE	CLOSING TIME
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	4:40 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.

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# TABLE OF CONTENTS

---

235

Cumulative Tables..... 237

**DEPARTMENT OF INSURANCE**

Regulation No. 1406, Third Party Administrators ..... 300

---

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

Board of Pharmacy, Rules and Regulations..... 239

**PUBLIC SERVICE COMMISSION**Regulation Docket No. 50, Consideration of Rules,  
Standards and Indices to Ensure Reliable  
Electrical Service by Electric Distribution  
Companies..... 243**DEPARTMENT OF EDUCATION**255 Definitions of Public School and Private School.. 254  
901 Education of Homeless Children & Youth.... 254**PROFESSIONAL STANDARDS BOARD**347 Certification Library/Media Specialist..... 258  
380 Certification School Nurse..... 260  
1510 Issuance of Initial License..... 262  
1514 Revocation of Licenses..... 265  
1516 Standard Certificate..... 267**DEPARTMENT OF FINANCE  
OFFICE OF THE STATE LOTTERY**Rule 30, Non-Discrimination on the Basis of  
Disability in Delaware Lottery Programs..... 270**DEPARTMENT OF HEALTH & SOCIAL SERVICES  
DIVISION OF PUBLIC HEALTH**Regulation for the Certification of Radiation  
Technologists/Technicians..... 273**DIVISION OF SOCIAL SERVICES**Prescribed Pediatric Extended Care Program and  
Title XIX Medicaid State Plan..... 277  
Temporary Assistance for Needy Families (TANF)  
program ..... 280  
DSSM 2027 Disqualification of Individuals Convicted  
of Drug Related Offenses..... 299**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF FISH & WILDLIFE**Tidal Finfish Regulation 3565, License Lotteries  
For Apprentices..... 308  
Shellfish Regulation 3709..... 308

---

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

2500 Board of Pharmacy..... 309

**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION**Rule 1.28, Meeting..... 316  
Rule 3.02, Appointment of Stewards..... 316  
Rule 19.01, Procedure Before Stewards..... 316  
Rule 13.05 Thirty Day Prohibition-Racing Claimed  
Horse..... 324**DEPARTMENT OF EDUCATION**101 Delaware Student Testing Program..... 325  
215 Strategic Planning..... 330  
610 Comprehensive School Discipline Program.. 331  
878 Guidelines for the School Districts to Comply  
with the Gun Free Schools Act..... 333**DEPARTMENT OF HEALTH & SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**DSSM 9007.1 Citizenship And Alien Status..... 334  
DSSM 9038, Verification Subsequent to Initial  
Certification..... 336  
DSSM 9063.3, Income Averaging..... 336  
DSSM 9085, Reporting Changes..... 336  
DSSM 9085.2, DSS Responsibilities: Actions  
on Changes..... 336  
DSSM 15120.2, Financial Eligibility..... 339  
DSSM 15200, Transitional Medicaid/Initial  
Eligibility..... 339

**DEPARTMENT OF SERVICES FOR CHILDREN,  
YOUTH AND THEIR FAMILIES  
DIVISION OF FAMILY SERVICES**

Regulations Pursuant to 16 Del. C. Ch. 9 for Designation of Substantiated Acts of Abuse or Neglect to Child Protection Levels and for Classifying Unsubstantiated Cases of Abuse or Neglect in the Division of Family Services .....	340
--	-----

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

Delaware 1999 Milestone Compliance Demonstration” For the 1-hour National Ambient Air Quality Standard Of Ground-Level Ozone .....	345
Delaware Phase II Attainment Demonstration For The Philadelphia-Wilmington-Trenton Ozone Non-Attainment Area Including A Revision of the 2005 Mobile Source Emission Budgets Using MOBILE6.....	353

---

**GOVERNOR**

Executive Order No. 46, The Delaware Homeland Security Council.....	358
Appointments.....	360

---

**GENERAL NOTICES**

**DEPARTMENT OF EDUCATION**

Interagency Agreements between the Department of Education and other agencies.....	362
---	-----

**DEPARTMENT OF INSURANCE**

Bulletin No. 26, Credit Scoring Filing Requirements..	369
---	-----

---

**CALENDAR OF EVENTS/HEARING**

Board of Pharmacy, Notice of Public Hearing.....	372
Public Service Commission, Notice of Public Hearing.....	372
State Board of Education, Notice of Monthly Meeting .....	372

Office of the State Lottery, Notice of Public Hearing .....	372
Dept. of Finance, Office of the State Lottery, Rule 30, Non-Discrimination on the Basis of Disability in Delaware Lottery Programs.....	372
DHSS, Div. of Public Health, Certification of Radiation Technologists/Technicians, Notice of Public Hearing.....	372
Div. of Social Services, Prescribed Pediatric Extended Care Program and Title XIX Medicaid State Plan, Notice of Public Comment Period.....	373
Temporary Assistance for Needy Families (TANF) program, Notice of Public Comment Period..	373
2027 Disqualification of Individuals Convicted of Drug Related Offenses, Notice of Public Comment Period.....	373
Dept. of Insurance, Regulation 1406, Third Party Administrators, Notice of Public Hearing.....	373
DNREC, Div. of Fish and Wildlife, Tidal Finfish Regulations, Shellfish Regulations, Notice of Public Hearing.....	374
Delaware River Basin Commission, Notice of Meeting .....	374
Notice of Availability of 4 Total Maximum Daily Loads (TMDLs), Informational Meetings and Public Hearing.....	374

---

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

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the Register in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**DIVISION OF PROFESSIONAL REGULATION (TITLE 24 DELAWARE ADMINISTRATIVE CODE)**

100 Board of Accountancy.....	7 DE Reg.	7(Prop.)
700 Board of Chiropractic.....	7 DE Reg.	36(Final)
1900 Board of Nursing.....	7 DE Reg.	158(Final)
5300 Board of Massage and Bodywork.....	7 DE Reg.	40(Final)

**DEPARTMENT OF AGRICULTURE**

Standardbred Breeder’s Fund Regulations.....	7 DE Reg.	119(Prop.)
<b>Nutrient Management Program</b>		
703 Mandatory Nutrient Management Plan Reporting Implementation Regulation.....	7 DE Reg.	160(Final)
<b>Harness Racing Commission</b>		
Rule 7.0, Rules of the Race, Sections 7.6.6.3 and 7.3.9.....	7 DE Reg.	42(Final)

**DEPARTMENT OF EDUCATION (TITLE 14 DELAWARE ADMINISTRATIVE CODE)**

101 Delaware Student Testing Program.....	7 DE Reg.	51(Final)
103 School Accountability for Academic Performance.....	7 DE Reg.	57(Final)
104 Education Profiles for the Schools, Districts and the State.....	7 DE Reg.	65(Final)
215 Strategic Planning.....	7 DE Reg.	10(Prop.)
275 Charter Schools.....	7 DE Reg.	125(Prop.)
608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students Who Have Been Victims of a Violent Felony.....	7 DE Reg.	67(Final)
610 Comprehensive School Discipline Program.....	7 DE Reg.	10(Prop.)
615 School Attendance.....	7 DE Reg.	130(Prop.)
811 School Health Record Keeping Requirements.....	7 DE Reg.	68(Final)
815 Physical Examinations and Screening .....	7 DE Reg.	68(Final)
817 Administration of Medications and Treatments.....	7 DE Reg.	68(Final)
878 Guidelines for the School Districts to Comply with the Gun Free Schools Act.....	7 DE Reg.	12(Prop.)
881 Releasing Students to Persons Other Than Their Parents or Legal Guardians.....	7 DE Reg.	131(Prop.)
<b>PROFESSIONAL STANDARDS BOARD</b>		
301 General Regulations for Certification of Professional Public School Personnel.....	7 DE Reg.	161(Final)
605 Student Rights and Responsibilities.....	7 DE Reg.	187(Final)
905 Federal Programs General Complaint Procedures.....	7 DE Reg.	188(Final)
1504 Delaware Performance Appraisal System for Administrators	7 DE Reg.	13(Prop.)
1511 Issuance and Renewal of Continuing License	7 DE Reg.	197(Final)
1530 Certification - Administrative - School Principal	7 DE Reg.	190(Final)
1531 Certification - Administrative - School Leader I	7 DE Reg.	190(Final)
1530 Certification - Administrative - School Leader II	7 DE Reg.	190(Final)
1593 Delaware Professional Teaching Standards	7 DE Reg.	75(Final)

**DEPARTMENT OF FINANCE**

**OFFICE OF THE STATE LOTTERY**

Video Lottery, Section 5.1, Technology Providers: Contracts; Requirements; Duties, Section 7.15, Game Requirements.....	7 DE Reg.	202(Final)
Video Lottery, Section 5.0, Technology Providers: Contracts; Requirements; Duties, Section 6.0, Agents: Duties, Section 7.0, Game Requirements.....	7 DE Reg.	206(Final)

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

Adult Abuse Registry, Regulations Governing.....	7 DE Reg.	82(Final)
Reg. 55.0, Neighborhood Homes for Persons with Developmental Disabilities.....	7 DE Reg.	132(Prop.)

**DIVISION OF PUBLIC HEALTH**

Pre-Hospital Advanced Care Directive Regulations.....	7 DE Reg.	85(Final)
Public Drinking Water Systems, Regulations Governing.....	7 DE Reg.	94(Final)

**DIVISION OF SOCIAL SERVICES**

Title XIX Medicaid State Plan, Attachment 4.18, Client Cost Sharing for Pharmaceutical Services.....	7 DE Reg.	23(Prop.)
Title XIX Medicaid State Plan, Attachment 4.19-C, Standards for Payment of Reserved Beds During Absence from Long-Term Care Facilities.....	7 DE Reg.	28(Prop.)

**DSSM**

5100 Legal Base.....	7 DE Reg.	96(Final)
5304 Jurisdiction.....	7 DE Reg.	96(Final)
5312 Responses to Hearing Requests.....	7 DE Reg.	96(Final)
5402 Hearings on Decisions.....	7 DE Reg.	96(Final)
5403 Availability of Documents and Records.....	7 DE Reg.	96(Final)
5405 Fair Hearing Procedures.....	7 DE Reg.	96(Final)
9007.1 Citizenship and Alien Status.....	7 DE Reg.	29(Prop.)
9038, Verification Subsequent to Initial Certification.....	7 DE Reg.	30(Prop.)
9063.3, Income Averaging.....	7 DE Reg.	30(Prop.)
9081.3, Exempt Aliens.....	7 DE Reg.	150(Prop.)
9085. Reporting Changes.....	7 DE Reg.	30(Prop.)
14300 Citizenship and Alienage.....	7 DE Reg.	150(Prop.)
15120.2, Financial Eligibility.....	7 DE Reg.	212(Final)
15200, Transitional Medicaid/Initial Eligibility.....	7 DE Reg.	32(Prop.)

**DEPARTMENT OF INSURANCE**

Reg. 1310, Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services .....	7 DE Reg.	100(Final)
--	-----------	------------

**DEPARTMENT OF JUSTICE****DIVISION OF SECURITIES**

Delaware Securities Act, Sections 600, 601, 608, 700 and 610.....	7 DE Reg.	213(Final)
---	-----------	------------

**DEPARTMENT OF LABOR**

Delaware Prevailing Wage Regulation.....	7 DE Reg.	152(Prop.)
--	-----------	------------

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

Reg. No. 38, Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart B.....	7 DE Reg.	6(Errata)
---	-----------	-----------

**DIVISION OF FISH AND WILDLIFE**

Horseshoe Crab Regs HC-1 thru HC-14.....	7 DE Reg.	220(Final)
--	-----------	------------

**GOVERNOR'S OFFICE**

Executive Order No. 44, Creating Principles for Responsible Industry in Delaware.....	7 DE Reg.	103
Executive Order No. 45, Amendment to Executive Order 20 Regarding State Employees' Charitable Campaign.....	7 DE Reg.	104
Appointments.....	7 DE Reg.	105

**HUMAN RELATIONS COMMISSION**

Rule 10, Voluntary Termination and Dismissal & Rule 27, Reconsideration.....	7 DE Reg.	34(Prop.)
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**Symbol Key**

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

**Proposed Regulations**

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

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

**BOARD OF PHARMACY**

24 DE Admin. Code 2500

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

PLEASE TAKE NOTICE, pursuant to 29 Del. C. §2509, the Delaware Board of Pharmacy (Board) proposes to modify Regulation 11.0 as it relates to emergency use medication, labeling, consultant pharmacist duties, and drug disposal in nursing homes. The changes to Regulation 11 were made in response to public comment from an earlier proposal that was not enacted.

A public hearing will be held on October 8, 2003 at 10:00 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. Written comments can be submitted at any time prior to the public hearing in care of David Dryden, Executive Director, at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained by calling (302)739-4798.

**PROPOSED CHANGES****11.0 Pharmaceutical Services in Nursing Homes**

11.1 Definition: A nursing home is an institution licensed by the ~~State Board of Health~~ Division of Public Health that provides permanent facilities that include in-

patient beds and medical services, including continuous nursing services, to provide treatment for patients who do not currently require continuous hospital services. Rest - Residential and Assisted Living beds in licensed nursing homes are exempt from this regulation. They are considered under Health Care Facilities.

**11.2 General Requirements**

11.2.1 Each ~~administrator~~ facility shall provide ~~within the facility~~, a cabinet or medication carts for individual patient medications ~~prescriptions~~. 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 ~~for the lock of~~ the storage unit shall be carried by or be accessible only to registered nurses, licensed practical nurses 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 medications "caution legend 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 emergency use medication 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 showing the receipt and disposition of all controlled substances. These records must be maintained for 2 years.

### 11.3 ~~Stock Medication~~ Emergency Use Medications

#### 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.~~

#### 11.3.2 ~~Legend medications – Emergency, IV, and Anaphylactic supplies~~

11.3.2.1 ~~Certain legend medications for emergency use may be stocked by the nursing home subject to Board approval.~~

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.~~

11.3.2.3 ~~IV's and vaccines must be submitted on an IV interim stock list.~~

11.3.2.4 ~~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.~~

11.3.2.5 ~~If there is no specific 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.~~

#### 11.3.3 ~~Legend 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.~~

11.3.3.3 ~~There can be no more than a total of 60 legend items present in this interim supply.~~

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 to the Executive Secretary of the Board for approval.~~

11.3.1 Emergency use medications are those which may be required to meet the immediate therapeutic needs of patients, as determined by the prescriber, 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.

11.3.2 It is the responsibility of the facility and provider pharmacy to determine the supply of emergency use medication that are to be stocked as well as documenting their locations within the facility. A list of current contents must be attached to the medication supply.

11.3.3 Accountability for emergency use medications.

11.3.3.1 The pharmacy provider must be contacted within 24 hours after medication is used from the supply and the pharmacy must restock the supply within a reasonable time to prevent harm to patients.

11.3.3.2 The provider pharmacy is responsible for the accuracy of all emergency use medications at the time of the filling of the medication. This check must also include any medication that became available when the medication is accessed. Records documenting use of an emergency medication must be kept for a minimum of 2 years at the provider pharmacy and must be readily available for inspection by the Board.

11.3.3.3 Failure to comply with these procedures can result in the suspension or denial of the use of emergency use medications.

11.3.3.4 Violations of accountability procedures for emergency use medications may result in review proceedings before the Board.

11.3.4 ~~Approved lists for legend drug boxes~~ There must be an accountability procedure at the facility for needles and syringes.

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.

11.3.4.2 When additions or deletions are made, then a complete revised list must be submitted for Board approval.

#### 11.3.5 Accountability for legend stock usage

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.~~

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.~~

11.3.5.3 ~~Continuous violations of accountability procedures for the non-controlled legend 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-disposition.~~ 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.

~~11.4.2~~ 11.4.3 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 2 years.

#### 11.5 Labeling

11.5.1 Labels on controlled substances must show 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 registered pharmacy interns, who may assist in chart reviews. Supervision of chart reviews by a pharmacy intern must be documented by the supervising pharmacist.

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~~ The consultant pharmacist must notify the Board in writing within ten days ~~of the starting date starting as a consultant in the State. 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, he/she must appear before the Board for an interview within ninety days after assuming that position.

11.6.4 The consultant pharmacist shall be responsible for 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 practitioner medication orders, medication errors, automatic stop orders, medications for patient discharge and leave of absence.

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

11.6.4.4 Policies and procedures outlining the destruction of wastage for all controlled 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 requirements. For registered out-of-state providers an additional labeling requirement is having the toll-free telephone number on the prescription labels.

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

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 medication orders; 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 Federal and State laws.

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

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 Federal and State requirements. For registered out-of-state providers an additional labeling requirement is having their 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' orders to be reviewed with the information on the patient profiles.

11.6.5 If the nursing home has a pharmacy or quality related committee Pharmacy and Therapeutics Committee or Quality Assurance or Assessment Committee, the consultant pharmacist CP shall serve on that committee.

11.6.6 The consultant pharmacist or designated pharmacy staff shall make inspections of each nursing

station and related drug storage areas at least monthly. A pharmacy support person may assist with inspection under the direct supervision of a pharmacist. Nursing station inspections must include, but are not limited to the following :- (1) Documentation of medication storage area(s) (59 to 86 Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit), (2) documentation of security of all drugs (e.g. medication room cabinets, carts, Board approved drug boxes), (3) proper labeling, including any accessory or cautionary instructions, (4) proper expiration dates, (5) cleanliness, (6) accountability of all medication and (7) interim, emergency, IV, anaphylactic boxes or kits are properly maintained. A copy of these inspection reports must be maintained at the facility.

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

11.6.6.1.1 medication storage area(s) (59 to 86 degrees Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit);

11.6.6.1.2 security of all drugs;

11.6.6.1.3 proper labeling, including any accessory or cautionary instructions;

11.6.6.1.4 proper expiration dating;

11.6.6.1.5 cleanliness;

11.6.6.1.6 emergency use medication supplies are properly maintained.

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 at the facility. 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. This written recommendation shall be forwarded to the attending practitioner, with the original documentation maintained in the patient chart. 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.

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 monthly.

11.6.8 The consultant pharmacist is responsible for the accountability of all medications. A random sample will be done monthly to identify overages or shortages of any medications. Documentation will be made of irregularities and will include date of audit, patient identification, a listing of overages or shortages, and an explanation if known. A plan for correction will be included in the documentation where appropriate. Documentation will be maintained for a period of 12 months at the facility.

11.6.9 4-6-8 The consultant pharmacist 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.

11.6.10 4-6-9 The consultant pharmacist CP shall assume all other responsibilities required of a consultant pharmacist CP as set forth in any State or Federal or State statutes or regulations as enacted or amended or may be enacted or amended.

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

**\* PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE BOARD OF PHARMACY REGULATIONS ARE AVAILABLE AT:**

**<http://www.state.de.us/research/profreg/Frame.htm>**

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## **PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code,  
Section 209(a) (26 Del.C. §209(a))

### **ORDER NO. 6217**

This 22nd day of July, 2003, the Commission determines and Orders the following:

1. In PSC Order No 5704 (April 24, 2001), this Commission proposed to adopt "Electric Service Reliability and Quality Standards" to establish additional reliability standards for Commission-regulated electric utilities and electric distribution companies.<sup>1</sup> In that Order, the

1. The original formulation of these regulations will be referred to as the "proposed regulations." Staff's later revisions will be called the "revised proposed regulations."

Commission directed the publication of these proposed regulations and assigned to a Hearing Examiner the tasks of reviewing comments, conducting public hearings, and preparing a Report with his recommendations concerning the proposed regulations. The proposed regulations were published in 4 DE Reg. 1929 (June 1, 2001).

2. The Commission, in Order No. 5704, also established a procedural schedule that contemplated expedited consideration of the proposed regulations. However, later, in PSC Order No. 5766 (July 24, 2001), the Commission (acting on Staff's recommendation) withdrew that earlier schedule in light of the then-pending proceedings in PSC Dckt. No. 01-194 involving the merger of Delmarva Power & Light Company ("DP&L").

3. Several entities filed comments in response to the originally proposed regulations, including the Division of the Public Advocate, DP&L, the Delaware Electric Cooperative, Inc., and the Delaware Energy Users' Group, a group of industrial customers located within DP&L's service territory. As a result of extensive discussions among the participants, a consensus was reached that resulted in the Staff offering revisions to the original proposed regulations. After circulation among the participants, these revised proposed regulations were submitted to the Hearing Examiner on June 6, 2003. No participant filed comments with the Hearing Examiner opposing Staff's revised proposed regulations.

4. In a June 27, 2003 letter, the Hearing Examiner transmitted the revised proposed regulations to the Executive Director and all participants with his recommendation that the Commission now embrace Staff's revised rules as proposed regulations to be published and considered in accord with rule-making procedures in the Administrative Procedures Act ("APA"). 29 Del.C. §§1132-33 & 10115-10118. The Hearing Examiner indicated that the revised proposed regulations should be subject to publication and another round of comment and hearing because Staff's revisions reflected "substantive changes in the proposal as a result of public comments, evidence, and information." 29 Del.C. §10118(c) (2002 Supp.). The Hearing Examiner also commented that he considered Staff's revisions to be reasonable, particularly since the revised regulations reflect a consensus reached by the participants after extensive negotiations, numerous comments, and a contested hearing held on April 28, 2003. The Hearing Examiner suggested that publication of revised proposed regulations at this time - prior to him submitting a Report based on the present administrative record - would avoid additional delay and ultimately expedite the consideration of this matter.

5. The Commission agrees that it is appropriate for it to now propose to adopt Staff's revised proposed regulations and have those revised regulations published for comment and hearing under the APA's rule-making procedures. These revised proposed regulations (Exhibit A to this Order) will

supersede the proposed regulations previously proffered in PSC Order No. 5704. In following this course, the Commission relies on the Staff's summary of the content of the revised proposed rules, as set forth in the Supplemental Comments filed by Staff on June 6, 2003, as well as the Hearing Examiner's recommendation that we should now proceed to publication, comments, and a hearing on Staff's revised proposed rules in order to allow for Commission consideration at the earliest possible time.

Now, therefore, **IT IS ORDERED:**

1. That the regulations entitled "Electric Service Reliability and Quality Standards" proposed for adoption in PSC Order No. 5704 (April 24, 2001), and published in 4 DE Register 1129 (June 1, 2001), are hereby withdrawn.

2. That, pursuant to 26 Del.C. §§209 & 1002(a)(1), the Commission hereby, under the provisions of 29 Del.C. §§10115-10118, proposes to adopt for electric public utilities and electric distribution companies the rules and regulations entitled "Electric Service Reliability and Quality Standards" as set forth in Exhibit A to this Order.

3. That the Secretary shall promptly forward a copy of this Order, with the proposed regulations set forth in Exhibit A, to the Delaware Registrar for publication in the next appropriate edition of the **Delaware Register of Regulations**. In addition, the Secretary shall also promptly forward to the Delaware Registrar a copy of the public notice attached as Exhibit B to this Order for similar publication in the next appropriate **Delaware Register of Regulations**. Third, the Secretary shall, before September 1, 2003, cause the public notice set forth in Exhibit B to be published in the legal classified sections of **The News Journal** and the **Delaware State News** newspapers, in two column format outlined in black. Fourth, the Secretary shall send, by United States mail, a copy of this Order, with attached exhibits, to each person or entity that has previously filed comments or otherwise participated in this docket. Fifth, the Secretary shall send a copy of this Order, with attached exhibits, by United States mail, to the Division of the Public Advocate and each person or entity that has previously requested advance notice of this Commission's regulation-making proceedings. Finally, the Secretary shall post a copy of this Order, with all exhibits, on the Commission's Internet website under an appropriate heading indicating that the Commission is proposing to adopt additional reliability regulations and solicits comments on its proposal.

4. That the previously designated Hearing Examiner, Robert P. Haynes, shall conduct a public hearing on the proposed regulations on September 22, 2003. After such hearing and the close of the comment period as set forth in Exhibit B, Hearing Examiner Haynes shall file a Report organizing, classifying, and summarizing the administrative record in this matter along with his recommendations concerning the materials and the proposed regulations.

Hearing Examiner Haynes shall submit such Report at a time to allow for its consideration by the Commission by December 1, 2003. Hearing Examiner Haynes is delegated the power to request additional comments and conduct additional hearings (after appropriate notice), if he deems such additional procedures necessary or appropriate.

5.) The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

Arnetta McRae, Chair  
Joann T. Conaway, Commissioner  
Jaymes B. Lester, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

**EXHIBIT A**  
**STATE OF DELAWARE**  
**Delaware Public Service Commission**  
**Electric Service Reliability**  
**and Quality Standards**

**A. Purpose and Scope**

1.) Reliable electric service is of great importance to the Delaware Public Service Commission ("Commission"), because it is an essential service to the citizens of Delaware. These regulations, in support of 26 Del. C., § 1002, set forth reliability standards and reporting requirements needed to assure the continued reliability and quality of electric service being delivered to Delaware customers and are applicable to all Delaware Electric Distribution Companies ("EDCs").

2.) Nothing in these regulations relieves any utility from compliance with any requirement set forth under any other regulation, statute or order. These regulations are in addition to those required under PSC Docket No. 58, Order No. 103, Regulations Governing Service Supplied by Electrical Utilities.

3.) Each EDC shall maintain the reliability of its distribution services and shall implement procedures to require all electric suppliers to deliver energy to the EDC at locations and in amounts which are adequate to meet each electric supplier's obligations to its customers. 26 Del.C. §1008.

4.) These regulations require the maintenance and retention of reliability data and the reporting of reliability objectives, planned actions and projects, programs, load studies and actual resulting performance on an annual basis, including major events as specified in section K.

5.) EDCs are responsible for maintaining the reliability of electric service to all their customers in the state of Delaware. Pursuant to this requirement, EDCs may be subject to penalties as described in Section M.

6.) EDCs are encouraged to explore the use of proven state of the art technology, to promote cost effective electric service reliability improvements.

**B. Definitions**

The following words and terms, as used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:

**“Acceptable reliability level”** is defined as the maximum acceptable limit of the System Average Interruption Frequency Index (“SAIFI”), the Customer Average Interruption Duration Index (“CAIDI”) and the Forced Outage Rate as specified in Section D.

**“ALM”** means Active Load Management in accordance with Article 1, Schedule 5.2 of PJM’s Reliability Assurance Agreement (RAA).

**“Availability”** means the measure of time a generating unit, transmission line, or other facility is capable of providing service, whether or not it actually is in service.

**“Beginning restoration”** includes the essential or required analysis of an interruption, the dispatching of an individual or crew to an affected area, and their arrival at the work site to begin the restoration process (normally inclusive of dispatch and response times).

**“Benchmark”** means the standard service measure of SAIFI, CAIDI and Forced Outage Rate as set forth in these regulations.

**“Capacity”** means the rated continuous load-carrying ability, expressed in megawatts (“MW”) or megavolt-amperes (“MVA”) of generation, transmission, or other electrical equipment.

**“Capacity Emergency Transfer Objective (‘CETO’)”** means the amount of megawatt capacity that an area or sub area must be able to import during localized capacity emergency conditions such that the probability of loss of load due to insufficient tie capability is not greater than one day in 10 years.

**“Capacity Emergency Transfer Limit (‘CETL’)”** means the amount of megawatts that can actually be imported into the area or sub area during localized capacity emergency conditions.

**“Constrained hours of operation”** means the hours of electric system operation during which time there are limits, transfer constraints or contingencies on the delivery system that require off-cost dispatch of generating facilities located within the PJM DPL Zone. In measuring compliance to standard, total constrained hours will exclude “major events” and forced generator outages.

**“Contingency”** means the unexpected failure or outage of a system component, such as a generator, transmission line, circuit breaker, switch, or other electrical element. A contingency may also include multiple components, which are related by situations leading to simultaneous component outages.

**“Corrective action”** means the maintenance, repair, or replacement of an EDC’s utility system components and structures to allow them to function at an acceptable level of reliability.

**“Corrective maintenance”** means the unplanned maintenance work required to restore delivery facilities to a normal operating condition that allows them to function at an acceptable level of reliability.

**“Customer Average Interruption Duration Index (‘CAIDI’)”** represents the average time in minutes required to restore service to those customers that experienced sustained interruptions during the reporting period. CAIDI is defined as follows:

$$\text{CAIDI} = \frac{\text{Sum of all Sustained Customer Interruption Durations per Reporting Period}}{\text{the Total Number of Sustained Customer Interruptions per Reporting Period}}$$

**“Delivery Facilities”** means the EDC’s physical plant used to provide electric energy to Delaware retail customers, normally inclusive of distribution and transmission facilities.

**“Dispatch time”** is the elapsed time between receipt of a customer call and the dispatch of a service resource to address the customer’s issue as tracked by the OMS.

**“Distribution feeder” or “feeder”** means a three-phase set of conductors emanating from a substation circuit breaker serving customers in a defined local distribution area. This includes three-phase, two-phase and single-phase branches that are normally isolated at all endpoints.

**“Distribution facilities”** means electric facilities located in Delaware that are owned by a public utility that operate at voltages of 34,500 volts or below and that are used to deliver electricity to customers, up through and including the point of physical connection with electric facilities owned by the customer.

**“Electric Distribution Company” or “EDC”** means a public utility owning and/or operating transmission and/or distribution facilities in this state.

**“Electric distribution system”** means that portion of an electric system, that delivers electric energy from transformation points on the transmission system to points of connection at the customers’ premises.

**“Electric service”** means the supply, transmission, and distribution of electric energy as provided by an electric distribution company.

**“Forced outage”** means the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons or a condition in which the equipment is unavailable due to unanticipated failure.<sup>2</sup>

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2. North American Electric Reliability Council – “Glossary of Terms”, August 1996

**“Forced outage rate”** means the hours a generating unit, transmission line, or other facility is removed from service, divided by the sum of the hours it is removed from service plus the total number of hours the facility was connected to the electricity system expressed as a percent.<sup>3</sup>

Multiple momentary forced outages on the same transmission line in the span of a single minute shall be treated as a single forced outage with the duration of one minute. When the operation of a transmission circuit is restored following a forced outage and the transmission line remains operational for a period exceeding one minute or more, followed by another forced outage, then these should be counted as two forced outages. Multiple forced outages occurring as a result of a single event should be handled as multiple forced outages only if subsequent operation of the transmission line between events exceeds one minute. Otherwise they shall be considered one continuous forced outage.<sup>4</sup>

**“Interruption”** means the loss of electric service to one or more customers. It is the result of one or more component outages, depending on system configuration or other events. See “outage” and “major event.” The types of interruption include momentary event, sustained and scheduled.

**“Interruption, duration”** means the period (measured in minutes) from the initiation of an interruption of electric service to a customer until such service has been restored to that customer. An interruption may require step restoration tracking to provide reliable index calculations.

**“Interruption, momentary event”** means an interruption of electric service to one or more customers, of which the duration is less than or equal to 5 minutes. This definition includes all reclosing operations, which occur within five minutes of the first interruption. For example, if a recloser or breaker operates two, three, or four times and then holds within five minutes, the event shall be considered one momentary event interruption.

**“Interruption, scheduled”** means an interruption of electric service that results when one or more components are deliberately taken out of service at a selected time, usually for the purposes of preventative maintenance, repair or construction. Scheduled interruptions, where attempts have been made to notify customers in advance, shall not be included in the SAIFI, CAIDI, or Forced Outage Rate calculations.

**“Interruption, sustained”** means an interruption of electric service to one or more customers that is not classified as a momentary event interruption and which is longer than five minutes in duration.

**“Interrupting device”** means a device, capable of being reclosed, whose purpose includes interrupting fault currents, isolating faulted components, disconnecting loads and restoring service. These devices can be manual, automatic, or motor operated. Examples include transmission and distribution breakers, line reclosers, motor operated switches, fuses or other devices.

**“Major Event”** means an event consistent with the I.E.E.E.1366, Guide For Electric Power Distribution Reliability Indices standard as approved and as may change over time. For purposes of this regulation, changes shall be considered to be in effect beginning January 1 of the first calendar year after the changed standard is adopted by the I.E.E.E. Major event interruptions shall be excluded from the EDC’s SAIFI, CAIDI and Forced Outage Rate calculations for comparison to reliability benchmarks. Interruption data for major events shall be collected, and reported according to the reporting requirements outlined in Section K.

**“Mid Atlantic Area Council (‘MAAC’)”** means a regional council of the North American Electric Reliability Council (‘NERC’), or successor organization, that is responsible for Mid Atlantic operational policies and reliability planning standards applicable to PJM and local electric distribution company members.

**“North American Electric Reliability Council (‘NERC’)”** means the national organization responsible for operational policies and reliability planning standards applicable to national system operations and electric distribution companies, or their successor organizations.

**“Outage”** means the state of a component when it is not available to perform its intended function due to some event directly associated with that component. An outage may or may not cause an interruption of electric service to customers, depending on system configuration.

**“Outage management system (‘OMS’)”** means a software operating system that provides database information to effectively manage service interruptions and minimize customer outage times.

**“Pre-restructuring”** refers to the five-year time frame prior to Delaware’s adoption of 26 Del. C., Chapter 10, Electric Utility Restructuring Statute.

**“PJM Interconnection, L.L.C. (‘PJM’)”** means the independent system operator that is responsible for mid-Atlantic region wholesale energy markets and the interstate transmission of energy, or its successor organization.

**“Power quality”** means the characteristics of electric power received by the customer, with the exception of sustained interruptions and momentary event interruptions. Characteristics of electric power that detract from its quality include waveform irregularities and voltage variations—either prolonged or transient. Power quality problems shall include, but are not limited to, disturbances such as high or low voltage, voltage spikes or transients, flicker and voltage

3. North American Electric Reliability Council – “Glossary of Terms”, August 1996

4. Draft CAISO Transmission Control Agreement, Appendix C, ISO Maintenance Standards

sags, surges and short-time overvoltages, as well as harmonics and noise.

**“Preventive maintenance”** means the planned maintenance, usually performed to preclude forced or unplanned outages, and which allows delivery facilities to continue functioning at an acceptable level of reliability.

**“Reliability”** means the degree of performance of the elements of the bulk electric system that results in electricity being delivered to customers within accepted standards and in the amount desired. Reliability may be measured by the frequency, duration, and magnitude of adverse effects on the electric supply. Electric system reliability can be addressed by considering two basic and functional aspects of the electric system – Adequacy and Security.

**Adequacy** - The ability of the electric system to supply the aggregate electrical demand and energy requirements of customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.

**Security** - The ability of the electric system to withstand sudden disturbances such as electric short circuits or unanticipated loss of system elements.<sup>5</sup>

As applied to distribution facilities, reliability is further described as the degree to which safe, proper and adequate electric service is supplied to customers without interruption.

**“Repair time”** is the elapsed time from the arrival of the service resource at the identified problem site to the correction of the customer’s original concern as tracked by the OMS.

**“Response time”** is the elapsed time from dispatch of service resource to the arrival of the service resource at the identified problem site as tracked by the OMS.

**“Step restoration”** means the restoration of service to blocks of customers in an area until the entire area or circuit is restored.

**“Sum of all Sustained Customer Interruption Durations”** means the summation of the restoration time (in minutes) for each event times the number of interrupted customers for each step restoration of each interruption event during the reporting period.

**“System Average Interruption Frequency Index (SAIFI)”** represents the average frequency of sustained interruptions per customer during the reporting period. SAIFI is defined as:

$$\text{SAIFI} = \frac{\text{Total Number of Sustained Customer Interruptions per Reporting Period}}{\text{Total Number of Customers Served per Reporting Period}}$$

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5. ERC definition - NERC’s Reliability Assessment 2001–2010, dated October 16, 2001.

**“Total Number of Sustained Customer Interruptions”** means the sum of the number of interrupted customers for each interruption event during the reporting period. Customers who experienced multiple interruptions during the reporting period are counted for each interruption event the customer experienced during the reporting period.

**“Total Number of Customers Served”** means the number of customers provided with electric service by the distribution facility for which a reliability index is being calculated on the last day of the time period for which the reliability index is being calculated. This number should exclude all street lighting (dusk-to-dawn lighting, municipal street lighting, traffic lights) and sales to other electric utilities.

**“Transmission facilities”** means electric facilities located in Delaware and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to customers (including any customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the customer.

### C. Electric Service Reliability and Quality

1.) Each EDC shall provide reliable electric service that is consistent with pre-restructuring service levels as identified in Section D. and complies with 26 Del. C., § 1002.

2.) Each EDC shall install, operate, and maintain its delivery facilities in conformity with the requirements of the National Electrical Safety Code and the operating policies and standards of NERC, MAAC and PJM, or their successor organizations.

3.) Each EDC shall have targeted objectives, programs and/or procedures and forecast load studies, designed to help maintain the acceptable reliability level for its delivery facilities and, where appropriate, to improve performance.

4.) Each EDC, in accordance with Section I., shall submit to the Commission, on or before March 31 of each year, a Planning and Studies Report identifying its current year’s annual objectives, planned actions and projects, programs, and forecast studies that serve to maintain reliability and quality of service at an acceptable reliability level.

5.) Each EDC, in accordance with Section J., shall submit to the Commission, on or before April 30 of each year, a Performance Report that assesses the achievement of the previous year’s objectives, planned actions, projects and programs, and assesses the relative accuracy of forecast studies and previous years performance measures with respect to benchmarks.

### D. Reliability and Quality Performance Benchmarks

1.) The measurement of reliability and quality performance shall be based on annual SAIFI, CAIDI and



Forced Outage Rate measures for each EDC. SAIFI and CAIDI calculations shall include all Delaware customer outages, excluding major events, and shall be reported by its distribution, substation and transmission components. The Forced Outage Rate shall be based on system transmission circuit and power transformer performance, excluding major events and scheduled interruptions.

2.) Each EDC shall maintain their electric service reliability and quality performance measures within the benchmark standard of this Section D., paragraph 3). SAIFI, CAIDI and Forced Outage Rate performance shall be measured each calendar year. Annual SAIFI and CAIDI performance equal to or better than the acceptable reliability level meets the standard of this regulation. Annual Forced Outage Rate performance shall be averaged with the prior two years performance for comparison to standard. Three-year average Forced Outage Rate performance equal to or better than the acceptable reliability level meets the standard of this regulation. When performance does not meet the acceptable reliability level, further review and analysis are required. The EDC may be subject to penalties as defined in Section M and subsequent corrective actions may be required.

3.) For the EDCs, the interim electric service reliability and quality performance benchmarks are established as follows:

a) The system SAIFI benchmark standard, which is based on pre-restructuring levels of performance and adjusted to reflect 1.75 standard deviation of data variability and the transition to an OMS system shall be as follows:

i) Delaware Electric Cooperative SAIFI shall be 4.6 interruptions; and  
ii) Conectiv SAIFI shall be 2.3 interruptions.

b) The system CAIDI benchmark, which is based on pre-restructuring levels of performance and adjusted to reflect 1.75 standard deviation of data variability and the transition to an OMS system shall be as follows:

i) Delaware Electric Cooperative CAIDI shall be 173 minutes; and  
ii) Conectiv CAIDI shall be 141 minutes.

c) The Forced Outage Rate benchmark standard shall be one percent.

4.) The electric service reliability and quality benchmarks, as defined in Section D., paragraph 3), are established as interim standards for 2003, 2004 and 2005, subject to further review. Each EDC shall track and report its annual performance and three-year average performance against benchmark standards in accordance with Section J.

5.) Prior to 2006, or as requested by the Commission, the Commission Staff, in conjunction with all interested parties, shall review the current interim regulations, benchmark standards and actual EDC performance. Subsequent to the review, the Staff shall make recommendation for final regulations and benchmark

standards to the Commission for consideration as final regulations.

## **E. Reliability and Quality Performance Objectives**

1.) Each EDC shall establish electric service reliability and quality performance objectives for the forthcoming year. Objectives shall include:

a.) Anticipated performance measures designed to maintain reliable electric distribution service with a description of any planned actions to achieve target objectives;

b.) Anticipated performance measures designed to maintain transmission circuits and power transformers with a description of any planned actions to achieve target objectives; and

c.) Annual corrective and preventive maintenance program hours anticipated on Delaware transmission circuits, distribution circuits and substation equipment.

2.) Performance objective measures shall be established to support the maintenance of electric reliability performance. Performance objectives shall be representative of expected performance, taking into consideration anticipated new construction projects, quality and maintenance programs, planned actions and any resource or time limitations.

## **F. Power Quality Program**

1.) Each EDC shall maintain a power quality program with clearly stated objectives and procedures designed to respond promptly to customer reports of power quality concerns.

2.) Each EDC shall consider power quality concerns in the design, construction and maintenance of its transmission and distribution power delivery system components to mitigate, using reasonable measures, power quality disturbances that adversely affect customers' equipment.

3.) Each EDC shall maintain records of customer power quality concerns and EDC response. These records shall be made available to the Commission Staff upon request with 30 days notice.

## **G. Inspection and Maintenance Program**

1.) Each EDC shall have an inspection and maintenance program designed to maintain delivery facilities performance at an acceptable reliability level. The program shall be based on industry codes, national electric industry practices, manufacturer's recommendations, sound engineering judgment and past experience.

2.) Each EDC shall maintain records of inspection and maintenance activities. These records shall be made available to Commission Staff upon request with 30 days notice.

**H. Delivery Facility Studies**

1.) Each EDC shall perform system load studies to identify and examine potential distribution circuit overloads, distribution substation and distribution substation supply circuit single contingencies and all transmission system single and double contingencies as specified by NERC, MAAC and PJM requirements. Double contingency analysis should include supply service contingencies that may cause overloads or outages on the EDC's system. The EDC shall identify all projects or corrective actions that are planned to mitigate reliability loading issues identified in the study.

2.) Delivery facility planning studies will be performed annually under a 50/50 weather normalized peak load condition with single and/or double contingencies, as specified by NERC, MAAC and PJM planning requirements, to identify required projects or corrective actions. A supplementary sensitivity study shall be performed under a 90/10 weather normalized peak load to identify projects or corrective actions that may be needed at increased 90/10 loading levels. All increased loads above normal 50/50 study parameters shall assume a power factor of .85. All MW and MVAR bus loads in the studies will be adjusted by a uniform percentage to achieve the loading corresponding to the 90/10 forecast. For each study resulting in a thermal overload or an out-of-range voltage level, the study shall be performed again after the implementation of Active Load Management (ALM), system switching or reconfiguration.

3.) Each EDC shall perform the electric delivery facility system planning studies as described herein in the fall of each year (year a) for the upcoming summer period (year b) and for the summer period two years later (year c). The planning studies will include all delivery facility enhancements planned to be in-service during the applicable summer peak and shall identify those delivery facilities that are anticipated to be overloaded during the peak demand period.

**I. Planning and Studies Report**

1.) By March 31 of each year, each EDC shall submit a report to the Commission identifying current reliability objectives, planned actions and projects, programs and load studies designed to maintain the electric service reliability and quality of the delivery facilities.

2.) The report shall include the following information:

a.) Objective targets in support of reliable electric service and descriptions of planned actions to achieve the objectives;

b.) Description and estimated cost of capital projects planned to mitigate loading or contingent conditions;

c.) The EDC's power quality program and any amendments as required in Section F;

d.) The EDC's inspection and maintenance program, any amendments as required in Section and any specific actions aimed at reducing outage causes or Forced Outage Rates;

e.) Delivery facility study reports, as described in Section H., to include at a minimum the information for both year b and year c as specified in Section H, paragraph 3), with specific findings as follows:

i.) For each thermal overload detected by both the 50/50 and 90/10 study, provide the overloaded system element, the normal and emergency ratings of the overloaded element, the percentage loading on the overloaded element and the percent overload on the element (both before and after the implementation of ALM or other corrective action), and a description of the delivery facility enhancement anticipated to eliminate the thermal overload (including the cost of the enhancement); and

ii.) For each out-of-range voltage level detected by both the 50/50 and 90/10 study, provide the system element that experiences the out-of-range voltage, the out-of-range voltage level (both before and after implementation of ALM or other corrective action), a description of the delivery enhancement anticipated to eliminate the out-of-range voltage (including the cost of the enhancement), a listing of the circuits that would experience an outage due to automatic load-shedding as a result of the out-of-range voltage;

f.) Summaries of all recent delivery facility planning studies and network capability studies (including CETO and CETL results) performed for any delivery facilities owned by the utility; and

g.) Summaries of any changes to reliability related requirements, standards and procedures at PJM, MAAC, NERC or the EDC.

**J. Annual Performance Report**

1) By April 30 of each year, each EDC shall submit an annual Performance Report, summarizing the actual electric service reliability results. The report shall include the EDC's average three-year performance results, actual year-end performance measure results and an assessment of the results/effectiveness of the reliability objectives, planned actions and projects, programs, and load studies in achieving an acceptable reliability level.

2) Delivery facilities year-end performance measures, as established in section D., paragraph 1), shall be reported as follows:

a.) SAIFI, and CAIDI measures:

i) Current year and three-year average reflecting Delaware performance, classified by distribution, substation and transmission components; and

ii) Current year for each feeder circuit providing service to Delaware customers, regardless of state origin.

b.) Forced Outage Rate measures:

i.) Current year and three-year average for the EDC's DPL Zone transmission system, classified by circuits and power transformers; and

ii.) Current year for each transmission line and power transformer that provides energy to Delaware customers, regardless of state location.

3) The Performance Report shall identify 2% of distribution feeders or 10 feeders, whichever is more, serving at least one Delaware customer, that are identified by the utility as having the poorest reliability. The EDC shall identify the method used to determine the feeders with poorest reliability and shall indicate any planned corrective actions to improve feeder performance and target dates for completion or explain why no action is required. The EDC shall ensure that feeders, identified as having the poorest reliability, shall not appear in any three consecutive Performance Reports without initiated corrective action.

4) For 2003, 2004 and 2005, the performance report shall include annual and 1999 base line information that provides the Commission with the ability to assess the EDC's efforts to maintain reliable electric service to all customers in the state of Delaware. Such reporting shall include the following items:

a.) Current year and 1999 base year expenditures, labor resource hours, and activity measures for each capital and/or maintenance program designed to support the maintenance of reliable electric service, to include:

i) Transmission and distribution tree trimming;

ii.) Transmission and distribution preventive maintenance;

iii.) Transmission and distribution corrective maintenance;

iv.) Transmission and distribution capital infrastructure improvements; and

v.) Process, practice or material improvements.

b.) Current year OMS and 1999 base year data to include:

i.) Number of outages by outage type;

ii.) Number of outages by outage cause;

iii.) Total number of customers at year end;

iv.) Total number of customers that experienced an outage; and

v.) Total customer minutes of outage time.

c.) Current year and 1999 base year customer satisfaction or other measures the EDC believes are indicative of reliability performance.

d.) Current year and three-year constrained hours of operation within PJM's DPL Zone by cause.

5) The Performance Report shall include a summary of each major event for which data was excluded, and an

assessment of the measurable impact on reported performance measures.

6) In the event that an EDC's reliability performance measure does not meet an acceptable liability level for the calendar year, the Performance Report shall include the following:

a.) For not meeting SAIFI, an analysis of the customer service interruption causes for all delivery facilities that significantly contributed to not meeting the benchmark;

b.) For not meeting CAIDI, an analysis of the duration of service interruptions for all delivery facilities by dispatch, response and repair times that significantly contributed to not meeting the benchmark;

c.) For not meeting Forced Outage Rate, an analysis of significant outages by cause;

d.) A description of any corrective actions that are planned by the EDC and the target dates by which the corrective action shall be completed; and

e.) If no corrective actions are planned, an explanation shall be provided.

7) The Performance Report shall include copies of current procedures identifying methods the EDC uses to ensure the electric supplier delivery of energy to the EDC at locations and in amounts which are adequate to meet each electric supplier's obligation to its customers.

8) The Performance Report shall include certification by an officer of the EDC of the data and analysis and that necessary projects, maintenance programs and other actions are being performed and adequately funded by the Company as addressed in its annual plans.

## **K. Major Event Report**

1) Each EDC shall notify the Commission of major events as soon as practical, but not more than 36 hours after the onset of a major event.

2) The EDC shall, within 15 business days after the end of a major event, submit a written report to the Commission, which shall include the following:

a.) The date and time when the EDC's major event control center opened and closed;

b.) The total number of customers out-of-service over the course of the major event;

c.) The date and time when the last customer affected by a major event was restored;

d.) The total number of trouble locations by facility classification;

e.) The time at which the mutual aid and non-company contractor crews were requested,

arrived for duty and were released, and the mutual aid and non-contractor response(s) to the request(s) for assistance; and

f.) A timeline profile of the number of company line crews, mutual aid crews, non-company contractor line

and tree crews working on restoration activities during the duration of the major event.

#### **L. Prompt Restoration of Outages**

1) EDCs shall begin the restoration of service to an affected service area within two hours of notification by two or more customers of any loss of electric service. In situations where it is not practical to respond within two hours to a reported interruption (safety reasons, inaccessibility, multiple simultaneous interruptions, storms or other system emergencies), the EDC shall respond as soon as the situation permits.

2) Each EDC shall strive to restore service as quickly and as safely as possible at all times; however, the requirement to begin restoration within two hours of notification shall not apply to EDCs during major events.

3) Each EDC shall monitor dispatch, response and repair times for customer outages. In the event that average annual dispatch, response or repair performance times exceed the EDC's expected levels for the calendar year, the EDC shall include the following in its annual performance report.

a). An analysis of the factors which caused the unexpected performance; and

b.) A description of any corrective actions planned by the EDC to meet expected performance levels.

4) Each EDC shall have outage response procedures that place the highest priority on responding to emergency situations for which prompt restoration is essential to public safety. These procedures should include recognition of priority requests that may come from police, fire, rescue, authorized emergency service providers or public facility operators.

#### **M. Penalties and Other Remedies**

1) Private or investor owned utilities, operating in Delaware under the regulations of the Commission, are subject to penalties and other remedial actions for failure to comply with Commission regulations requiring informational reports and performance at an acceptable reliability level.

a.) Pursuant to 26 Del.C., §§ 205(a) and 217, penalties for violations of report submission requirements set out in Sections I., J. and K. of these regulations or penalties for violations of benchmark standards in Section D of these regulations, may be assessed as follows:

i.) For failure to submit complete required reports on the due date set by rule, the EDC may be liable for penalties for each day beyond the due date that the report is not submitted, as provided in the Delaware statute, provided; however, that upon timely written request to the Commission, demonstrating the need for an extension of time, the due date for submitting required reports may be extended by the Commission for good cause shown.

ii.) For failure to have objectives, programs and plans designed to maintain reliable electric service or for the willful misrepresentation of fact and/or intentional inaccuracies in any submitted report or for violation of any performance standard requirement of these regulations, an EDC may be liable for penalties or mandatory corrective actions as allowed by the Delaware statute, with the following limitation. Penalties for violation of any performance standard may be applied only after the Commission has established final regulations or if the Commission determines that the EDC willfully and intentionally took actions that resulted in failure to meet a standard during the interim period.

b.) The Commission shall be responsible for assessing any penalty under this section, consistent with Delaware law. In determining the amount of the penalty, or the amount agreed upon in compromise, the Commission may consider aggravating and mitigating circumstances including: the nature and gravity of the violation; the degree of the EDC's culpability and history of prior violations; and any good faith effort on the part of the EDC in attempting to achieve compliance. Nothing in this section relieves any private or investor owned utility from compliance or penalties, that may be assessed due to non-compliance with any requirement set forth under any other regulation, statute or order.

2) Cooperatives operating in Delaware under the regulations of the Commission are subject to remedial action penalties for failure to comply with Commission regulations requiring informational reports and performance at an acceptable reliability level. Due to the particular ownership structure, cooperatives are exempt from the financial penalties of this section, unless otherwise determined by the Commission or as otherwise stated herein. Nothing in these regulations relieves any cooperative from compliance or penalties, that may be assessed due to non-compliance with any requirement set forth under any other regulation, statute or order.

a.) Remedial action penalties for violations of report submission requirements set out in Sections I., J. and K. of these regulations or for violations of performance standards in Section D of these regulations, may be assessed as follows:

i) For failure to submit required reports on the due date set by rule, the cooperative shall notify their customers of the delinquency, the reason for such delinquency, and the time frame in which the cooperative will comply with all reporting requirements; however, that upon timely written request to the Commission demonstrating the need for an extension of time, the due date for submitting required reports may be extended by the Commission for good cause shown.

ii) For failure to have objectives, programs and plans designed to maintain reliable electric service or for

the willful misrepresentation of fact and/or intentional inaccuracies in any submitted report or for violation of any performance standard requirement of these regulations, a cooperative may be liable for mandatory corrective actions and customer notifications as directed by the Commission.

b.) Cooperatives shall provide all reports by required due dates and shall correct electric service reliability and quality deficiencies expeditiously in order to maintain an acceptable reliability level. The Commission may impose financial penalties for repeated failures to meet regulation requirements, consistent with Delaware statute.

3) Upon failure of any EDC to meet performance benchmark standards, the EDC shall report monthly, or over such other period of time that the Commission shall establish by order, the latest performance indices, until such time as performance meets the acceptable reliability level.

4) Each EDC not meeting performance benchmark standards as required by Section D., shall inform its customers, in writing, of plans to improve electric service reliability and quality in writing by July 1 of the year following any year in which its performance does not meet an acceptable reliability level.

5) Each violation of any reporting rule or performance standard of these regulations shall constitute a single, separate and distinct violation for that particular day. Each day during which a violation continues shall constitute an additional, separate and distinct violation. Provided, however, that a violation of a performance measure shall not be deemed to be a violation per customer, whether affected or otherwise, but shall constitute a single Delaware-wide violation for the day.

6) Penalty assessments are payable as provided by Delaware statute.

#### **N. Outage Management System (OMS)**

1) Each EDC shall implement an OMS as described in this section by January 1, 2003.

2) The OMS, at a minimum, shall consist of an outage assessment software program, integrated with a geographic information system that permits an EDC to effectively manage outage events and restore customer service in a timely manner.

3) The OMS should permit the EDC to:

a.) Group customers who are out of service to the most probable interrupting device that operated;

b.) Associate customers with distribution facilities;

c.) Generate street maps indicating EDC outage locations;

d.) Improve the management of resources during a storm;

e.) Improve the accuracy of identifying the number of customers without electric service;

f.) Improve the ability to estimate expected restoration times;

g.) Accurately identify the number and when customers were restored; and

h.) Effectively support the dispatch of crews and/or service personnel.

#### **O. Reporting Specifications and Implementation**

1) Planning and Studies Reports, Performance Reports and Major Event Reports provided under these regulations are subject to annual review and audit by the Commission. The EDC must maintain sufficient records to permit a review and confirmation of material contained in all required reports.

2) Reports shall be submitted as an original and 4 copies, except that in lieu of paper reporting, information may be submitted electronically to the Secretary, Delaware Public Service Commission, with certification of authenticity by an officer of the corporation.

3) Each EDC may request that information, required under these regulations, be classified as confidential, proprietary and/or privileged material. The EDC must attest that such information is not subject to inspection by the public or other parties without execution of an appropriate proprietary agreement. Each EDC requesting such treatment of information is also obligated to file an additional copy of the information, excluding the confidential or proprietary information. The Commission, in accordance with Rule 11, Rules of Practice and Procedure of the Delaware Public Service Commission, effective May 10, 1999, will treat such information as "confidential, not for public release" upon receipt of a properly filed request. Any dispute over the confidential treatment of information shall be resolved by the Commission, designated Presiding Officer or Hearing Examiner.

4) These regulations are placed in effect as interim regulations effective 2003 through 2005, or until such time as the Commission adopts final regulations.

### **EXHIBIT B**

#### **BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE CONSIDERATION OF RULES, STANDARDS, AND INDICES TO ENSURE RELIABLE ELECTRICAL SERVICE BY ELECTRIC DISTRIBUTION COMPANIES (OPENED SEPTEMBER 26, 2000)	PSC REGULATION DOCKET NO. 50
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**SOLICITATION OF COMMENTS AND NOTICE OF  
PUBLIC HEARING ON PROPOSED "ELECTRIC  
SERVICE RELIABILITY AND QUALITY SERVICE"  
REGULATIONS**

Attention: Regulation Dckt. No. 50  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, DE 19904.

The Public Service Commission ("the Commission") initiated this proceeding to consider the need for, and the scope of, rules and regulations to ensure that Delaware consumers continue to receive reliable electrical service in their homes and businesses.

The Commission initially proposed in PSC Order No. 5704 (April 24, 2001) to adopt particular "Electric Service Reliability and Quality Standards." Those proposed regulations were previously published in 4 **DE Reg.** 1929 (June 1, 2001).

As a result of the comments and evidence received since the publication of those originally proposed regulations, the Commission, in PSC Order No. 6217 (July 22, 2003), decided to now propose for adoption **revised** "Electric Service Reliability and Quality Standards." These revised proposed regulations supersede those proposed earlier in PSC Order No. 5704.

In summary, the revised proposed "Electric Service Reliability and Quality Standards" adopt additional reliability requirements for electric utilities and electric distribution companies subject to the jurisdiction of the Commission based on a uniform methodology for measuring reliability. The revised proposed regulations include requirements for data maintenance, record retention, and service interruption information, and establish interim standards to measure the reliability of the service provided. These revised proposed regulations also set forth requirements for the implementation and scope of outage management systems, prescribe record reporting parameters, and require utilities and electric distribution companies to maintain reliable service to their customers in an efficient, sufficient, and adequate manner.

You may review the proposed revised regulations in the September, 2003 edition of the **Delaware Register of Regulations**. You may also review the proposed regulations at the Commission's Internet website located at "www.state.de.us/delpsc." Copies of the proposed revised regulations can be obtained from the Commission during normal business hours at its Dover office at the address set out below. The fee for such copies is \$0.25 per page.

The Commission has the authority to adopt the proposed regulations under 26 **Del.C.** §§209(a) and 1002(a)(1).

The Commission now solicits from any person or entity written comments, suggestions, and compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at the following address:

Public Service Commission

All such materials must be filed with the Commission on or before October 3, 2003. All persons or entities currently involved in the proceedings do not need to file comments and all previously filed evidence will be considered. Direct notice of further proceedings will only be sent to current participants, persons or entities who now file comments, and non-commenting persons or entities who file a notice of an intent to participate.

The Commission will also hold a public hearing on the proposed regulations beginning 10:00 AM on September 22, 2003. Such hearing will be held at the Commission's office in Dover at the address set forth above.

All materials submitted in this proceeding are available for inspection and copying during normal business hours at the Commission's Dover office. The fee for copying is \$0.25 per page.

If you are disabled and wish to participate in, or review, these proceedings, you should contact the Commission to discuss any auxiliary aids or services you might need. You may contact the Commission in writing, by telephone (including text telephone), by Internet e-mail, or in person. If you have questions about this matter, you can call the Commission by using its toll-free telephone number (in Delaware): 1-800-282-8574. You may also call the Commission at (302) 739-4247 or by Text Telephone at (302) 739-4333. You can also send your inquiries by Internet e-mail addressed to robert.howatt@state.de.us.

**DEPARTMENT OF EDUCATION**

14 DE Admin. Code 255

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §255)**EDUCATION IMPACT ANALYSIS  
PURSUANT TO  
14 DEL. C. Section 122(d)****255 Definitions of Public School and Private School****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education intends to amend regulation 255 Definitions of Public School and Private School to reflect the changes made to the Delaware Code as defined in Title 14 § 2703A, resulting from Senate Bill 103, by adding the definition of a non-public school. The title of the regulation will also be changed to read Definitions of Public School, Private School and Non-public School.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation defines non-public school but does not address student achievement issues.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation defines non-public schools but does not address equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation defines non-public schools but does not address health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation defines non-public schools but does not address students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of 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? The amended regulation is necessary to correctly reflect the intent of the state statute.

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.

**255 Definitions of Public School, and Private School and Non-public School**

1.0 Public School – A public school shall mean a school or Charter School having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators. It also shall include the agencies of states and cities which administer the public funds.

2.0 Private School – A private school shall mean a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised and shall be interpreted further to include an accredited and/or approved college or university.

3.0 Non-public School - A non-public school shall mean a private school as that term is defined in paragraph 2.0 of this regulation or any homeschool defined in 14 Del.C. §2703A.

See 4 DE Reg. 1251 (2/1/01)

**EDUCATION IMPACT ANALYSIS  
PURSUANT TO  
14 DEL. C. Section 122(d)****901 Education of Homeless Children and Youth****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education intends to amend regulation 901 Education of Homeless Children and Youth in order to be consistent with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, of 2001, that ensures educational rights and protections for children and youth experiencing homelessness. The regulation repeats the definition of "Homeless Children and Youths" from the federal statute and includes a process for dispute resolution concerning school selection or enrollment issues as required by the federal statute.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the dispute resolution process for school selection or enrollment issues for Homeless Children and Youth which could be related to student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the dispute resolution process for school selection or enrollment issues for Homeless Children and Youth which could be related to equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the dispute resolution process for school selection or enrollment issues for Homeless Children and Youth which could be related to health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the dispute resolution process for school selection or enrollment issues for Homeless Children and Youth which may help to protect these students' rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level until resolution of the dispute goes to the Secretary of Education.

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 requires that the local school districts and charter schools make every effort possible to resolve the dispute at the local level.

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 dispute remain at the local level until it is appealed to the Secretary of Education for resolution.

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 is 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 federal statute requires the state to have a process for resolving disputes concerning this issue.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be additional transportation costs associated with the amendment to the regulation.

**901 Education of Homeless Children and Youth**

~~Consistent with the provisions of the Stewart B. McKinney Homeless Assistance Act, 42 USC, the Secretary with the consent of the State Board of Education adopts the following regulations on assistance to homeless children and youth:~~

~~1.0 The term "homeless" or "homeless individual" shall include:~~

~~1.1 An individual who lacks a fixed, regular, and adequate nighttime residence; and~~

~~1.2 An individual who has a primary nighttime residence that is:~~

~~1.2.1 A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally disabled);~~

~~1.2.2 An institution that provides a temporary residence for individuals intended to be institutionalized; or~~

~~1.2.3 A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;~~

~~1.2.4 But does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or a State law.~~

~~2.0 A homeless individual shall be eligible for assistance if the individual complies with state or federal income eligibility requirements applicable to assistance to the homeless.~~

~~3.0 All local school districts, in cooperation with each other, shall assure that each child of a homeless individual and each homeless youth have access to a free, appropriate, public education which would be provided to the children of~~



a resident of the State, consistent with school attendance laws.

4.0 After consultation with the parent or guardian of a homeless child, the homeless youth, and/or the applicable social worker, the local school district in which a homeless child or youth resides, as defined in section 1.0 of this policy the new school district, shall determine whether the homeless child or youth shall:

4.1 Be enrolled in the appropriate school in the attendance area of the school district in which the homeless child or youth resides; or

4.2 Be provided a free appropriate public education program with services comparable to services offered to other students in the district, in the shelter or other temporary living accommodation; or

4.3 Continue his/her education in the home school serving the attendance area of residence in the district of origin for the remainder of the school year.

4.3.1 Such a determination shall be made consistent with the homeless child's or youth's best interests, and, where necessary, shall be made in consultation with and with the cooperation of, the homeless child's or youth's district of origin.

5.0 School bus transportation shall be provided consistent with those services offered other students in the State. To that end, school districts shall provide transportation:

5.1 Where it is determined that the homeless child or youth will attend school in the new school district;

5.1.1 Through regularly scheduled school transportation, to the appropriate school serving the attendance area of the new school district in which the homeless child or youth resides.

5.2 Where it is determined that the homeless child or youth will remain in the home school serving the attendance area of residence in the district of origin:

5.2.1 Through regularly scheduled school transportation, from the nearest bus stop to the student's temporary residence, in the attendance area of the district of origin, to the home school.

6.0 School districts shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth. To that end, school districts shall:

6.1 Assist homeless children and youth in meeting the immunization requirements;

6.2 Assist homeless children and youth in matters concerning guardianship;

6.3 Assist homeless children and youth in obtaining birth records as needed; and

6.4 Keep documentation of efforts made by the district in this regard in each student's file.

7.0 School districts shall ensure that the school records of each homeless child or youth shall:

7.1 Be maintained so that such records are available within ten (10) school days to the new school district;

7.2 When there is a request for such records, be transferred in a speedy fashion, employing the use of couriers, if necessary;

7.3 When such records cannot be provided with sufficient speed to ensure continuity of programming, be supplemented by telephonic communication regarding the appropriate placement of and programming for the homeless child or youth.

7.3.1 All shelters and other regularly established temporary living accommodations shall be provided, by the school district in which they are located, signature forms for the release of such information by the district of origin. Couriers should be used to expedite the delivery of such forms to the district of origin.

7.3.2 All such exchanges of records shall be done in a manner which is consistent with the Procedures for the Collection, Maintenance and Disclosure of Student Data.

8.0 Each homeless child shall be provided services comparable to services offered to other students in the school selected according to the provisions of 4.0, including educational services for which the child meets the eligibility criteria, such as compensatory educational programs for the disadvantaged, and educational programs for the disadvantaged, and educational programs for students with disabilities and for students with limited English proficiency; programs in vocational education; programs for the gifted and talented; and school meals programs.

9.0 Dispute resolution shall be through the applicable local boards of education, appealable to the State Board of Education pursuant to 14 Del. C., Section 1058.

10.0 One person shall be designated by each school district to coordinate services to homeless children and youth, and each district shall report the name of that person to the Department of Education, Office of Coordinator of Education of the Homeless, at the beginning of each fiscal year.

### See 1 DE Reg. 963 (1/1/98)

1.0 Purpose: Consistent with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.), the intent of this regulation is to ensure the educational rights and protections for children and youth experiencing homelessness.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**“Department”** means the Delaware Department of Education.

**“Homeless Children and Youths”** as defined by the provisions of the 42 U.S.C. §11434a(2), means

individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. §11302(a)(1)); and includes:

Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

Children and youths who have a primary nighttime residence that is in a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. §11302(a)(2)(C));

Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

Migratory children (as such term is defined in section 6399 of Title 20, the Elementary and Secondary Education Act of 1965) who qualify as homeless because the children are living in circumstances described above.

“LEA Homeless Liaison” means the Local Educational Liaison for Homeless Children and Youths designated under 42 U.S.C. §11432(g)(1)(J)(ii).

“Secretary” means the Secretary of Education.

“State Coordinator” means the Delaware Coordinator for Education of Homeless Children and Youths designated under 42 U.S.C. §11432(d)(3).

“Unaccompanied Youth” as defined by the provisions of 42 U.S.C. §11434a(6) includes a youth not in the company of a parent or guardian.

3.0 Federal Regulations: Local school districts shall comply with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.) and any regulations issued pursuant thereto.

4.0 Procedures for the Resolution of Disputes Concerning the Educational Placement of Homeless Children and Youths

4.1 If a dispute arises over school selection or enrollment, the local school district must immediately enroll the homeless student in either the school of origin (as defined in 42 U.S.C. 11432 (g) (3) (G) ) or the school that non-homeless students who live in the attendance area in which the homeless student is actually living are eligible to attend, whichever is sought by the parent, guardian or homeless youth, pending resolution of the dispute.

4.2 The local school shall provide the parent, guardian or homeless youth with a written notice of the school’s decision regarding school selection or enrollment. The notice shall include:

4.2.1 A written explanation of the school’s decision regarding school selection or enrollment;

4.2.2 Contact information for the LEA Homeless Liaison and State Coordinator, with a brief description of their roles;

4.2.3 A simple, detachable form that parents, guardians, or homeless youth can complete and turn in to the school to initiate the dispute resolution process;

4.2.4 Instructions as to how to dispute the school’s decision at the district level;

4.2.5 Notice of the right to enroll immediately in the school of choice pending resolution of the dispute;

4.2.6 Notice that immediate enrollment includes full participation in all school activities for which the student is eligible;

4.2.7 Notice of the right to appeal to the State if the district-level resolution is not satisfactory; and

4.2.8 Time lines for resolving district and State level appeals.

4.3 District Level Dispute Resolution Process

4.3.1 Local school districts shall develop a dispute resolution process at the district level. The dispute resolution process shall be as informal and accessible as possible, but shall allow for impartial and complete review. Parents, guardians, and homeless youth shall be able to initiate the dispute resolution process directly at the school they choose or the school district or LEA Homeless Liaison’s office.

4.3.2 Within ten (10) calendar days of the initiation of the district level dispute resolution process; the school district shall inform the parties in writing of its determination, along with notice of the right to appeal to the State if the district level resolution is not satisfactory.

4.4 Inter-district Resolution Process

4.4.1 When inter-district issues arise, representatives from all involved school districts, the State Coordinator, or his or her designee, and the parent(s), guardian(s) or unaccompanied youth shall meet within ten (10) calendar days of the initiation of the dispute process to attempt to resolve the dispute.

4.4.2 The State Coordinator’s role is to facilitate the meeting.

4.4.3 If the parties are unable to resolve the inter-district dispute, it shall be referred to the Secretary within ten (10) calendar days of the meeting. Subsection 4.5.4 through 4.5.9 shall govern the review official’s determination. The review official shall consider the entire record of the dispute, including any written statements submitted and shall make a determination based on the child’s or youth’s best interest, as defined in 42 U.S.C. §11432(g)(3).

4.5 State Level Dispute Resolution Process

4.51 The State-level dispute resolution process is available for appeals from district-level decisions and inter-district disputes. Appeals may be filed by parents, guardians, homeless youths or school districts. Appeals filed by a local school shall not be accepted.

4.5.2 To initiate the State-level dispute resolution process, the appellant must file a written notice of appeal with the Secretary no later than ten (10) calendar days after receiving written notification of the district level or inter-district decision. The notice of appeal shall state with specificity the grounds of the appeal, and shall be signed by the appellant. Where the appeal is being initiated by a school district, the superintendent of the district must sign the notice of appeal.

4.5.3 A copy of the notice of appeal shall be delivered by hand or certified mail to all other parties to the proceeding at the time it is sent to the Secretary. A copy of any other paper or document filed with the Secretary or review official shall, at the time of filing, also be provided to all other parties to the proceeding.

4.5.4 Upon receipt of a notice of appeal, the Secretary or his/her designee, shall within five (5) calendar days decide whether to hear the appeal or assign it to an independent and impartial review official and shall so advise the parties.

4.5.5 The local district shall file a certified record of the district or inter-district level dispute proceeding with the Secretary or review official within five (5) calendar days of the date the Secretary notifies the parties that an appeal has been filed. The record shall contain any written decision, any written minutes of the meeting(s) at which the disputed action was taken, all exhibits or documentation presented at the district or inter-district level dispute proceeding, and any other evidence relied on by the District(s) in making its (their) decision.

4.5.6 Appeals are limited to the record. The parties may support their positions in written statements limited to matters in the existing record. In order to be considered, written statements must be filed with the review official no later than twenty (20) calendar days after the appeal is filed.

4.5.7 The review official shall consider the entire record of the dispute, including any written statements submitted in reaching his or her decision. The review official shall overturn the district or inter-district decision only if he or she decides that the district's decision was not supported by substantial evidence or was arbitrary or capacious.

4.5.8 Within thirty (30) calendar days of the receipt of the notice of appeal, the review official shall inform the parties of his or her determination.

4.5.9 The determination of the review official shall be final and is not subject to further appeal.

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

**347 Certification Library/Media Specialist**

**A. Type Of Regulatory Action Requested**

Amendment to Existing Regulation

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

The Professional Standards Board, in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to amend regulation 347 Certification Librarian/Media Specialist. It is necessary to amend this regulation to comply with changes in statute regarding the licensure and certification of educators. The amended regulation is aligned with national standards for library media specialists. The amended regulation will be renumbered to reflect its movement to the Professional Standards Board portion of the Department of Education regulations.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for library media specialists.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all library media specialists employed by school districts meet high standards of performance.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the certification requirements for library media specialists, not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the certification requirements for library media specialists, not students' legal rights.

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

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

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

same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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? 14 Del. C. requires that we promulgate this regulation.

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

### **~~347 Certification Librarian/Media Specialist (Effective July 1, 1993)~~**

~~1.0 The following shall be required for the Standard License:~~

~~1.1 Bachelor's degree from an accredited college and;~~

~~1.2 Professional Education~~

~~1.2.1 15 semester hours of coursework in professional education to include Human Development and Methods of Teaching or;~~

~~1.2.2 A valid Standard Delaware teaching license and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Completion of a Bachelor's degree in an approved (NCATE/NASDTEC) program in School Library Science or;~~

~~1.3.2 Completion of a Master's degree in an approved (NCATE/ NASDTEC/American Library Association) program in School Library Science or;~~

~~1.3.3 A minimum of 27 semester hours in Library/Media Education covering the following areas: Foundations in Library Services/Library Trends, Reference Sources, Literature for Children, Literature for Adolescents, Evaluation, Selection, Acquisition of Resources/ Production of Teacher Resources, Cataloging and Classification, Organization and Administration of Library/Media Programs and Services, Technology in the Library (including microcomputer word processing, and on-line/CD-ROM~~

~~technology), Instructional Design/Curriculum Development for the School Library and;~~

~~1.3.3.1 Completion of a Practicum of 12 or more semester hours in a School Library (with experience at both the elementary and secondary levels) or;~~

~~1.3.3.2 One year of successful, full-time experience as a School Librarian/Media Specialist, and 6 additional semester hours in Library Science from the areas specified in 1.3.3.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The limited Standard license may be issued for a period of up to three years at the request of a Delaware public school district to a person who meets the requirements listed below, and who is employed as a School Librarian/Media Specialist to allow for the completion of the requirements for the Standard License as specified in 1.0. The Limited Standard License can be extended for 3 years (at the request of a school district) upon completion and verification of 12 additional semester hours of the coursework specified above in 1.3.3.~~

~~2.1.1 Requirements of 1.1 and 1.2 and;~~

~~2.1.2 A minimum of 3 years of successful, full-time work experience at the level (elementary, middle, secondary) of assignment and-~~

~~2.1.3 A minimum of 6 semester hours in Library Science selected from 1.3.3.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

### **1547 Standard Certificate – Library/Media Specialist**

1.0 Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. §1220 (a), for Library/Media Specialist.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Department” means the Delaware Department of Education.

“License” means a credential which authorizes the holder to engage in the practice for which the license is used.

“Standard certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del. C. §1220 (a), the Department shall issue a standard certificate as a Library/Media Specialist to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree in any content area from a regionally accredited college/university; and,

3.2 Completion of a Master's degree from a regionally accredited college/university in an American Library Association (ALA) approved program in School Library/Media; or,

3.3 Master's degree from a regionally accredited college/university in any other content area, including a general Media Library Specialist (MLS) degree, and completion of a program in School Library/Media approved by the Department pursuant to 14 DE Admin. Code 399 which meets ALA Standards.

## Educational Impact Analysis Pursuant To 14 Del. C. Section 122 (D)

### 380 Certification School Nurse

#### A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

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

The Professional Standards Board, in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to amend regulation 380 Certification School Nurse. It is necessary to amend this regulation to comply with changes in statute regarding the licensure and certification of educators. The amended regulation will be renumbered to reflect its movement to the Professional Standards Board portion of the Department of Education regulations.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for school nurses.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all school nurses employed by school districts meet high standards of performance.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the certification requirements for school nurses, not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the certification requirements for school nurses, not students' legal rights.

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

necessary authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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? 14 Del. C. requires that we promulgate this regulation.

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

### ~~380 Certification School Nurse (Effective July 1, 1993)~~

~~1.0 The following shall be the requirements for the Standard License~~

~~1.1 Bachelor's degree in Education, Nursing, Health Education, Allied Health, Psychology, Counseling or School Nursing from an accredited college/university; and,~~

~~1.2 Registered Nurse, State of Delaware (true copy of current license required) and,~~

~~1.3 Three years clinical nursing experience and,~~

~~1.4 Specialized professional preparation:~~

~~1.4.1 A one semester college/university level course in each of the following areas: Human Behavior and Development, Exceptional Children and Sociology.~~

~~1.4.2 One course in each area below (university/college level, or Department of Education approved in-service courses for nurses): Community of Public Health, Counseling and Guidance, School Nursing, Physical Assessment, Health Education, Testing/Screening of the School Age Child.~~

**2.0 Maintenance of License (Renewal)**

2.1 During the 5-year life of the Standard License, 75 clock hours (5 semester hours) of continuing education shall be required, as specified below:

2.1.1 All courses must relate to the field of school nursing.

2.1.2 Six clock hours of CPR training is required within the 75 clock hour requirement.

2.1.3 If content is appropriate, 5 semester hours (5 SH x 15 clock hours/SH = 75 clock hours) of university or college credit, or 3 semester hours (45 clock hours) and 30 clock hours of in-service may be used to meet the 75 clock hours;

2.1.4 All in-service courses taken shall be DOE approved courses for Nurses;

2.1.5 Other types of continuing education courses require prior approval from the Office of Certification;

2.1.6 Evidence of the 75 clock hours of coursework must be maintained by the individual and submitted to the Office of Certification at the expiration of the Standard License. Failure to meet the appropriate clock hour requirement will result in the issuance of a Limited Standard License.

3.0 The following shall be required for the Limited Standard License

3.1 The limited Standard License may be issued for a period of three years at the request of a Delaware public school district by the local district superintendent to a person who meets the requirements listed below, and who is employed as a school nurse to allow for the completion of the requirements for the Standard License as in 1.0:

3.1.1 Registered Nurse, State of Delaware (true copy of current license) and;

3.1.2 Three years clinical nursing experience and;

3.1.3 Specific agreement to complete the requirements specified in 1.1 and 1.4 within the three-year life of this License.

4.0 Licenses that may be issued for this position include Standard and Limited Standard.

**1580 Standard Certificate -- School Nurse**

1.0 Content: This regulation shall apply to the requirements for a standard certificate for school nurses, pursuant to 14 **Del. C.**, §1220 (a).

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**“Department”** means the Delaware Department of Education.

**“Educator”** means a public school employee who holds a license issued under the provisions of 14 **Del. C.**, Chapter 12, and includes teachers and administrators, and as

otherwise defined by the Standards Board and the State Board pursuant to 14 **Del. C.**, § 1203, but does not include substitute teachers. For the purposes of this regulation, school nurses are considered educators.

**“License”** means a credential which authorizes the holder to engage in the practice for which the license is used.

**“Standard certificate”** means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

**“Standards Board”** means the Professional Standards Board established pursuant to 14 **Del. C.**, § 1201.

**“State Board”** means the State Board of Education of the State pursuant to 14 **Del. C.**, § 104.

3.0 In accordance with 14 **Del. C.**, §1220 (a), the Department shall issue a standard certificate as a school nurse to a nurse who holds a valid Delaware initial, continuing, or advanced license; or a limited standard, standard or professional status certificate issued by the Department prior to August 31, 2003 and who meets the following requirements:

3.1 Bachelor's degree in Nursing or School Nursing from an accredited college/university; and,

3.2 Current RN license, recognized by the DE Board of Nursing; and,

3.3 A minimum of three years clinical nursing experience; and

3.4 Valid and current certification in CPR.

**4.0 Induction Requirements**

4.1 Pursuant to 14 **DE Admin. Code** 1510, 4.2 and 1511., 3.0, during the term of the initial license as an educator, a school nurse must complete 90 clock hours of training consisting of school nursing, health education, testing/screening, counseling and guidance, and introduction to exceptional children. Failure to meet this requirement will result in the denial of a continuing license. (See **DE Admin. Code** 1511, 3.0).

**5.0 Revocation**

5.1 A standard certificate; or a limited standard, standard or professional status certificate as a school nurse issued prior to August 31, 2003 may be revoked in accordance with 14 **DE Admin. Code** 1514 for:

5.1.1 Making a materially false or misleading statement in a certificate application; or

5.1.2 Revocation of a license issued under 14 **Del. C.**, Chapter 12; or

5.1.3 Failure to maintain a current license as a registered nurse in the State of Delaware; or

5.1.4 Failure to maintain valid and current certification in CPR.

## Educational Impact Analysis Pursuant To 14 Del. C. Section 122(D)

### 1510 Issuance Of Initial License

#### A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend regulation 1510 Issuance of Initial License. This regulation applies to the issuance of an initial license as established by 14 Del. C. §1210. The amendment to this regulation is necessary to clarify the provision of H.B. 68, which allows 91 days of long term teaching experience at one assignment to be used to fulfill the requirement for student teaching.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns educator licensure, not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps ensure that all educators demonstrate high standards for the issuance of an initial license.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator licensure, not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator licensure, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

8. Will the 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 new regulation? 14 Del. C. requires that we promulgate this regulation.

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

#### 1510 Issuance of Initial License

1.0 Content: This regulation shall apply to the issuance of an initial license for educators, pursuant to 14 Del. C. § 1210.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**“Alternative Routes to Licensure and Certification”** means programs approved by the Department of Education to certify or license candidates who hold bachelors degrees with appropriate to the instructional field they desire to teach, but who did not complete a regionally accredited educator preparation program.

**“Composite score”** means a total of an applicant's scores on all three (3) subtests of Praxis I which is equal to, or greater than, the sum of the passing scores on the three subtests.

**“Date of hire”** means the effective date of employment by a school district, charter school, or other employing authority.

**“Department”** means the Delaware Department of Education.

**“Educator”** means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del. C. § 1203, but does not include substitute teachers.

**“Examination of general knowledge”** means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

**“Exigent circumstances”** means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, expiration of a license



during the school year, 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.

**"Jurisdiction"** means a state, territory or country.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Mentoring"** means activities prescribed by the Department and/or other employing authority in which a holder of an initial license must engage during the three-year term of the initial license.

**"Novice applicant"** means an applicant who has not previously held an initial license in Delaware.

**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

**"Standards Board"** means the Professional Standards Board established pursuant to **14 Del. C. § 1201**.

**"State Board"** means the State Board of Education of the State pursuant to **14 Del. C. § 104**.

**"Student teaching program"** means a placement within a National Association of State Directors of Teacher Education and Certification or National Council for the Accreditation of Teacher Education approved program offered by a college or university, or such alternatives as deemed appropriate to the program, such as supervised internships or other field based experience recognized as a required component of the regionally accredited educator preparation program. For the purposes of this regulation, student teaching program also means one year of teaching experience within the last year consisting of a minimum of 91 days of long term teaching experience at one assignment during which regular evaluations were conducted, evidencing at least satisfactory performance.

3.0 In accordance with **14 Del. C. § 1210**, the Department shall issue an initial license to a novice applicant who submits evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) completion of a student teaching program, or one year of teaching experience consisting of a minimum of 91 days of long term teaching experience at one assignment in the area for which a certificate is sought, or enrollment in an Alternative Routes to Licensure and Certification program, and (3) a passing score on an examination of general knowledge, such as PRAXIS I, or such other alternative as may be established by the Standards Board, with the approval of the State Board. For the purposes of this regulation, a bachelor's degree for a trades and industry teacher shall be two (2) years of college or technical training, plus six (6) years of trade experience. An initial license shall also be issued to an applicant currently licensed as an educator in another jurisdiction with less than three years of

teaching experience or to an applicant who previously held a valid Delaware standard or professional status certificate who has been out of the profession for more than three years. In addition to an initial license, applicants must also apply for a standard certificate in the particular area, subject, or category in which they wish to be employed, and must verify that they possess the prescribed knowledge, skill and/or education to practice in that area, subject, or category. (See **14 DE Admin. Code 1516**).

3.1 An applicant for an initial license shall submit the application form, official transcripts, and official scores on an examination of general knowledge to the Department.

3.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

3.2 Examination of General Knowledge Requirements

3.2.1 An applicant seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: the PRAXIS I Tests or such alternatives as set forth in 3.2.4 below.

3.2.2 Scores of Examinations of General Knowledge.

3.2.2.1 The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.

3.2.2.1.1 Pre-professional Skills Test Taken between 7/1/83 and 10/22/93: reading - 175, mathematics - 175, writing - 172.

3.2.2.1.2 PRAXIS I - Paper and Pencil Tests (Tests taken on 10/23/93 and thereafter) and computerized pre-professional skills tests taken 1/1/02 and thereafter: reading - 175, mathematics - 174, writing - 173.

3.2.2.1.3 PRAXIS I - Computer Based Tests (Tests taken on 10/23/93 and thereafter): reading - 322, mathematics - 319, writing - 319.

3.2.3 Individuals holding Delaware certificates issued prior to July 1, 1983 are exempt from the testing requirements.

3.2.4 Acceptable alternatives to the PRAXIS I test scores include:

3.2.4.1 Scores from the California Test of Basic Skills (CTBS) shall be accepted in lieu of PPST/ PRAXIS I scores if the test was taken as a condition of meeting certification or licensure requirements in that state and the scores total 123, with a minimum of at least 37 in each category.

3.2.4.2 Scholastic Aptitude Tests (SAT) taken after 4/1/95 and presented for exemption must meet the scores set forth below due to a re-centering of the SAT.

3.2.4.2.1 A minimum score of 520 on the SAT Mathematics taken prior to 4/1/95, and a minimum score of 540 on the SAT Mathematics test taken



thereafter will be accepted as fulfillment of the PRAXIS I Mathematics requirement.

3.2.4.2.2 A minimum score of 480 on the SAT Verbal test taken prior to 4/1/95, and a minimum score of 560 on the SAT verbal test taken thereafter will be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3 Graduate Record Examination (GRE) scores presented for exemption must meet the scores set forth below.

3.2.4.3.1 A minimum score of 490 on the Graduate Record Examination (GRE) Verbal test will be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3.2 A minimum score of 540 on the Graduate Record Examination (GRE) Quantitative test will be accepted as fulfillment of the PRAXIS I mathematics requirement.

3.2.4.4 National Teacher Examination (NTE) Core Battery Communications Skills with a minimum score of 670 will be accepted as fulfillment of the PRAXIS I writing requirement.

3.2.5 Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same timeline as that required for PRAXIS I and scores must pre-date the employment date.

3.2.6 Timeline for Examination of General Knowledge.

3.2.6.1 An applicant for an initial license must pass PRAXIS I or an approved alternative within the period of time from the date of hire to the end of the next, consecutive fiscal year. If proof of passage of Praxis I is not provided by the end of the next consecutive fiscal year, the initial license shall be suspended. Notwithstanding the foregoing, the superintendent of the employing school district or charter school or other employing authority may submit to the Secretary of Education a written request for a one-year extension. The request must document the effectiveness of the applicant.

3.2.6.1.1 An applicant for an initial license who does not achieve a passing score on PRAXIS I, but whose score on PRAXIS I is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage. Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content areas of mathematics or English/language arts must meet the passing score in that content area.

3.2.6.2 An applicant in a vocational trade and industry area must pass PRAXIS I or an approved alternative within six (6) years of the date of employment or before the expiration of the initial license, whichever is later.

3.2.7 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

3.2.7.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.

3.2.8 Submission of Scores of Examination of General Knowledge.

3.2.8.1 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the Department.

3.2.8.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores, or scores of acceptable alternatives, sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.

3.2.8.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.

4.0 An initial license is valid for three (3) years, unless revoked, and may not be renewed. Notwithstanding the foregoing, an initial license issued to an applicant in a vocational trade and industry area is valid for up to six (6) years to provide time for completion of specified college level course work required for certification.

4.1 An initial license issued to an applicant who is not currently employed by a school district, charter school, or other employing authority shall be inactive until such time as an applicant is employed by a public school district or charter school. Once employed, the initial license shall be in effect for three (3) years from the date of hire until the last day of the month of issuance three (3) years later, except in the case of the vocational and trade industry areas which shall expire on the last day of the month of issuance six (6) years later.

4.2 During the term of the initial license, license holders are required to participate in mentoring and other prescribed professional development activities offered by the Department and by the school district or charter school or other employing authority in which they are employed.

5.0 Applicants with Foreign Credentials.

5.1 Applicants graduating from foreign institutions shall provide an analysis of the degree equivalency, along with all other required application materials, which shall be reviewed by the Department.

6.0 The Department may extend an initial license for a period not to exceed one (1) year, exigent circumstances warranting the necessity of such extension.

6.1 A license holder whose license expires during the school year may have the initial license extended until the last day of the fiscal year upon a request from the district

superintendent, charter school administrator, or other employing authority. This extension shall be considered an exigent circumstances and shall not exceed one (1) year in length.

7.0 An educator may take a leave of absence of up to three (3) years with no effect upon the validity or expiration of the initial license.

8.0 An applicant shall disclose his or her criminal conviction history upon application for an initial license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an initial license as specified in **14 Del. Code, § 1219**.

9.0 This regulation shall apply to all requests for issuance of an initial license, except as specifically addressed herein.

9.1 Educators whose applications for certification in Delaware were received prior to August 31, 2003, and whose applications and credentials have been reviewed by the Department and resulted in the issuance of an evaluation or prescription letter shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations as adopted for certification effective July 1, 1993.

9.2 Educators employed on a Limited Standard Certificate or a Temporary Certificate issued prior to August 31, 2003 shall continue on that certificate until the requirements specified are met or the certificate expires, whichever comes first. In no case shall a Limited Standard or Temporary Certificate be valid after July 1, 2008.

10.0 The Secretary of Education may, at the request of the superintendent of a local school district or charter school administrator or other employing authority, review licensure credentials on an individual basis and grant a license to an applicant who otherwise does not meet the requirements for initial license, but whose effectiveness is documented by the local school district, charter school, or other employing authority.

standard, standard, or professional status certificates issued prior to August 31, 2003 who have not yet been issued continuing or advanced licenses under the revised licensure and certification regulations.

### **C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the revocation of educators' licenses and certificates, not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the revocation of educators' licenses and certificates, not student achievement.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the revocation of licenses and certificates of educators which helps to protect students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the revocation of licenses and certificates of educators, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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.

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

### **1514 Revocation Of Licenses**

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

Amendment to Existing Regulation

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

The Professional Standards Board, in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to amend regulation 1514 Revocation of Licenses. It is necessary to amend this regulation to include educators who hold limited

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 Del. C. requires that we promulgate this regulation.

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

### 1514 Revocation of Licenses

1.0 Content: This regulation shall apply to the revocation of an initial license, continuing license and/or advanced license; or a limited standard, standard or professional status certificate issued prior to August 31, 2003 for educators, pursuant to **14 Del.C.** § 1218.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**“Advanced license”** means a license issued as part of the three-tiered licensure system set forth in **14 Del. C.** §1213 and 1214.

**“Continuing license”** means a license issued as part of the three-tiered license system set forth in **14 Del.C.** §1211 and 1212.

**“Department”** means the Delaware Department of Education.

**“Dismissal”** means (1) dismissal by a school board or board of directors where the license or certificate holder is employed by a public school district or a charter school for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty; or (2) the license or certificate holder’s voluntary resignation of employment in the face of disciplinary action for immorality; or (3) the license or certificate holder’s conviction of a crime which is evidence of immorality.

**“Educator”** means a public school employee who holds a license issued under the provisions of **14 Del.C.** Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to **14 Del.C.** §1203, but does not include substitute teachers.

**“Immorality”** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness or otherwise.

**“Initial license”** means a license issued as part of the three-tiered licensure system set forth in **14 Del.C.** §1210.

**“License holder”** or **“licensee”** means any individual who holds an initial license, continuing license and/or advanced license, and until a continuing license is issued, a limited standard, standard, or professional status certificate.

**“Secretary”** means the Secretary of the Delaware Department of Education.

**“Standards Board”** means the Professional Standards Board established pursuant to **14 Del.C.** §1205.

**“State”** means the State of Delaware.

3.0 An initial, continuing or advanced license; or a limited standard, standard, or professional status certificate issued prior to August 31, 2003 may be revoked upon the dismissal of the license holder for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty, and must be revoked upon a finding that the license or certificate holder made a materially false or misleading statement in his or her license or certificate application.

3.1 Revocation Requested by a School District or Charter School.

3.1.1 When any license or certificate holder is dismissed by a school board, ~~or~~ board of directors, or other employing authority for immorality, the board making such a determination pursuant to **14 Del.C.** shall, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual’s license.

3.1.2 When any license or certificate holder is dismissed by a school board or board of directors or other employing authority for misconduct in office, incompetence, willful neglect of duty or disloyalty, the board making such a determination pursuant to **14 Del.C.** may, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual’s license.

3.1.3 When a license or certificate holder employed by a school board or board of directors or other employing authority voluntarily resigns in the face of disciplinary action for immorality and an investigation has been initiated by the school board or board of directors, or other employing authority, the board shall, upon accepting the resignation, give written notice to the Secretary.

3.1.4 Upon receipt of written notification from the school board or board of directors or other employing authority, the Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board’s Hearing Procedures and Rules.

3.1.5 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

3.2 Revocation by the Secretary of Education

3.2.1 The Secretary may initiate proceedings to revoke a license or certificate holder’s license or certificate when she/he has good reason to believe that any of the following circumstances exist:

3.2.1.1 The license or certificate holder has been convicted of a crime which is evidence of immorality;

3.2.1.2 The license or certificate holder who is not employed by a public school district or charter school or other employing authority has voluntarily resigned his/her employment in the face of an open investigation for immorality; or

3.2.1.3 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty or falsification of credentials.

3.2.2 The Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefor. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

3.2.3 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license or certificate.

#### 4.0 Duty of License or Certificate Holder to Report.

4.1 Notwithstanding any other provisions stated herein, a license or certificate holder shall send written notification to the Secretary within thirty (30) days of the happening of any of the following events:

4.1.1 The license or certificate holder is dismissed by a school board, board of directors, or other employing authority for immorality;

4.1.2 The license or certificate holder voluntarily resigns employment in the face of disciplinary action for immorality and/or an open investigation for immorality;

4.1.3 The license or certificate holder is convicted of a crime which is evidence of immorality; or

4.1.4 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty, disloyalty or falsification of credentials.

4.2 The failure of the license or certificate holder to report any of the above events to the Secretary of Education shall be grounds for revoking a license or certificate.

5.0 When a license or certificate is revoked, all certificates held by the license or certificate holder shall be revoked. Educators are entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

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

### 1516 STANDARD CERTIFICATE

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 1516 Standard Certificate from the *Regulations of the Department of Education*. The regulation concerns the requirements for certification of educational personnel. It is necessary to amend this regulation due to changes in statute.

Changes in statute in 2000 and again in 2003 necessitated major changes in the licensure and certification system for educators. All educators must have an initial, continuing, or advanced license, as well as a standard certificate, which delineates the area in which an educator may practice. A standard certificate is issued to an educator who holds a license and who has acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students. Educators who have graduated from an educator preparation program offered by a Delaware higher education institution approved by the Department, who have achieved a passing score on a PRAXIS II examination, who have obtained National Board for Professional Teaching Standards certification, or who hold a current and valid certificate from another state in the area in which the standard certificate is sought are granted a standard certificate.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

8. Will the 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 new regulation? 14 Del. C. requires that we promulgate this regulation.

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

## 1516 Standard Certificate

1.0 Content: This regulation shall apply to the issuance of a standard certificate, pursuant to 14 Del. C. § 1220 (a).

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**"Certified"** means holding a certificate in a specific content area at designated grade levels.

**"Certification"** means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

**"Department"** means the Delaware Department of Education.

**"Educator"** means a public school employee who holds a license issued under the provisions of 14 Del.C., Chapter 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del.C. §1203, but does not include substitute teachers.

**"Examination of content knowledge"** means a standardized test which measures knowledge in a specific content area.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

**"Standards Board"** means the Professional Standards Board established pursuant to 14 Del.C. §1201.

**"State Board"** means the State Board of Education of the State pursuant to 14 Del.C. §104.

~~3.0 The Department shall issue a standard certificate to an educator who holds a valid Delaware initial, continuing, or advanced license or limited standard, standard, or professional status certificate who has acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students, or has graduated from a Delaware approved program, or holds a valid and current certificate in the area requested from another state. Educators may hold certificates in more than one area.~~

~~3.1 An educator may document the acquisition of the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:~~

~~3.1.1 Submitting evidence of having graduated from a Delaware approved educator preparation program; or~~

~~3.1.2 Holding a valid and current certificate from another state; or~~

~~3.1.3 Achieving a passing score on an examination of content knowledge, such as PRAXIS II. The section is subject to the establishment of passing scores for PRAXIS II examinations by the Department, and their approval by the Professional Standards Board, with concurrence from the State Board of Education; or~~

~~3.1.3.1 National Board for Professional Teaching Standards in the area, subject, or category in which the standard certificate is to be issued will be accepted in lieu of a passing score on PRAXIS II.~~

~~3.1.3.2 In areas, subjects or categories where an examination of content knowledge is neither available nor applicable, the applicant must meet the requirements set forth in the relevant Department regulation governing the issuance of a standard certificate in the area for which a standard certificate is sought.~~

3.0 The Department shall issue a standard certificate to an educator who holds a valid Delaware initial, continuing or advanced license; or limited standard, standard, or professional status certificate issued prior to August 31, 2003, who has:

3.1 Acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a standard certificate is requested; or

3.1.2 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a standard certificate in the area for which a standard certificate is sought; or

3.2 Graduating from an educator preparation program offered by a Delaware higher education institution approved by the Department pursuant to 14 DE Admin. Code 399, with a major in the area of the standard certificate requested; or

3.3 Achieving a passing score on a Praxis II examination in the area requested. This section is subject to the establishment of passing scores for Praxis II examinations by the Department and their approval by the Standards Board, with concurrence from the State Board; or

3.4 Holding a valid and current certificate from another state in the area for which a standard certificate is sought.

3.4.1 A "valid and current certificate from another state" means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.

~~4.0 An applicant for a standard certificate shall submit evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) official transcripts and, if applicable, official scores on the PRAXIS II examination or a notarized copy of the National Board for Professional Teaching Standards Certificate. If applied for simultaneously with application for an initial license, the applicant shall provide all required documentation for that application in addition to the documentation cited above.~~

4.0 Educators may hold certificates in more than one area.

~~4.0~~ 5.0 An applicant for a standard certificate shall submit evidence of (1) ~~receipt of~~ a bachelors degree from a regionally accredited 4-year college or university; (2) official transcripts and, if applicable, official scores on the Praxis II examination, or evidence of passage a notarized copy of the National Board for Professional Teaching Standards Certificate, or an official copy of the out-of-state license or certification, if applicable. If applied for simultaneously with application for an initial license, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

~~5.0~~ 6.0 If an applicant holds a valid initial, continuing, or advanced Delaware license; or a limited standard, standard or professional status certificate issued prior to August 31, 2003 and is requesting additional standard certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill and/or education required for the additional standard certificate requested is required.

~~6.0~~ 7.0 This regulation shall apply to all requests for issuance of a standard certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current professional status certificate or standard certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License. The Department shall also recognize a limited standard certificate or temporary certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the evaluation letter received with the limited standard or temporary certificate. Requirements must be completed by the expiration date of the limited standard or temporary certificate, but in no case later than December 31, 2009.

~~7.0~~ 8.0 A standard certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's initial, continuing, or advanced license or limited standard, standard, or professional status certificate is revoked in accordance with 14 **DE Admin. Code** 1514. An educator is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

8.0 9.0 The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a standard certificate on an individual basis and grant a standard certificate to an applicant who otherwise does not meet the requirements for a standard certificate, but whose

effectiveness is documented by the local school district or charter school administrator or other employing authority.

## DEPARTMENT OF FINANCE

### OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code,  
Sections 4805(a) & 10115 (29 Del.C. §§4805(a) &  
10115)

The Lottery issues this proposed rule amendment pursuant to 29 Del. C. §4805(a) and 29 Del. C. §10115. The Lottery will accept written comments from September 1, 2003 through September 30, 2003. The Lottery will hold a public hearing on the proposed rule amendment on October 2, 2003 at 9:00 a.m. in the second floor conference room at the Delaware Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments should be submitted to Brian Peters, Delaware Lottery Office, at the same above-listed address. The Lottery proposes to amend Rule (30)(6a) pertaining to permitted exemptions to clarify that retailers or license applicants may apply for an exemption to the standards of accessibility in the rule.

### 30.0 Non-Discrimination on the Basis of Disability in Delaware Lottery Programs

#### (1) Definitions

a) **“Accessible”** means complying with the technical requirements found in the ADA Accessibility Guidelines (ADAAG).

b) **“Accessible Route”** means a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

c) **“ADA”** means the Americans with Disabilities Act (42 United States Code. §§12101-12213 and 47 United States Code §225 and §611).

d) **“Director”** means the Director of the State Lottery Office.

e) **“Entrance”** means any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

f) **“Facility”** means all or any portion of buildings, structures, site improvements, complexes,

equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

g) **“Lottery Program”** means on-line and instant games offered to the public through retailer licensees.

h) **“Lottery”** or **“State Lottery Office”** means the lottery established by the Delaware State Lottery Law, Chapter 348, Volume 59, of the Laws of Delaware.

i) **“Lottery Retailer”** or **“Retailer”** means a business entity housed in a specific retail facility that is under license with the Delaware Lottery to provide lottery related services.

j) **“Inspection Report”** means a completed survey of the retailer or applicant facility that identifies barriers to program accessibility, if any and suggest possible solutions.

k) **“Service Site”** means an area within a lottery retailer facility where a customer can purchase a lottery related product. This is usually the cashier’s station. qualified historic building or facility that is listed in or is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under State or Local law.

l) **“Technically Infeasible”** means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

#### (2) Purpose

a) The Americans with Disabilities Act (P.L. 101-336, U.S.C. §§ 12131-12134), known as the ADA, prohibits discrimination on the basis of disability in the delivery of programs offered by entities of state or local government. The purpose of this regulation is to ensure that the Delaware Lottery is in compliance with the ADA by ensuring that people with disabilities have access to Delaware Lottery programs.

b) In defining the scope or extent of any duty imposed by these regulations including compliance with the standard of accessibility defined in paragraph 3(b), higher or more comprehensive obligations established by otherwise applicable federal, state or local enactment may be considered.

#### (3) General Requirements

a) Prohibition of discrimination. No lottery retailer shall discriminate against any individual on the basis of a disability in the full and equal enjoyment of lottery related goods, services, facilities, privileges, advantages, or accommodations of any lottery licensed facility.



b) Standard of accessibility. Each Retailer is required to meet a standard of accessibility that enables people with disabilities, including those who use wheelchairs, to enter the lottery licensed facility and participate in the lottery program. An accessible route must be provided comprised of the following accessible elements:

- 1) Parking if parking is provided to the general public;
- 2) Exterior route connecting parking (or a public way if no parking is provided) to an accessible entrance;
- 3) Entrance;
- 4) Interior Route connecting the entrance to a service site.

c) Each element shall meet the design standards set forth in the ADA Accessibility Guidelines (ADAAG) published in the Federal Register on July 26, 1991.

(4) New License Applicants

a) License applicants. The State Lottery Office shall inspect the site of applicants for compliance with this regulation prior to granting a license. The State Lottery Office will not grant a license to an applicant who is not in compliance with this regulation.

b) Inspection reports. The State Lottery Office, prior to granting a license, shall provide lottery applicants with an Inspection Report that shall identify barrier removal actions, if any, necessary to provide program accessibility. The identified actions must be completed prior to the granting of a license.

(5) Current Retailers

a) The State Lottery Office shall inspect the site of each lottery retailer for compliance with this regulation.

b) Inspection reports. The State Lottery Office shall provide to all current retailers an Inspection Report that shall identify barrier removal actions necessary to provide program accessibility. The identified actions must be completed within 90 days of receipt of the Inspection Report.

c) Extensions. The Director may grant an extension of up to 90 days to allow a current retailer to complete barrier removal actions identified in the Inspection Report.

(i) Any request for an extension must be in writing, and shall include specific reasons for an extension and supporting documentation.

(ii) The Director shall grant an extension only upon showing of good cause.

(6) Permitted exemptions

a) The following exemptions to the requirements of this rule may be granted by the Director. The Director shall review the circumstances and supporting documentation provided by the retailer or applicant to determine if the ~~retailer's~~ request for an exemption should be granted. The Director shall determine the type and scope of documentation to be required for each exemption

classification. All decisions made by the Director shall be final; any retailer whose request for an exemption is denied by the Director shall be required to satisfy the requirements of this rule as a condition for maintaining its eligibility for a Lottery retailer contract.

b) Historic properties. To the extent a historic building is exempt under federal law, and if barrier removal would threaten or destroy the historic significance of the structure, this rule shall not apply to a qualified historic building or facility that is listed in or is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under State or Local law.

c) Legal impediment to barrier removal. Any law, act, ordinance, state regulation, ruling or decision which prohibits the lottery retailer from removing a structural impediment or from making a required improvement to the facility may be the basis for an exemption to this rule. A lottery retailer requesting an exemption for a legal impediment will not be required to formally seek a zoning variance to establish such impediment, but will be required to document that they have applied for and have been refused whatever permit(s) are necessary to remove the identified barrier(s).

d) Landlord refusal. An exemption may be granted based on the refusal of a landlord to grant permission to a Lottery retailer to make improvements required by the Lottery under this rule or based on the refusal of a landlord to pay for improvements required by the Lottery under this rule. The exemption shall only apply to the retailer's current term, and does not include any possible renewal periods under the lease. To request such an exemption, the retailer must submit documentation to the Director that the retailer requested the Landlord's permission and financial participation to make the required structural improvements, that such request was denied by the landlord, and the reasons for the denial. In making a decision on the exemption request, the Director shall take into consideration, but not be limited to, the sufficiency of the reasons provided by the landlord for denying the retailer's request.

e) Undue financial hardship. A limited exemption may be granted if a retailer can demonstrate that the cost of removing a structural barrier or of making the required structural modification(s) to the retailer's facility is an undue financial hardship in that the cost of making such a change(s) exceeds 25% of the retailer's compensation from the Lottery for the prior calendar year (An annualized sales figure based upon the retailer's most current 13-week sales period shall be used for those retailer locations with less than a full year's history of sales.) Under the terms of this limited exemption, a retailer would be required to annually make those improvements and modifications that can be financed within an amount that is approximately equal to 25% of the total compensation earned from the Lottery in the prior calendar



year. This requirement would continue on a year-to-year basis until all the improvements and modifications required by this rule have been completed. A retailer shall provide all supporting documentation requested by the Director to substantiate the, cost estimates of making the required improvements to the retailer's location.

f) Technical Infeasibility. A permanent exemption may be granted if a retailer can demonstrate that the removal of architectural barriers identified in the inspection report is not possible due to technical infeasibility. If such a claim is made, the Lottery may have the barrier removal action evaluated by a person knowledgeable in accessibility codes and construction to determine the merits of the claim.

g) Alternative methods. Where an exemption is granted in accordance with the provisions of this subchapter, the lottery retailer shall make the lottery related goods and services available through alternative methods. Examples of alternative methods include, but are not limited to:

- 1) Providing curb service;
- 2) Directing by signage to the nearest accessible lottery retailer.

(7) Complaints Relating to Non-Accessibility

a) An aggrieved party may file an accessibility complaint with the Lottery Director or designee for review. Complaints must be in writing and, where possible, submitted on an ADA complaint form. As soon as practical, but not later than 30 days after the filing of a complaint, each complaint will be investigated. After the completion of the investigation, if the agency determines that the lottery retailer is not in compliance with this regulation, a letter of non-compliance will be issued to the lottery retailer with a copy to the complainant. If the lottery retailer is determined to be in compliance, a letter so stating will be mailed to the retailer and complainant. Regardless of whether a complaint has been filed, the agency will issue a letter of noncompliance within 30 days after the completion of an onsite inspection of the lottery retailer facility if the agency determines that the lottery retailer is not in compliance with this regulation.

b) If the letter of non-compliance shows deficiencies in the accessibility of the retailer facility, the lottery retailer shall submit a plan to the agency within 30 days of the issuance of the letter of non-compliance. The plan shall describe in detail how the lottery retailer will achieve compliance with this regulation. Compliance shall be accomplished within 90 days of the letter of non-compliance. The Lottery may, upon request, grant the lottery retailer additional time to submit the plan for good cause.

c) Within 20 days of the submission of the plan to the agency, the Lottery shall notify the lottery retailer of the agency's acceptance or rejection of the plan. If the plan is

rejected, the notification shall contain the reasons for rejection of the plan and the corrections needed to make the plan acceptable to the Lottery. If the retailer agrees to make the required corrections, the Lottery shall accept the plan as modified.

d) If a retailer fails to submit a plan within 30 days of issuance of the letter of noncompliance and has not requested an extension of time to submit a plan, the Lottery may proceed to initiate termination proceedings.

e) If approved, the plan must be completely implemented within 60 days of the agency's notice of approval. The Lottery may, upon request, grant the lottery retailer additional time for good cause. Notice of any extension will also be sent to the complainant, if applicable. Any such extension will commence immediately upon expiration of the first 60 day period.

f) If the corrective action taken by the lottery retailer corrects the deficiencies specified in the letter of noncompliance as originally issued or as later revised or reissued or if the onsite inspection of the lottery retailer facility reveals compliance with this regulation, the Lottery will issue a notice of compliance. Until this notice is issued, a complaint will be considered pending.

g) Failure to make the identified modifications in compliance with the accessibility standards and within the required time period will result in the initiation of proceedings to suspend or revoke the lottery license by the agency.

h) A license will be suspended if the Lottery determines that the lottery retailer has made significant progress toward correcting deficiencies listed in the compliance report, but has not completed implementation of the approved compliance plan. If the Lottery determines that the lottery retailer has not made a good faith effort to correct the deficiencies listed in the compliance report, this inaction will result in the revocation of the lottery license for that lottery licensed facility.

i) While proceedings to suspend or revoke a lottery retailer's license are pending pursuant to this regulation, and until a notice of compliance is issued pursuant to subsection (c) of this section, the Lottery shall withhold incentive payments from the lottery retailer. In addition, if a license is revoked pursuant to this regulation, and incentive payments and other privileges have been withheld from the affected retailer pending review of the complaint, the lottery retailer forfeits any claim to such incentive payments or other privileges.

(8) Request for Hearings

a) If the Lottery proposes the denial of an application for a license or the suspension or revocation of a lottery retailer's license pursuant to this regulation, the agency shall give the applicant or lottery retailer written notice of the time and place of the administrative hearing not later than 30 days before the date of the hearing.

b) All relevant rules of evidence and time limits established in these rules shall apply to hearings conducted under this regulation.

(9) Non-Exclusivity of Remedies

a) Remedies established by these regulations are not intended to supplant, restrict or otherwise impair resort to remedies otherwise available under law, including those authorized by the ADA and Del. Code Ann., title 6, ch. 45 (1993).

**See 3 DE Reg. 951 (1/1/00)**

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 7406 (16 Del.C. §7406)

These regulations, "Regulation for the Certification of Radiation Technologists/Technicians," replace by revision the current "Regulation for the Certification of Radiation Technologists/Technicians" previously adopted on February 27, 1989 and most recently amended July 11, 2002.

The amendments to these regulations define certification requirements for technicians and technologists operating radiation machines, or administering radioactive materials in the healing arts in Delaware.

**Notice Of Public Hearing**

The Authority on Radiation Protection will hold a public hearing to discuss the proposed changes to the Regulation for the Certification of Radiation Technologists/Technicians. This public hearing will be held on Monday, September 22, 2003, at 5:00 pm in the Pritchett Conference Room, Delaware Hospital for the Chronically Ill on DuPont Highway, in Smyrna, Delaware.

Copies of the proposed regulations along with a listing of substantial changes are available for review by contacting:

Office of Radiation Control  
Jesse Cooper Building  
P.O. Box 637  
Federal and Water Streets  
Dover, Delaware 19903  
Telephone: (302) 744-4546

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by close of business Friday, September 19, 2003. Anyone wishing to submit written comments as a supplement to, on

in lieu of, oral testimony should submit such comments by close of business September 30, 2003 to:

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

**Proposed Regulation for the Certification or Radiation  
Technologists/Technicians**

This Regulation is approved by the Authority on Radiation Protection on June 13, 2002, pursuant to 16 Del. C. §7406(c). Radiation Technologists/Technicians are "users of ionizing radiation" and, therefore, subject to certification by the Authority on Radiation Protection. This Regulation is effective July 11, 2002.

**SECTION I FINDINGS**

The Authority hereby finds and declares that the citizens of the State of Delaware are entitled to the maximum protection practicable from the harmful effects of excessive and improper exposure to ionizing radiation; that the protection can be increased by requiring appropriate education and training of individuals operating medical and dental equipment and sources emitting ionizing radiation; and that it is therefore necessary to establish certification standards in radiation protection principles for these operators and to provide for their appropriate examination and certification.

**See 6 DE Reg. 99 (7/1/02)**

**SECTION II TITLE OF REGULATION**

This regulation shall be known as the "Radiation Technologist/Technician Certification Regulation".

**See 6 DE Reg. 99 (7/1/02)**

**SECTION III SEVERABILITY**

If any provision or application of any provision of these Regulations is held invalid, that invalidity shall not affect other provisions or applications of these Regulations.

**See 6 DE Reg. 99 (7/1/02)**

**SECTION IV DEFINITIONS**

As used in this regulation:

A. "Agency" means the administrative agent of the Authority on Radiation Protection; i.e., the Office of Radiation Control, Division of Public Health, Department of Health and Social Services.

**B. "ARRT: American Registry of Radiologic Technologists."** A national certifying body that credentials through a national test graduates of JRCERT approved radiologic technology programs. The ARRT also provides the State Limited Scope Licensing Examination to be used by individuals who do not meet the national registry requirements.

**C. "Authority"** means the Authority on Radiation Protection as specified by 16 Del. C. §7404.

**D. "CCI: Cardiovascular Credentialing International."** A national certifying body that credentials technologists in invasive cardiovascular procedures.

**Ð E. "Certificate"** means a document issued by the Agency recognizing the successful completion of an Authority approved Certification Exam. The "Certificate" allows for the practice of radiation technology as specified by the level of examination the individual has passed. Other credentials include "Temporary".

1. Temporary - means a certificate issued by the Agency as a temporary authorization to practice Radiation Technology to any applicant who has complied with the provisions of this regulation and is scheduled for the next available examination.

**E. F. "Certification Examination"** means any examination satisfactory to the Authority that is used to determine the competency of Radiation Technologists/Technicians in the "principles and practice of radiation protection".

**F. G. "CIS: Cardiovascular Invasive Procedure Specialist"** means any individual, other than a licensed practitioner who has trained to perform procedures in a catheterization lab or special procedures lab that require the use of radiation.

**G. H. "CODA": Commission on Dental Accreditation.**

**G. I. "Dental Assistant"** means an individual, other than a "Licensed Practitioner", who applies radiation to humans for diagnostic purposes in dentistry.

**H. J. "DANB: Dental Assisting National Board"** which provides national registration for dental assistants.

**I. K. "Fee"** means the money [see schedule A] an individual must pay:

1. to apply for and to take the certification examination
2. for recertification - to reinstate an expired certificate
3. for renewal - to renew a valid certificate

**J. L. "JRCERT: Joint Review Committee on Education in Radiologic Technology"**

**M. JRCECT: Joint Review Committee on Education in Cardiovascular Technology**

**K. N. "Licensed Practitioner"** means an individual licensed to practice medicine, dentistry, dental hygiene, podiatry, chiropractic, or osteopathy in this State.

**L. O. "Medical Radiographer"** means an individual, other than a Licensed Practitioner, who exposes humans to ionizing radiation for diagnostic purposes in medicine, podiatry, chiropractic, or osteopathy.

**M. P. "NMTCB: Nuclear Medicine Technologist Certification Board"** which provides national certification of Nuclear Medicine Technologists.

**N. Q. "Nuclear Medicine Technologist"** means an individual, other than a Licensed Practitioner, who uses radiopharmaceutical agents on humans for diagnostic and/or therapeutic purposes.

**O. R. "Radiation Technician"** means any individual who has not graduated from an approved program in radiation technology, but has passed an Authority approved examination.

**P. S. "Radiation Technologist"** means any individual who has successfully completed a JRCERT approved program in radiation technology and/or has passed a national certification examination in his/her field of specialization.

**Q. T. "Radiation Technology"** means the use of a radioactive substance or equipment emitting ionizing radiation on humans for diagnostic or therapeutic purposes.

**R. U. "Radiation Therapist"** means an individual, other than a Licensed Practitioner, who exposes humans to ionizing radiation for therapeutic purposes.

**S. V. "Source of Radiation"** means a radioactive material, or any device or equipment emitting or capable of producing ionizing radiation.

**T. W. "User of Ionizing Radiation"** means an individual who supervises the application of ionizing radiation and/or applies ionizing radiation to human beings for diagnostic, therapeutic and/or research purposes (16 Del. C. §7403(9)).

**See 6 DE Reg. 99 (7/1/02)**

## SECTION V LEGAL TITLES

No individual, other than a Licensed Practitioner or Certified Radiation Technologist/Technician, shall use a Source of Radiation on humans for diagnostic, therapeutic and/or research purposes.

A. The Authority shall establish certification requirements for Radiation Technologists/Technicians; i.e., Dental Assistant, Medical Radiographer, Nuclear Medicine Technologist, and Radiation Therapist. Individuals holding these certificates shall be recognized by such title(s).

B. Any individual certified under this regulation is authorized to use a source of radiation on humans for diagnostic or therapeutic purposes under the supervision of a Licensed Practitioner, and in accordance with the Delaware Radiation Control Regulations.

C. Holders of a certificate (legal title) under this regulation shall display the official certificate or a verified copy in each place of regular employment.

**See 6 DE Reg. 99 (7/1/02)**

### SECTION VI CREDENTIALING PROCESS

#### A. Classification of Credentials

1. Certificate (Section VII A)
2. Temporary Certificate (Section VII B)

#### B. Application

1. The Agency shall accept an application for credentialing from any Radiation Technologist/Technician who is at least 18 years of age or who is currently enrolled in and attending an educational program in radiation technology and who pays a non-refundable application and examination fee (if applicable) established by rule of the Authority.

2. One or more booklets on basic radiation protection and terminology, examination specifications, and requirements for certification and examination shall be prepared and distributed under the supervision of the Authority on Radiation Protection in consultation with appropriate professional associations (see Schedule B). Upon acceptance of the application and examination fee, a copy of the booklet shall be sent to all applicants.

3. The application shall be valid for a period of six (6) months.

#### C. Examinations

1. The examination process shall be administered by the Authority on Radiation Protection or its designee, the ARRT (American Registry of Radiologic Technologists), the CCI (Cardiovascular Credentialing International) or Expor Assessments, Inc. The fee for examination shall accompany the application request.

2. The Authority may accept, in lieu of an examination, a current credential by a recognized national voluntary credentialing body, (See Schedule C) issued on the basis of an examination consistent with the requirements established by the Authority, provided that the radiation protection standards to which that body adheres are at least as stringent as those established by the Authority.

3. An examinee who fails to pass the certification examination may be re-examined, provided the prescribed application and examination fees for each re-examination are paid.

**See 6 DE Reg. 99 (7/1/02)**

### SECTION VII ISSUING CREDENTIALS

A. The Agency may issue a Certificate or Temporary Certificate to each applicant who has successfully met the requirements under Section VI, Subsection B, and has paid the prescribed fees. Furthermore, the Certificate shall be

issued on verifying that the applicant has passed a certification examination acceptable to the Authority [see C.1. and C.2. above]. The initial Certificate shall expire after a period of four (4) years from date of issue. Certificates based on national credentials will automatically terminate if the national credentials are permitted to lapse.

B. Temporary Certificate. The Agency may issue a Temporary Certificate to any person whose certification or re-certification may be pending and when issuance is justified by special circumstances. A Temporary Certificate may be issued if the Agency finds that it will not violate the purpose of this regulation or endanger the public health and safety. A Temporary Certificate shall grant the same rights as the credential for which the applicant is awaiting examination. Such credential may not be renewed by the Agency without the approval of the Authority and only for just cause.

The Temporary Certificate shall expire:

1. on the date of notification of the results of the certification examination; or,
2. on the certification examination date if the applicant does not take the examination; or,
3. in any case, after a maximum of 365 days from the date of issue.

C. A valid certificate may be renewed by the Agency for a period of four (4) years upon payment of a renewal fee (see Schedule A) established by the Authority.

1. Applicants for renewal of certificates based on national credentials must provide proof that the national credentials are currently valid.

D. A Radiation Technologist/Technician whose certificate has lapsed for a period of less than 180 days shall apply for re-certification provided that he/she presents evidence of having previously passed a Certification Examination approved by the Authority and pays the re-certification fee

A Radiation Technologist/Technician whose certificate has lapsed for more than 180 days shall:

1. Apply for re-certification
2. Apply to take the appropriate certification examination or show proof of currently valid national credentials
3. Pay the re-certification and re-examination fees

A radiation technologist/technician who has allowed his/her certificate to expire shall not expose humans to ionizing radiation until and unless he/she is re-certified .

**See 6 DE Reg. 99 (7/1/02)**

### SECTION VIII LIMITATIONS OF CREDENTIALS

A. Nothing in the provisions of this regulation relating to Radiation Technology shall limit, enlarge, or affect the practice of Licensed Practitioners herein defined.

B. The requirement for certification shall not apply to a resident physician, dentist, dental hygienist or to a student enrolled in and attending a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, or radiation technology who applies ionizing radiation to humans in such an educational program while under the supervision of a certified Radiation Technologist.

C. A certificate, registration or license issued by another state will not be accepted as a valid equivalent Radiation Technologist/Technician certification by the Authority.

**See 6 DE Reg. 99 (7/1/02)**

## **SECTION IX APPEALS, ENFORCEMENTS AND PENALTIES**

### **A. OFFENSES**

The following is a list of offenses which are grounds for disciplinary actions of a certified Radiation Technologist or certified Radiation Technician and are the basis for refusal of an application for certification:

The certificate holder or applicant:

1. has been found guilty of fraud or deceit in procuring or attempting to procure a certificate to practice radiation technology; or
2. has been convicted of a felony; or
3. has been convicted of a crime involving moral turpitude or gross immorality; or
4. is unfit or incompetent by reason of gross negligence; or
5. is addicted to the use of habit-forming drugs and not currently under treatment for the addiction; or
6. has a physical or mental condition that prohibits the certificate holder from performing the essential functions of the practice authorized by the certificate; or
7. has a certificate to practice as a registered technologist that has been suspended or revoked in any jurisdiction; or
8. is guilty of unprofessional conduct, or the willful neglect of a patient.

### **B. DISCIPLINARY SANCTIONS**

The Authority on Radiation Protection may impose any of the following sanctions singly or in combination when it finds a certificate holder or an applicant is guilty of any offense described in Section A:

1. Permanently revoke a certificate to practice
2. Suspend a certificate until the certificate holder provides proof that the conditions in response to which the suspension was issued no longer exist.
3. Censure a certificate
4. Issue a letter of reprimand
5. Refuse a certificate (Applicant)
6. Refuse to renew a certificate

### **C. PROCEDURE**

#### **1. THE AUTHORITY**

a. The Agency may, upon complaint or upon its own initiative, investigate whether a certificate holder or applicant has engaged in activities specified in this section as grounds for disciplinary action. The Agency shall file a complaint with the Authority seeking to impose sanctions against the alleged violator.

b. The Authority shall notify the alleged violator of the complaint and offer the alleged violator the opportunity for a hearing, which must be requested within 30 days of the date of notification. If the alleged violator does not timely request a hearing, the proposed sanctions shall become final. If the alleged violator makes a timely request for a hearing, the Authority shall schedule the hearing and give the alleged violator at least 15 days notice prior to the date fixed for the hearing.

c. In all proceedings herein:

1) The alleged violator may be represented by counsel who shall have the right of examination and cross-examination.

2) The alleged violator and the Agency may subpoena witnesses. Subpoenas shall be issued by the Chairman or Vice Chairman of the Authority upon written request.

3) Testimony before the Authority shall be under oath. Any member of the Authority shall have power to administer oaths for this purpose.

4) A stenographic record of the hearing shall be made by a qualified court reporter. At the request and expense of either party such record shall be transcribed with a copy to the other party.

5) The decision of the Authority shall be based upon a preponderance of the evidence. If the charges are supported by such evidence, the Authority may refuse to issue, or may revoke or may suspend a certificate, or otherwise discipline a certificate holder as outlined in these regulations.

6) The decision of the Authority will be sent to the alleged violator by certified mail.

7) Any final order of the Authority may be appealed to the Superior Court.

8) All findings of the original action, hearing, appeal and conclusions will be held in file at the Agency.

9) The Agency shall notify the employer of the alleged violator of any final order of the Authority regarding any action taken against the certification of that employee by registered, return receipt mail.

### **D. JUDICIAL REVIEW BY SUPERIOR COURT**

Any final order entered in any proceeding by the Authority shall be subject to judicial review by the Delaware Superior Court per 16 Del. C. §7412(c).

### **E. UNLAWFUL PRACTICE OF RADIATION TECHNOLOGY**

No person shall practice or offer to practice radiation technology or claim to be a registered or certified radiation worker in Delaware, or shall use any title, abbreviation, sign, card, or device to indicate that such person is certified pursuant to this regulation unless such person is actually certified by the Authority on Radiation Protection.

See 6 DE Reg. 99 (7/1/02)

### SCHEDULE A Credential Fees

Certificate Category	Application	Examination	Renewal
Dental Assisting	Included in examination fee per testing organization	Per Testing Organization	\$10.00 for 4 years

Medical Radiation Technician	\$10.00	Per Testing Organization	\$10.00 for 4 years
Medical Radiation Technologist	\$10.00	Per National Board	\$10.00 for 4 years
Nuclear Medicine	\$10.00	Per National Board	\$10.00 for 4 years
Radiation Therapy	\$10.00	Per National Board	\$10.00 for 4 years

See 6 DE Reg. 99 (7/1/02)

### SCHEDULE B

Delaware Professional Associations  
Dental Assistants Association  
Dental Hygienists Association  
Medical Society of Delaware  
Society of Nuclear Medicine Technologists Section  
Delaware Society of Radiology Professionals  
Dental Society of Delaware

See 6 DE Reg. 99 (7/1/02)

### SCHEDULE C

List Of National Credentialing Organizations Acceptable For Delaware Certification

1. American Registry of Radiologic Technologists
2. Dental Assisting National Board
3. Nuclear Medicine Technologist Certification Board
4. Cardiovascular Credentialing International (CCI)

See 6 DE Reg. 99 (7/1/02)

### DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

### Prescribed Pediatric Extended Care Program and Title XIX Medicaid State Plan

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Division of Social Services Provider Manual and the Title XIX Medicaid State Plan to revise and clarify the criteria and reimbursement methodology for Prescribed Pediatric Extended Care 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 September 30, 2003.

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.

### DSS PROPOSED REGULATION #03-33a PROVIDER MANUAL REVISIONS:

#### 822 Prescribed Pediatric Extended Care (PPEC) Provider Specific Policy

##### 1.0 Overview

##### 1.1 General Information

1.1.1 Prescribed Pediatric Extended Care (PPEC) is a package of comprehensive nursing, nutritional assessment, developmental assessment, speech, physical and occupational therapy services provided in an outpatient setting, as ordered by an attending physician. These services are provided no more than twelve hours per day, five days per week.

1.1.2 The Center for Medicare and Medicaid Services (CMS) approval of PPEC as an EPSDT-related treatment service was obtained in May 1990 for services provided on or after October 1, 1989.

1.1.3 PPEC services are primarily provided for infants and children ages 0-36 months old, who are severely disabled and require a level of care consistent with an acute care in-patient hospitalization, a skilled nursing facility, or

private duty nursing being authorized for continuous 8 hour shifts.

1.1.4 PPEC services are provided as an alternative to more expensive institutionalization or as an alternative to community/home care for children who are determined to be in medical need of services.

1.1.5 PPEC services may be provided when parent(s) are employed and required medical care is not available in home or daycare. Hours of employment must be documented. Documented parental inability to care for child, or an inability to access needed medical care will be considered in determining eligibility for PPEC services.

## 1.2 Service Limitations

1.2.1 PPEC services are generally limited to eligible recipients who are under age 3.

1.2.2 Special exceptions for children age 3-5 with cognitive impairments can only be considered after a thorough Individual Education Plan (IEP) has been completed by the Department of Education and confirming documentation from the school district that an appropriate facility with required services is not available.

1.2.3 Special exceptions for children age, who are cognitively intact and age eligible for school services (as determined and documented by the school district, child watch, or other appropriate authority are not eligible for the 3-21 year old program) will be considered for PPEC services.

1.2.4 Before and after school services are not PPEC level services. When medical documentation demonstrates a need for continuous nursing supervision the child and family will be evaluated on a case by case review. If continuous nursing supervision is required, it may be paid for under the Level I eligibility criteria with hourly rate (TBD).

1.2.5 Admission to PPEC for observational purposes will not be approved or reimbursed by Delaware Medical Program (DMAP).

1.2.6 Admission to the PPEC for skilled assessment and monitoring will only be considered short term (less than 2-4 weeks) under limited special circumstances. Appropriate circumstances may include:

A. Skilled assessment and monitoring is needed on a continuous basis (8 hours or greater) and cannot be accomplished by intermittent nursing visits or visits to the physicians' office.

B. Continuous clinic/health data is required to treat an unstable condition, i.e., frequent adjustments to the treatment plan as a result of the monitoring such as medication titration.

C. The child is frequently admitted to acute care or emergency care and an effective treatment plan has not been developed in an alternative setting/care level.

1.2.7 PPEC services are not covered for children over age 6.

## 2.0 Qualified Providers

### 2.1 Standards

2.1.1 State licensing standards have been established specifically relating to PPEC Centers (PPECCs). To participate in the ~~Delaware Medical Assistance Program~~ DMAP, an entity must be professionally licensed as a PPECC by the State's Office of Health Facilities, Licensing and Certification.

## 3.0 Services

### 3.1 ~~Limitations~~ Request for Services

3.1.1 All ~~Prior authorization of~~ PPEC services must be prior authorized. ~~will be required.~~ Each request is reviewed on an individual basis, using policies established by the DMAP, including billing and documentation of billing all primary insurance. (Refer to the Services Requiring Prior Authorization section in the General Policy for details) ~~Two pieces of documentation will be needed to authorize these services. These are:~~

### 3.2 Special Physician Documentation Requirements

~~3.1.1.1~~ 3.2.1 A letter from The attending practitioner shall request a referral to evaluate for payment of PPEC services by submitting a letter to the Medical Evaluation Team (MET) that documents: ~~physician containing the following information:~~

~~3.1.1.1.1~~ 3.2.1.1 Name of patient

~~3.1.1.1.2~~ 3.2.1.2 Patient's Medicaid ID number

~~3.1.1.1.3~~ 3.2.1.3 Date of birth

3.2.1.1 Patient's name

3.2.1.2 Medicaid ID number

3.2.1.3 Date of birth

~~3.1.1.1.4~~ 3.2.1.4 Detailed medical history that documents the need for PPEC services

~~3.1.1.1.5~~ 3.2.1.5 Documentation that the child would require inpatient hospital or nursing home care in the absence of PPEC services

~~3.1.1.1.6~~ 3.2.1.6 Estimated amount and duration of required services, ~~(e.g., the~~ number of days per week and the number of weeks/months, the patient is expected to need these services.

~~3.1.1.1.7~~ 3.2.1.7 If home health services or private duty nurse services are ordered concurrently with PPEC, medical justification for the combination of services is required

~~3.1.1.1.8~~ 3.2.1.8 The doctor may recommend the name and address of the PPEC organization who will provide the care

~~3.1.1.2~~ A letter from the PPEC providing the following information:

~~3.1.1.2.1~~ 3.1.1.2.1 Name of patient

~~3.1.1.2.2~~ 3.1.1.2.2 Patient's Medicaid ID

number

~~3.1.1.2.3 Evaluation of the expected level of care needed including the scoring sheet used to determine level of care~~

~~3.1.1.3 Requests for prior authorization must be sent to:~~

~~Division of Social Services  
Robscott Building  
Medicaid Prior Authorization Unit  
153 Chestnut Hill Road  
Newark, DE 19713~~

3.2 Parental Documentation Requirements

3.2.1 Parents shall provide documentation that the child is severely disabled, meeting Delaware's Children's Community Alternative Disability Program eligibility requirements or child is disabled under the Social Security Administration regulations. If parents do not have access to needed documentation, the parents must sign a medical release to obtain medical documentation deemed necessary by MET to determine medical eligibility. Failure to do so will result in denial of PPEC services.

3.2.2 Parents shall provide a copy of the most recent Individual Family Service Plan (IFSP) if completed and available for children age 0 up to age 3. For children age 3-5, parents shall provide an IEP when appropriate. Parents must sign a release for MET to obtain information.

3.3 Prior Authorization Addresses

3.3.1 All information for prior authorization must be sent (letter or fax) to one of the following addresses:

Division of Social Services  
Medical Evaluation Team  
Robscott Bldg., Suite 3A  
153 Chestnut Hill Road  
Newark, DE 19713  
Fax Number: (302) 368-6977

Or

Georgetown State Service Center  
546 S. Bedford St.  
Georgetown, DE 19947  
Fax Number: (302) 856-5517

3.3.4 Service Levels

3.4.1 DMAP's Medical Evaluation Team will evaluate the child and complete a PPEC Scoring sheet to determine the reimbursable PPEC level of care. (Refer to Appendix A)

~~3.2.13.4.2 Levels of care are determined by the intensity of the child's daily needs. A scoring system to document these needs has been developed by the DMAP in consultation with the PPEC providers. This~~ The scoring system, illustrated in Appendix A, is used to assign the level of care.

~~3.2.3 The DMAP recognizes as a reimbursable medical service four of the five established levels of care. Level 1 is not currently a reimbursable service, and has no~~

~~corresponding procedure code. Procedure/Revenue codes for covered services are found in Appendix B.~~

3.4.3 Level I Eligibility criteria:

Child is not eligible at Level 2 or higher level; and

The child has a medical condition() that prevents him/her from being accepted by traditional day care; and

The service is prescribed by a physician; and

There is no parent or legal guardian available to care for the child.

3.4.4 The Prescribed Pediatric Extended Care Reimbursement Sheet will not be used for Level I Eligibles.

3.4.5 The DMAP recognizes as a reimbursable medical service three established levels of care. Procedure/Revenue codes for covered services are found in Appendix C.

3.4.6 See DMAP General Policy Manual for Provider Appeal Procedures.

4.0 Reimbursement

4.1 Methodology

4.1.1 PPEC providers are reimbursed a proportion of their charges, to be determined by the DMAP, prospective rate representing their reasonable costs and the acuity level of the client.

4.1.2 PPEC providers will not be reimbursed for Level I service if they fail to submit a valid annual Statement of Reimbursable Costs (Cost Report).

4.2 Acuity Levels

4.2.1 Clients served by PPEC providers will be assigned levels of acuity according to the resources required for their care. Reimbursement rates will reflect the various acuity levels.

4.3 Units of Services

4.3.1 Per Diem: PPEC reimbursement may be in daily units (per diem), if the client requires a full day (8-12 hours) of service.

4.3.2 Per Diem - Half Day: PPEC reimbursement rates may be paid in half day units (per diem), if the client requires a minimum of 4 consecutive hours of service.

4.3.3 Hourly rates (TBD)

4.4 Sliding Fee Scale

4.4.1 To determine percentage of cost of care paid by parents refer to Appendix D **(To Be Determined)**.



**DSS PROPOSED REGULATION #03-33b  
STATE PLAN REVISIONS:****ATTACHMENT 4.19-B  
Page 7**

Prescribed Pediatric Extended Care Centers (PPECCs) will be reimbursed at a negotiated range of daily rates depending on the level of care needed by each child. Existing rates cannot be increased except on an annual basis after approval from the State agency. The State agency will limit approved increases to the Centers for Medicare and Medicaid Services (CMS) medical care inflator appropriate for the service.

**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE  
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) 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 September 30, 2003.

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 CHANGES**

- Clears up ambiguous language regarding Delaware as a waiver state.
- Added citation and effective date to the Transitional Medicaid language.

- Adds Financial Management Training and financial as an allowable work activity.

**DSS PROPOSED REGULATION Rev#03-31  
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.

~~The current authorization of the TANF waiver[s] terminated on September 30, 2002. TANF is authorized to continue through December 31, 2002. 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 DHSS agreed were inconsistent with TANF based on our 1999 Waiver Inconsistency Certification.~~

~~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 as is currently designed with minor changes to be in compliance with certain TANF requirements. In making this decision, Delaware has carefully considered any potential risks to our ability to meet TANF participation rates and have formulated contingency plans that will ensure we avoid participation rate penalties. 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.

The current short-term reauthorization of TANF leaves much unknown about the future of the program, and Delaware is unwilling to make major changes to our TANF program without full knowledge of new federal requirements. 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.

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 Delaware is unable at this time to plan what alternative provisions might be required by enactment of long-term reauthorization legislation, we have opted to continue operating Delaware's TANF program as it is currently designed with minor changes to be in compliance with certain TANF requirements.

Delaware ~~is plans~~ to closely watching the progress of federal TANF reauthorization and ~~to~~ will 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 support 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-suffi-

ciency 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.

### **Diversions 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:
  - 1 An investigation, prosecution, or criminal or civil proceeding conducted in connection with public assistance programs.
  - 2 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
- Provide financial management training.

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 via 1931d program effective October 1, 2002, 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. AAAP 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.

**See 6 DE Reg. 442 (10/1/02)**

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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 under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to rehabilitated drug felons.

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 September 30, 2003.

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**

The State of Delaware is electing to opt out under 21 U.S.C. §862a so that rehabilitated drug felons can receive

food stamp benefits if they are participating in, completed, or certified out of a drug treatment program approved by Delaware Health and Social Services, as follows:

- Individuals convicted of a drug felony for distribution (trafficking) of a controlled substance continue to be permanently barred from receiving food stamps.
- Individuals convicted of a drug felony for the possession or use of a controlled substance can receive food stamps if they have met certain conditions including substance abuse treatment.

These individuals will be required to submit to quarterly random drug testing with a clean drug test result to continue to participate in the food stamp program.

Citation: 142<sup>nd</sup> General Assembly - House Bill 263, Eligibility for Food Stamp Program

#### **DSS PROPOSED REGULATION #03-32**

#### **REVISIONS:**

#### **2027 Disqualification of Individuals Convicted of Drug Related Offenses**

##### *For Cash Assistance:*

Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of possession, use or distribution of controlled substances shall not be eligible for cash assistance ~~or benefits under the food stamp program.~~

This provision does not apply to individuals convicted of such offenses which occurred prior to August 22, 1996, the date of enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

##### ~~For Cash Assistance:~~

Determine income, resources, and deductions according to DSSM 4003.2 if the individual is a parent payee. Exclude the income and resources of the individual if the person is a non-parent payee.

##### For Food Stamps:

Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of distribution of controlled substances shall not be eligible for benefits under the food stamp program.

Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of possession or use of controlled substances shall not be

eligible for benefits under the food stamp program unless they meet the following conditions:

1. Is currently participating in a substance abuse treatment program approved by DHSS; or

2. Is currently enrolled in a substance abuse treatment program approved by DHSS subject to a waiting list to receive available treatment, and the individual remains enrolled in the treatment program and enters the treatment program at the first available opportunity; or

3. Has satisfactorily completed a substance abuse program approved by DHSS; or

4. Is determined by a treatment provider licensee by DHSS not to need substance abuse treatment according to DHSS' guidelines; and

5. Is complying with, or has already complied with all obligations imposed by the Court, including any substance abuse treatment obligations.

Individuals who regain eligibility for food stamps due to meeting the above conditions will be required to submit to quarterly random drug testing at the individual's own cost.

Individuals who return a clean drug test result free of controlled substances will continue to be eligible to get food stamps, if otherwise eligible.

Individuals who return an unclean drug test result, which shows the use of controlled substances, will be disqualified from receiving food stamps for one year.

Individuals who fail to return a drug test result will be ineligible to receive food stamps until a clean drug test result is provided.

The period of ineligibility will remain in effect until the end of the one year. The individual must return a clean drug test result free of controlled substances before getting benefits again.

Such ineligible individuals will not be considered part of the household except that the income and resources of such individuals shall be considered to be income and resources of the household.

Determine the income, resources and deductions of these disqualified individuals according to 9076.1. Intentional Program Violation, Felony Drug Conviction or Fleeing Felon Disqualifications, or Work Requirement Sanctions.

This provision does not apply to individuals convicted of such offenses that occurred prior to August 22, 1996, the date of enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

## DEPARTMENT OF INSURANCE

18 DE Admin. Code 1406

Statutory Authority: 18 Delaware Code,  
Sections 311, 2304(16), and 2312 (18 Del.C. §§  
311, 2304(16) and 2312)

### Notice Of Public Hearing

Insurance Commissioner Donna Lee H. Williams hereby gives notice that a public hearing will be held on Thursday September 25, 2003, at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider Proposed Regulation 1406 relating to the licensing and regulation of third party administrators.

The purpose for promulgating Regulation 1406 is to comply with 74 *Del. Laws* Ch. 157 which became law on July 15, 2003 requiring the Delaware Insurance Department to enact regulations governing the licensure and regulation of third party administrators doing business in Delaware.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 *Del. C.* Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than 4:30 p.m., Thursday, October 2, 2003, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904.

### Regulation 1406 Third Party Administrators

#### Contents

<u>1.0</u>	<u>Scope and Authority</u>
<u>2.0</u>	<u>Definitions</u>
<u>3.0</u>	<u>Requirement for Written Agreement</u>
<u>4.0</u>	<u>Payment to Administrator</u>
<u>5.0</u>	<u>Maintenance of Information</u>
<u>6.0</u>	<u>Approval of Advertising</u>
<u>7.0</u>	<u>Responsibilities of the Insurer</u>
<u>8.0</u>	<u>Premium Collection and Payment of Claims</u>
<u>9.0</u>	<u>Compensation to the Administrator</u>
<u>10.0</u>	<u>Notice to Covered Individuals; Disclosure of Charges and Fees</u>
<u>11.0</u>	<u>Delivery of Materials to Covered Individuals</u>
<u>12.0</u>	<u>Home State Certificate of Authority/License</u>
<u>13.0</u>	<u>Registration Requirement</u>
<u>14.0</u>	<u>Nonresident Administrator Certificate of Authority</u>
<u>15.0</u>	<u>Annual Report, Fees and Expenses</u>
<u>16.0</u>	<u>Grounds for Denial, Suspension or Revocation of Certificate of Authority</u>

- 17.0 Fees  
18.0 Severability  
19.0 Effective Date

**1.0 Scope and Authority**

This Regulation is adopted by the Commissioner pursuant to the authority granted by 18 *Del. C.* §§ 102, 74 *Del. Laws* Ch. 157, and promulgated in accordance with the Delaware Administrative Procedures Act, Title 29 *Del. C.* Chapter 101.

**2.0 Definitions**

For purposes of this Regulation:

2.1 **“Administrator”** or **“third party administrator”** or **“TPA”** means a person

2.1.1 who directly or indirectly underwrites, collects charges or premiums from, or denies, modifies, adjusts or settles claims on residents of this state in connection with health and/or pharmacy benefits coverage offered or provided by an insurer, except any of the following:

2.1.1.1 An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of such employer;

2.1.1.2 A union on behalf of its members;

2.1.1.3 An insurer that is authorized to transact insurance in this state pursuant to Title 18;

2.1.1.4 An insurance producer licensed to sell health and/or pharmacy benefits coverage in this state, whose activities are limited exclusively to the sale of insurance;

2.1.1.5 A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

2.1.1.6 A trust and its trustees, agents and employees acting pursuant to such trust established in conformity with 29 U.S.C. Section 186;

2.1.1.7 A trust exempt from taxation under Section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to such trust, or a custodian and the custodian’s agents or employees acting pursuant to a custodian account which meets the requirements of Section 401(f) of the Internal Revenue Code;

2.1.1.8 A credit union or a financial institution that is subject to supervision or examination by federal or state banking authorities, or a mortgage lender, to the extent they collect and remit premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments;

2.1.1.9 A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection;

2.1.1.10 A person who adjusts or settles claims in the normal course of that person’s practice or employment as an attorney at law and who does not collect charges or premiums in connection with health and/or pharmacy health benefits coverage;

2.1.1.11 An adjuster licensed by this state whose activities are limited to adjustment of claims;

2.1.1.12 A person licensed as a managing general agent in this state, whose activities are limited exclusively to the scope of activities conveyed under such license;

2.1.1.13 An administrator who is affiliated with an insurer and who only performs the contractual duties (between the administrator and the insurer) of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator’s books and records to the insurance Commissioner, upon a request from the insurance Commissioner. For purposes of this paragraph, “insurer” shall have the same meaning as set forth in section 2.8 of this regulation; or

2.1.1.14 A person, firm or entity whose business is solely limited to the payment of money, claims or bills at the direction of an insurer and who does not adjust or settle claims on residents of this state in connection with health coverage offered or provided by an insurer.

2.2 **“Affiliate or affiliated”** means an entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

2.3 **“Commissioner”** means the Insurance Commissioner of Delaware.

2.4 **“Control”** (including the terms **“controlling,”** **“controlled by”** and **“under common control with”**) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by 18 *Del. C.* Chapter 50 that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

2.5 **“GAAP”** means United States generally accepted accounting principles consistently applied.

2.6 **“Home state”** means the District of Columbia and any state or territory of the United States in which an administrator is incorporated, or maintains its principal place of business. If neither the state in which the administrator is incorporated, nor the state in which it maintains its principal place of business has adopted this Regulation, or a substantially similar law governing administrators, the administrator may declare another state, in which it conducts business, to be its “home state.”

2.7 **“Insurance producer”** means a person who sells, solicits or negotiates a contract of insurance as those terms are defined in this Regulation.

2.8 **“Insurer”** means a person undertaking to provide health and/or pharmacy benefits coverage or self-funded coverage under a governmental plan or church plan in this state. For the purposes of this Regulation, insurer includes an employer, a licensed insurance company, a prepaid hospital or medical care plan, a health maintenance organization, a managed care organization, a health service corporation, a pharmacy benefits manager or a multiple employer welfare arrangements (MEWAs).

2.9 **“Negotiate”** means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

2.10 **“Nonresident administrator”** means a person who is applying for licensure or is licensed in any state other than the administrator’s home state.

2.11 **“Person”** means an individual or a business entity.

2.12 **“Sell”** means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

2.13 **“Solicit”** means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

2.14 **“Underwrites”** or **“underwriting”** means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan; the overall planning and coordinating of a benefits program.

2.15 **“Uniform Application”** means the current version of the NAIC Uniform Application for Third Party Administrators.

### **3.0 Requirement for Written Agreement**

3.1 No administrator shall act as such without a written agreement between the administrator and the insurer, and the written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and for five (5) years thereafter.

The agreement shall contain all provisions required by this statute, except insofar as those requirements do not apply to the functions performed by the administrator.

3.2 The written agreement shall include a statement of duties that the administrator is expected to perform on behalf of the insurer and the lines, classes or types of insurance for which the administrator is to be authorized to administer. The agreement shall make provision with respect to underwriting or other standards pertaining to the business underwritten by the insurer.

3.3 The insurer or administrator may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the administrator during the pendency of any dispute regarding the cause for termination of the written agreement. The insurer shall fulfill any lawful obligations with respect to policies affected by the written agreement, regardless of any dispute between the insurer and the administrator.

### **4.0 Payment to Administrator**

If an insurer utilizes the services of an administrator, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured party shall be deemed to have been received by the insurer, and the payment of return premiums or claim payments forwarded by the insurer to the administrator shall not be deemed to have been paid to the insured party or claimant until the payments are received by the insured party or claimant. Nothing in this section limits any right of the insurer against the administrator resulting from the failure of the administrator to make payments to the insurer, insured parties or claimants.

### **5.0 Maintenance of Information**

5.1 An administrator shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and shall be maintained for a period of not less than five (5) years from the date of their creation.

5.2 The Commissioner shall have access to books and records maintained by an administrator for the purposes of examination, audit and inspection. Any documents, materials or other information in the possession or control of the Commissioner that are furnished by an administrator, insurer, insurance producer or an employee or agent thereof acting on behalf of the administrator, insurer or insurance producer, or obtained by the Commissioner in an investigation shall be confidential by law, shall not be subject to the provisions of 29 Del. C. Chapter 100, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil

action. However, the Commissioner is authorized to use such documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties, in which case the rules of the court having jurisdiction over the case shall govern the production and admissibility of such documents.

5.3 Neither the Commissioner nor any person who received documents, materials or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to § 5.2.

5.4 In order to assist in the performance of his or her duties, the Commissioner:

5.4.1 May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to § 5.2 with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information; and

5.4.2 May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

5.5 No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in § 5.4.

5.6 Nothing in this Regulation shall prohibit the Commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to 29 Del. C. Chapter 100 to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

5.7 The insurer shall own the records generated by the administrator pertaining to the insurer; however, the administrator shall retain the right to continuing access to books and records to permit the administrator to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

5.8 In the event the insurer and the administrator cancel their agreement; notwithstanding the provisions of § 5.1, the administrator may, by written agreement with the insurer, transfer all records to a new administrator rather than retain them for five (5) years. In such cases, the new administrator shall acknowledge, in writing, that it is responsible for retaining the records of the prior administrator as required in § 5.1.

## **6.0 Approval of Advertising**

An administrator may use only advertising pertaining to the business underwritten by an insurer that has been approved in writing by the insurer in advance of its use.

## **7.0 Responsibilities of the Insurer**

7.1 If an insurer utilizes the services of an administrator, the insurer shall be responsible for determining the benefits, premium rates, underwriting criteria and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in the written agreement between the administrator and the insurer.

7.2 It is the sole responsibility of the insurer to provide for competent administration of its programs.

7.3 In cases where an administrator administers benefits for more than one hundred certificate holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one such review shall be an on-site audit of the operations of the administrator.

7.4 For purposes of this section, "insurer" means a licensed insurance company, prepaid hospital or medical care plan, a health maintenance organization or a multiple employer welfare arrangements (MEWAs).

## **8.0 Premium Collection and Payment of Claims**

8.1 All insurance charges or premiums collected by an administrator on behalf of or for an insurer, and the return of premiums received from that insurer, shall be held by the administrator in a fiduciary capacity. The funds shall be immediately remitted to the person entitled to them or shall be deposited promptly in a fiduciary account established and maintained by the administrator in a federally or state insured financial institution. The written agreement between the administrator and the insurer shall provide for the administrator to periodically render an accounting to the insurer detailing all transactions performed by the administrator pertaining to the business underwritten by the insurer.

8.2 If charges or premiums deposited in a fiduciary account have been collected on behalf of or for one or more



insurers, the administrator shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each insurer. The administrator shall keep copies of all the records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to the deposits and withdrawals.

8.3 The administrator shall not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited. Withdrawals from the account shall be made as provided in the written agreement between the administrator and the insurer. The written agreement shall address, but not be limited to, the following:

8.3.1 Remittance to an insurer entitled to remittance;

8.3.2 Deposit in an account maintained in the name of the insurer;

8.3.3 Transfer to and deposit in a claims-paying account, with claims to be paid as provided for in § 8.4;

8.3.4 Payment to a group policyholder for remittance to the insurer entitled to such remittance;

8.3.5 Payment to the administrator of its commissions, fees or charges; and

8.3.6 Remittance of return premium to the person or persons entitled to such return premium.

8.4 All claims paid by the administrator from funds collected on behalf of or for an insurer shall be paid only on drafts or checks of and as authorized by the insurer.

## **9.0 Compensation to the Administrator**

9.1 An administrator shall not enter into an agreement or understanding with an insurer in which the effect is to make the amount of the administrator's commissions, fees, or charges contingent upon savings effected in the adjustment, settlement and payment of losses covered by the insurer's obligations. This provision shall not prohibit an administrator from receiving performance-based compensation for providing hospital or other auditing services.

9.2 This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or the number of claims paid or processed.

## **10.0 Notice to Covered Individuals; Disclosure of Charges and Fees**

10.1 When the services of an administrator are utilized, the administrator shall provide a written notice approved by the insurer to covered individuals advising them of the identity of, and relationship among, the administrator, the policyholder and the insurer.

10.2 When an administrator collects funds, the reason for collection of each item shall be identified to the insured party and each item shall be shown separately from any premium. Additional charges may not be made for

services to the extent the services have been paid for by the insurer.

10.3 The administrator shall disclose to the insurer all charges, fees and commissions received from all services in connection with the provision of administrative services for the insurer, including any fees or commissions paid by insurers providing reinsurance.

## **11.0 Delivery of Materials to Covered Individuals**

Any policies, certificates, booklets, termination notices or other written communications delivered by the insurer to the administrator for delivery to insured parties or covered individuals shall be delivered by the administrator promptly after receipt of instructions from the insurer to deliver them.

## **12.0 Home State Certificate of Authority/License**

12.1 A person shall apply to be an administrator in its home state, upon the Uniform Application and shall receive a certificate of authority or license from the Commissioner of its home state, prior to performing any function of an administrator in this state.

12.2 The Uniform Application shall include or be accompanied by the following information and documents:

12.2.1 All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all amendments to such documents;

12.2.2 The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

12.2.3 NAIC Biographical Affidavit for the individuals who are responsible for the conduct of affairs of the applicant; including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant;The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

12.2.4 Audited annual financial statements or reports for the two (2) most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two (2) fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or

combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The applicant shall also include such other information as the Commissioner may require in order to review the current financial condition of the applicant;

12.2.5 A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping and underwriting; and

12.2.6 Such other pertinent information as may be required by the Commissioner.

12.3 An administrator licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons utilizing the services of the administrator.

12.4 An administrator licensed or applying for licensure under this section shall produce its accounts, records and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

12.5 The Commissioner may refuse to issue a certificate of authority or license if the Commissioner determines that the administrator, or any individual responsible for the conduct of affairs of the administrator is not competent, trustworthy, financially responsible or of good personal and business reputation, or has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if the Commissioner determines that any of the grounds set forth in § 15 exists with respect to the administrator.

12.6 A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended or revoked by the Commissioner, for so long as the administrator continues in business in this state and remains in compliance with this Regulation.

12.7 An administrator licensed or applying for licensure under this section shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license in this state. The Commissioner shall report any such changes to the national producer database or its successor.

12.8 An administrator licensed or applying for a home state certificate of authority/license that administers or will administer governmental or church self-insured plans in its home state or any other state shall maintain a surety bond for the use and benefit of the home state Commissioner and

the insurance regulatory authority of any additional state in which the administrator is authorized to conduct business and cover individuals and persons who have remitted premiums or insurance charges or other monies to the administrator in the course of the administrator's business in the greater of the following amounts:

12.8.1 \$100,000; or

12.8.2 Ten percent (10%) of the aggregate total amount of self-funded coverage under church plans or governmental plans handled in the administrator's home state and all additional states in which the administrator is authorized to conduct business.

### **13.0 Registration Requirement**

A person who directly or indirectly underwrites, collects or charges premiums from, or adjusts or settles claims on residents of this state, in connection with health and/or pharmacy benefits coverage provided by a self-funded plan other than a governmental or church plan shall register with the Commissioner annually, verifying its status as herein described.

### **14.0 Nonresident Administrator Certificate of Authority**

14.1 Unless an administrator has obtained a home state certificate of authority or license in this state under § 12, any administrator who performs administrator duties in this state shall obtain a nonresident administrator certificate of authority or license in accordance with this section by filing with the Commissioner the Uniform Application, accompanied by a letter of certification. In lieu of requiring an administrator to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

14.2 An administrator shall not be eligible for a Nonresident Administrator certificate of authority or license under this section if it does not hold a certificate of authority as a resident in a home state that has adopted this Regulation or a substantially similar law governing administrators.

14.3 Except as provided in §§ 14.2 and 14.8, the Commissioner shall issue to the administrator a nonresident administrator certificate of authority or license promptly upon receipt of a complete application.

14.4 Unless notified by the Commissioner that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, each nonresident administrator shall annually file a statement that its home state administrator certificate of authority or license remains in

force and has not been revoked or suspended by its home state during the preceding year.

14.5 At the time of filing the statement required under § 14.4 or, if the Commissioner has notified the nonresident administrator that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database, on an annual date determined by the Commissioner, the nonresident administrator shall pay a filing fee as required by the Commissioner.

14.6 An administrator licensed or applying for licensure under this section shall produce its accounts, records and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

14.7 A nonresident administrator is not required to hold a nonresident administrator certificate of authority or license in this state if the administrator's duties in this state are limited to the administration of a group policy or plan of insurance and no more than a total of 100 lives for all plan residents in this state.

14.8 The Commissioner may refuse to issue a nonresident administrator certificate of authority or license, or delay the issuance of a nonresident administrator certificate of authority or license, if the Commissioner determines that, due to events or information obtained subsequent to the home state's licensure of the administrator, the nonresident administrator cannot satisfy the requirements of this Regulation, or that grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license. In such an event, the Commissioner shall give written notice of its determination to the Commissioner of the home state, and the Commissioner may delay the issuance of a nonresident administrator certificate of authority to the nonresident administrator until such time, if at all, that the Commissioner determines that the administrator can satisfy the requirements of this Regulation and that no grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license.

### **15.0 Annual Report, Fees and Expenses**

15.1 Each administrator licensed under § 12 shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year, or within such extension of time as the Commissioner for good cause may grant. The annual report shall include an audited financial statement performed by an independent certified public accountant. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two officers of the administrator. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or

combining worksheet that shall be filed with the report and include the following:

15.1.1 amounts shown on the consolidated audited financial report shall be shown on the worksheet;

15.1.2 amounts for each entity shall be stated separately, and

15.1.3 explanations of consolidating and eliminating entries shall be included.

15.2 The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

15.3 At the time of filing its annual report, the administrator shall pay a filing fee as set by § 17.

15.4 The Commissioner shall review the most recently filed annual report of each administrator on or before September 1 of each year. Upon completion of its review, the Commissioner shall either:

15.4.1 Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in that annual report and financial statements; or

15.4.2 Update any electronic database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicating that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report.

15.5 An administrator shall be subject to assessment for all fees, costs, experts and related expenditures with respect to any examination, arbitration or enforcement action undertaken by the Commissioner pursuant to Title 18.

### **16.0 Grounds for Denial, Suspension or Revocation of Certificate of Authority**

16.1 The certificate of authority or license of an administrator shall be denied, suspended or revoked if the Commissioner finds that the administrator:

16.1.1 Is in an unsound financial condition;

16.1.2 Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or

16.1.3 Has failed to pay any judgment rendered against it in this state within sixty days after the judgment has become final.

16.2 The Commissioner may deny, suspend or revoke the certificate of authority or license of an administrator if the Commissioner finds that the administrator:

16.2.1 Has violated any lawful rule or order of the Commissioner or any applicable law of this state;

16.2.2 Has refused to be examined or to produce its accounts, records and files for examination, or if any individual responsible for the conduct of affairs of the administrator, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the administrator; and any other person who exercises control or influence over the affairs of the administrator; has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the Commissioner;

16.2.3 Has, without just cause, refused to pay clean claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the administrator to secure full payment or settlement of such claims;

16.2.4 At any time fails to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;

16.2.5 Or any of the individuals responsible for the conduct of its affairs, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent (10%) or more of its voting stock, voting securities or voting interest; and any other person who exercises control or influence over its affairs; has been convicted of, or has entered a plea of guilty or *nolo contendere* to, a felony without regard to whether adjudication was withheld;

16.2.6 Is under suspension or revocation in another state; or

16.2.7 Has failed to timely file its annual report pursuant to § 15, if a resident administrator, or its statement and filing fee, as applicable, pursuant to §§ 14.4 and 14.5, if a nonresident administrator.

16.3 The Commissioner may, in his or her discretion and without advance notice or hearing, immediately suspend the certificate of authority or license of an administrator if the Commissioner finds that one or more of the following circumstances exist:

16.3.1 The administrator is insolvent or impaired;

16.3.2 A proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the administrator has been commenced in any state; or

16.3.3 The financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

16.4 If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this part, the Commissioner may, in lieu of suspension or revocation, impose a fine upon the administrator.

### **17.0 Fees**

17.1 The following fees shall be applicable for filings and matters arising under this Regulation:

<u>For filing application for initial certificate of authority in Delaware or for the registration of a foreign home state certificate including all documents submitted as part of such application</u>	<u>500.00</u>
<u>Issuance of a certificate of authority</u>	<u>\$100.00</u>
<u>Reinstatement</u>	<u>\$100.00</u>
<u>Amendment of certificate</u>	<u>\$100.00</u>
<u>Duplicate or replacement certificate</u>	<u>\$500.00</u>

17.2 For any other fee, cost or charge, the provisions of 18 Del. C. § 701 are incorporated by reference and are applicable to matters arising under this Regulation.

17.3 The provisions of 18 Del. C. Chapter 3 shall be applicable to examinations required by this Regulation.

### **18.0 Severability**

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

### **19.0 Effective Date**

This Regulation shall become effective on January 1, 2004.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2003  
Donna Lee H. Williams, Commissioner

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**DEPARTMENT OF NATURAL  
RESOURCES & ENVIRONMENTAL  
CONTROL**

**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Sections §915(e), (k), and (n); §1920 (7 Del.C.  
§§915(e), (k), and (n), 1920)

**1. TITLE OF THE REGULATIONS:**

Tidal Finfish Regulations, Shellfish Regulations.

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

To create a new Tidal Finfish Regulation 3565 and a new Shellfish Regulation S-76 that establish procedures for conducting the first lottery and subsequent lotteries of available commercial gill net permits and authorization for commercial hook and line permits (Tidal Finfish Regulation 3565), and commercial crab dredge, conch pot, and conch dredge licenses (Shellfish Regulation S-76). It is proposed that the first lottery for available licenses be held on January 2, 2004 and subsequent lotteries will be held the first working day in January of each year thereafter, as long as one or more licenses are available. Participants in the lotteries shall include current participants in the apprentice program who have completed the required and properly documented 150 days of commercial fishing activities over no less than a 2-year period dating from the specific date the applicant signed up as an apprentice, according to the provisions of §915(e), (k), and (n); and §1920, 7 Delaware Code.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

N/A

**4. STATUTORY BASIS OR LEGAL AUTHORITY  
TO ACT:**

7 Del. C. §915(e), (k), & (n); §1920

**5. OTHER REGULATIONS THAT MAY BE  
AFFECTED BY THE PROPOSAL:**

N/A

**6. NOTICE OF PUBLIC COMMENT:**

Individuals may present their opinions and evidence and/or request additional information by writing, or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment and new regulation will be held at the Department of Natural Resources and Environmental Control Auditorium 89 Kings Highway, Dover, DE at 7:30

PM on October 1, 2003. The record will remain open for written or e-mail comments to [roy.miller@state.de.us](mailto:roy.miller@state.de.us) until 4:30 PM on October 6, 2003.

**Tidal Finfish Regulation 3565, License Lotteries For Apprentices.**

The first lottery for available commercial gill net permits and authorization for commercial hook and line permits shall be held on January 2, 2004; with subsequent lotteries to be held annually the first working day in January of each year, as long as one or more licenses are available. Participants in the lotteries shall include current participants in the apprentice program who have completed the required and properly documented 150 days of commercial fishing activities over no less than a 2-year period dating from the specific date the applicant filed their application with the Department as an apprentice, according to the provisions of 7 Del.C. §915(e), (k), and (n)

**Shellfish Regulation 3709.**

The first lottery for available commercial crab dredge, conch pot, and conch dredge licenses shall be held on January 2, 2004; with subsequent lotteries to be held annually the first working day in January of each year, as long as one or more licenses are available. Participants in the lotteries shall include current participants in the apprentice program who have completed the required and properly documented 150 days of commercial fishing activities over no less than a 2-year period dating from the specific date the applicant filed their application with the Department as an apprentice, according to the provisions of 7 Del.C. §1920

**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

**Final Regulations**

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PHARMACY  
24 DE Admin. Code 2500  
Statutory Authority: 24 Delaware Code,  
Section 2509 (24 Del.C. §2509)**

A Public Hearing was held to receive comments on June 11, 2003 at a scheduled meeting of the State Board of Pharmacy. The Board considered proposed changes to Regulations 1.0 and 3.0 as published in the Register of Regulations, Vol. 6, Issue 11, May 1, 2003.

**Summary Of The Evidence And Information Submitted**

There were no verbal comments. The Board received one written comment related to the changes proposed to Rule 3.0.

Rita Landgraf, Director, State Council for Persons with Disabilities (SCPD) in her letter dated May 29, 2003 expressed her concern that there may be times of power failure or other disruption of web access that would leave a pharmacist without reference material if reference books were no longer required. She suggested requiring back up material such as a CD-ROM or offering a menu from which a pharmacist could select appropriate texts to provide more flexibility.

**Findings Of Fact With Respect To The Evidence And Information Submitted**

1. The changes as proposed will give a pharmacy the ability to take advantage of technology to reduce the paper in the pharmacy and select reference material appropriate for the nature of the practice. If there is an interruption of power affecting computer access, prescriptions cannot be filled in any event.

The Board expects pharmacists to maintain the reference material necessary for the safe and efficient practice of pharmacy. If there is a pharmacy that does not have access to sufficient material, it will be discovered in the routine inspections.

2. There is a change from the published version of Regulation 1.1.1. The word "Foundation" should be deleted from the final sentence. The Board finds this is a non-substantive change to correctly identify NABP.

**Decision And Effective Date**

The Board hereby adopts the changes to Regulations 1.0 and 3.0 as amended to be effective 10 days following publication on this order in the Register of Regulations.

**Text And Citation**

The text of the revised rules remains as published in Register of Regulations, Vol. 6, Issue 11, May 1, 2003 after

deleting the word "Foundation" in Regulation 1.1.1.

**SO ORDERED** this 22<sup>nd</sup> day of July, 2003.

**STATE BOARD OF PHARMACY**

John E. Murphy, R.Ph., President  
 Yvonne Brown, R.Ph., Vice President  
 Daniel Hauser, Pharm. D.  
 Joseph F. Gula, R. Ph., J.D  
 Nancy Weldin, Public Member  
 Carolyn Calio, Public Member  
 Karen J. Dey, R.Ph.

**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~~ provide proof of completion of all requirements for graduation from an approved school or college. 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 as determined by the National Association of Boards of Pharmacy (NABP) on the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination for Delaware (MPJE) Examination~~ to be eligible for a license to practice. A candidate must take an examination within 365 days of the determination of eligibility by the Board. The Secretary will supply the grades 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.~~

1.1.3 The Board will re-confirm the eligibility of an applicant who fails the NAPLEX. ~~Any applicant who fails the examination~~ The applicant shall be entitled to take a

re-examination at least ninety-one (91) days following the date of the failure. If an applicant has failed the examination three times, he/she shall be eligible to re-take the examination NAPLEX, 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.~~

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. The Board will re-confirm the eligibility of an applicant who fails the MPJE. The applicant shall be entitled to re-take the MJPE at least thirty-one (31) days following the date of the failure. If an applicant has failed the examination three times, he or she shall be eligible to re-take the examination, provided that he or she produces evidence of working full-time as an intern for a period of three months or has completed a one semester college course on jurisprudence.~~

**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.

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).

### 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 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 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 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 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 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.

1.4.5.5 Credit for Instructors of Continuing Education

1.4.5.5.1 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.

1.4.5.5.2 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 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 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 Credit for On the Job Training:

1.4.5.6.1 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.

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

1.4.5.6.3 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 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).

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 with in the practice after licensure is at least equivalent to the practical pharmacy experience required by the Delaware Board. An applicant for licensure by reciprocity shall be of good moral character and shall:~~

1.7.1.1 submit proof that he or she was qualified for licensure in Delaware at the time of initial licensure by examination;

1.7.1.2 submit proof of licensure in good standing from each state where he or she is or has been licensed; and

1.7.1.3 obtain a passing score on the MPJE on the laws applicable in this State as provided in Regulation

## 1.1.

~~1.7.2 Candidates for reciprocity licensure, except those who have been licensed by examination within the last year, must have practice 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 1.7.2~~ Reciprocity applicants who took examinations after June 1, 1979, must have passed the ~~National Association of Boards of Pharmacy standard examination~~ NAPLEX 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 examination 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 1.7.3~~ Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/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

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

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

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

**See 4 DE Reg. 1501 (3/1/01)**

**See 6 DE Reg. 488 (10/1/02)**

### 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 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:~~ maintain a library of the latest edition and supplements of current reference sources (either hard copy or electronically accessible) appropriate to the individual pharmacy practice and to the care of the patients served. The reference sources must:

#### 3.3.1 References:

3.3.1.1 ~~Delaware Laws and Regulations governing Pharmacy. Provide information on the therapeutic use, dosing, pharmacology, adverse effects, and interactions of drugs dispensed to patient.~~

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) Provide information helpful in the counseling of patients on the use of drugs dispensed.~~

3.3.1.3 ~~USP-DI (All volumes and supplements). Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.~~

3.3.1.4 Include a listing of therapeutic equivalents for drugs dispensed.

~~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 Hansten's Drug Interactions~~

~~3.3.1.4.1.4 APhI 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~~

3.3.1.5 Include current Delaware and federal laws and regulations governing pharmacy and controlled substances.

3.3.1.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.

**3.3.2 Equipment:**

**3.3.2.1 Prescription Scale, Class A**

Set of metric weights if a balance is used

**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.

**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

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

See 6 DE Reg. 488 (10/1/02)

## DEPARTMENT OF AGRICULTURE

### THOROUGHBRED RACING COMMISSION

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

#### ORDER

Pursuant to 29 *Del.C.* §10118 and 3 *Del.C.* §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed amendments to the Commission Rules. Following notice and a public hearing held on June 30, 2003 on the proposed Rule amendments, the Commission makes the following findings and conclusions:

#### Summary Of Evidence

1. The Commission posted public notice of the proposed amendments in the June 1, 2003 **Register of Regulations** and in the **Delaware Capital Review** and the **Delaware State News**. The proposed amendments to the Commission's Rules are as follows:

i) amend Rule 1.28 to clarify the definition of "Meeting" to include all race dates approved by the Commission under 3 *Del.C.* §10122(c);

ii) amend Rule 3.02(a) to clarify that the authority of the Stewards at the Meeting shall be during the period as required by the Commission; and

iii) amend Rule 19.01(d) to provide that one steward may hold a hearing during emergencies or during periods when there is no live racing.

2. The Commission held a public hearing on June 30,

2003 and received no public comments. The Commission received no written comments from the public during the month of June, 2003.

#### Findings Of Fact And Conclusions

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Regulations.

4. The Commission finds that the proposed amendments to the Commission Regulations are necessary for the agency to achieve its statutory duty to regulate thoroughbred racing under 3 *Del.C.* §10103. The Commission concludes that the proposed amendments to the Regulations should be adopted in the proposed form. The Commission adopts the proposed amendments to Commission Rules 1.28, 3.02(a), and 19.01(d).

5. The effective date of this Order shall be ten (10) days from the publication of this order in the next issue of the Register of Regulations. A copy of the enacted Regulation amendments is attached as Exhibit #1 to this Order.

**IT IS SO ORDERED** this 21st day of July, 2003.

Bernard Daney, Chairman

Duncan Patterson, Commissioner

Carolyn Wilson, Commissioner

#### Part 1 -- Definitions and Interpretations

In the context of these Rules of Racing, the following words and phrases shall be construed as having the following special meanings:

##### 1.01 Added money:

Cash, exclusive of trophy or other award, added by the Licensee to stakes fee paid by subscribers to form the total purse for a stakes race.

##### 1.02 Age:

The number of years since a horse was foaled, reckoned as if such horse were foaled on January 1 of the year in which such horse was foaled.

##### 1.03 Arrears:

All sums due by any permittee or registrant as reflected by his account with the Licensee or the Horsemen's Bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.

##### 1.04 Authorized Agent:

Any person currently registered as an agent for a registered-owner principal by virtue of a notarized

appointment of agency properly and fully lodged with the Licensee.

**1.05 Betting Interest:**

A single horse, or more than one horse joined as a "mutuel entry" or joined in the "mutuel field", on which a single pari-mutuel wager may be placed.

**1.06 Bleeder:**

Any horse known to have bled from its nostrils during a workout or race or is found to have bled internally by endoscopic examination. See Rule 15.02, Paragraph (a).

**1.07 Breeder:**

Owner of the dam of a horse at the time such horse was foaled. A horse is "bred" at the place of its foaling.

**1.08 Claiming Race:**

Any race in which the ownership of every horse running therein may be transferred in conformity with these Rules.

**1.09 Closing:**

Time published by the Licensee after which entries for a race will not be accepted.

**1.10 Commission:**

The Delaware Thoroughbred Racing Commission. "Commissioner" is a member of the Commission.

**1.11 Day:**

Any 24-hour period beginning at 12:01 a.m. and ending at midnight. "Racing Day" is a day on which races are conducted. "Calendar Days" are those consecutive days counted irrespective of number of "Racing Days."

**1.12 Declaration:**

Withdrawal of a horse entered in a race prior to time of closing of entries therefor in conformance with these Rules.

**1.13 Disciplinary Action:**

That action taken by the Stewards, by the Licensee, or by the Commission, for a Rule violation; it can include suspension, revocation, voidance of a permit, authorization or registration, ejection or exclusion from the Licensee's grounds, or assessment of a forfeiture, or reprimand, or any combination thereof.

**1.14 Disqualification:**

An order of the Stewards revising the order of finish of a race.

**1.15 Entry:**

The act of nominating a horse for a race in conformance with these Rules. See "Mutuel Entry".

**1.16 Equipment:**

Accoutrements, other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, include whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

**1.17 Exhibition Race:**

A race between horses of diverse ownership for which a purse is offered by the Licensee, but on which no pari-mutuel wagering is permitted.

**1.18 Field or Mutuel Field:**

A single betting interest involving more than one horse which is formed when the number of horses starting a race exceeds the numbering capacity of the totalizator and where all horses of a higher number are grouped in the "mutuel field".

**1.19 Forfeit:**

Money due by a permittee, registrant or other person to whom these Rules apply because of an error, fault, neglect of duty, breach of contract, or alternative order of the Stewards.

**1.20 Handicap Race:**

A race in which the weights to be carried by the horses therein are assigned by the Licensee's Handicapper with the intent of equalizing the chances of winning for all horses entered. A "free handicap" is a handicap for which no nominating fee is required to be weighted, but an entrance and/or starting fee may be required for starting therein.

**1.21 Horse:**

Any Thoroughbred, whether mare, gelding, colt or filly, which is registered as such with the Jockey Club in Lexington, Kentucky, or, for Steeplechase racing purposes, by the National Steeplechase Association in Fair Hill, Maryland and any Arabian whether mare, gelding, colt or filly which is registered as such with the Arabian Horse Registry of America, Inc. in Westminster, Colorado and for which an Identification Supplement has been issued.

In these rules of racing, unless otherwise noted, the use of the word "Thoroughbred" shall likewise apply to Arabian horses.

**1.22 Ineligible:**

A horse or person not qualified, not permitted, or not authorized under these Rules or conditions of a race to participate in a specified racing activity.

**1.23 Jockey:**

A rider currently authorized to ride in races as a Jockey, or Apprentice Jockey, or Amateur Jockey, or a provisional Jockey permitted by the Stewards to ride in two races prior

to applying for a permit.

1.24 Lessee:

A registered Owner whose interest in a horse is a leasehold.

1.25 Licensee:

Any person, or persons, or corporation, licensed by the Commission to conduct a recognized race meeting at a particular racetrack within this State. When used herein, the word refers to that Licensee of the racetrack at which any matter or thing calling for the application of these Rules arises or occurs.

1.26 Maiden:

With respect to flat races, a horse which has never won a flat race at a recognized meeting in any country; a "maiden" which was disqualified after finishing first remains a "maiden"; race conditions referring to "maidens" shall be interpreted as meaning "maidens" at the time of starting.

In flat races a horse is still a maiden though a winner of a steeplechase or hurdle race, and in steeplechase and hurdle races a horse is still a maiden though a winner on the flat.

1.27 Match Race:

A race between two horses for which no other horses are eligible.

1.28 Meeting:

The entire period of consecutive days, exclusive of dark days, granted by the Commission to a Licensee for the conduct of racing, beginning at 12:01 a.m. of the first racing day and extending through a period ending at 11:59 p.m. after the last scheduled race on the last day, which includes all race dates approved by the Commission under 3 Del. C. §10122(c) including racing dates limited exclusively to the receiving and accepting of wagers or bets on electronically televised simulcasts. See "Recognized Meeting".

Rule 1.28 Rev. March 1976.

1.29 Month:

A calendar month.

1.30 Mutuel Entry:

A single betting interest involving two or more horses entered in the same race and joined for pari-mutual purposes because of common ties as to ownership so that a wager on one horse joined in a "mutuel entry" is a wager on all horses joined in the same "mutuel entry".

Rule 1.30 Rev. July 1977.

1.31 Mutuel Field:

See "Field".

1.32 Nominator:

The person in whose name a horse is entered for a race.

1.33 Owner:

Any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly registered and approved by Licensee as a person responsible for such horse.

1.34 Permittee:

Any person authorized by or registered with and approved by Licensee to participate in any designated way in racing at the location where Licensee is authorized to conduct a racing meet. See "Registrant".

1.35 Place:

When used in the context of a single position in the order of finish in a race, "Place" means second; when used in the context of a pari-mutuel wagering, a "Place" wager is one involving a payoff on a betting interest which finished first or second in a race; when used in the context of multiple positions in the order of finish in a race, "Place or Placing" means finishing first, or second, or third. See "Unplaced".

1.36 Post:

The starting point of a race.

1.37 Post Position:

The relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

1.38 Post Time:

The advertised moment scheduled for the arrival of all horses at the starting point for a race.

1.39 Prize:

The combined total of any cash, plate, purse, premium, stake, trophy, reward or object of value awarded to the Owners of horses according to order of finish in a race. No race shall be authorized or permitted for a purse, stake or reward of less than \$700.00, except in the event of a split race, in which case the purse, stake or reward shall be equally divided.

1.40 Purse:

The gross cash portion of the prize for which a race is run.

1.41 Purse Race:

Any race for which entries close less than 72 hours prior to its running, and for which Owners of horses entered are not required by its conditions to contribute money toward its purse.

**1.42 Race:**

A running contest between horses, ridden by Jockeys, over a prescribed course, at a recognized meeting, during regular racing hours, for a prize.

**1.43 Racing Official:**

Any person appointed and designated as such, and authorized to perform the duties prescribed, by the Licensee of any race meeting authorized by the Commission.

**1.44 Recognized Meeting:**

Any meeting with regularly scheduled races for horses on the flat or over jumps, licensed by and conducted under rules promulgated by a governmental body, including any such authority which has reciprocal relations with the Jockey Club of Lexington, Kentucky, whose race records can be provided to a Licensee by the Jockey Club and any such authority which has reciprocal relations with the American Horse Registry of America, Inc. in Westminster, Colorado.

**1.45 Registrant:**

Synonymous with "Permittee".

**1.46 Registration Certificate:**

A document issued by the Jockey Club of Kentucky certifying as to the name, age, color, sex, pedigree and breeder of a horse as registered by number with the Jockey Club, shall be deemed to refer also to the document known as a "racing permit" issued by the Jockey Club in lieu of a "registration certificate" when a horse is recognized as a Thoroughbred for racing purposes in the United States, but is not recognized as a Thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

1.46(a) Reward: Any non-monetary prize, as defined in Rule 1.39, with a monetary value in excess of \$2,500.00, as determined by the fair market value of the prize, given to competitors in a race as an incentive to win, place or show.

The fair market value of any prize shall be determined by the commission. Evidence of fair market value shall include purchase price and resale value.

Rule 1.46(a) adopted 11/30/94.

**1.47 Rules:**

When used in the plural, shall be deemed to mean all current "Rules" promulgated by the Commission; when used in the singular, shall be deemed to be confined to the numbered "Rule", and subparagraphs thereof, wherein such mention is made.

**1.48 Rulings:**

All determinations, decisions, or orders of the Stewards duly issued in writing and posted.

Rule 1.48 Rev. March 1976.

**1.49 Scratch:**

Withdrawal of a horse entered for a race after time of closing of entries therefor in conformance with these Rules.

**1.50 Scratch Time:**

Time set by Licensee's Racing Secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

**1.51 Specimen:**

Sample of blood, urine or saliva taken or drawn from a horse for chemical testing.

**1.52 Stakes:**

All fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of such race, such fees to be included in the purse.

**1.53 Stakes Race:**

A race which closes more than 72 hours in advance of its running and for which subscribers contribute money towards its purse.

**1.54 Starters:**

When referring to a horse -- a horse in a race when the starting-gate doors open in front of it at the moment the Starter (a Racing Official) dispatches the horses for a race.

**1.55 Stewards:**

Duly appointed Racing Officials with powers and duties as provided by these Rules.

**1.56 Subscription:**

Nomination or entry of a horse in a stakes race.

**1.57 Thoroughbred Racing:**

The conduct of running contests between horses, each of which is registered with the Jockey Club in Lexington, Kentucky and certified as having a Thoroughbred pedigree, or which is registered and certified by any other authority recognized by the commission, and each of which is ridden by a Jockey, under the auspices of an appropriate governmental regulatory body which has jurisdiction over such.

1.57(a) Trophy or Plate: For the purpose of calculating a prize or reward, a perpetual trophy or plate shall have no monetary value.

No trophy or plate shall be considered a reward, as defined by these rules and 3 Del. C. §10121 and 10141(c), unless the trophy or plate has a monetary value exceeding \$2,500.00.

The fair value market of any trophy or plate shall be determined by the commission. Evidence of fair market value shall include purchase price and resale value.



Rule 1.57(a) adopted 11/30/94.

1.58 Unplaced:

Not among the first three horses finishing a race.

1.59 Walkover:

A race in which the only starter or all starters represent a single ownership.

1.60 Weigh In:

Presentation of a Jockey to the Clerk of Scales for weighing after a race.

Rule 1.57 Rev. March 1974.

1.61 Weigh Out:

Presentation of a Jockey to the Clerk of Scales for weighing prior to a race.

1.62 Weight for Age:

A standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse, as set out hereinafter in these Rules.

1.63 Workout:

A training exercise of a horse on the training or main track of a Licensee during which such horse is timed for speed over a specified distance.

1.64 Year:

Twelve consecutive months beginning with January and ending with December.

1.65 Mandatory Safety Equipment: Helmets and Vests

The helmets and vests that are to be worn while riding astride a horse or pony at any time, for any reason, while on the grounds of a racetrack that comes under the jurisdiction of the Delaware Racing Commission.

Rule 1.65 adopted 11/30/94.

### PART 3 -- STEWARDS

3.01 Qualifications for Stewards:

No person shall qualify for appointment or approval as a Steward unless:

(a) In addition to any minimum qualifications promulgated by the Commission, all applicants for the position of Steward must be certified by a national organization approved by the Commission. An applicant for the position of steward must also have been previously employed as a steward, patrol judge, clerk of scales or other racing official at a thoroughbred racing meeting for a period of not less than forty-five days during three of the last five years, or have at least five years of experience as a licensed

jockey who has not less than one year as a licensed racing official at a thoroughbred racing meeting or have ten years of experience as a licensed thoroughbred trainer who has served not less than one year as a licensed racing official at a thoroughbred racing meeting.

(b) He is a person of good moral character and unblemished reputation.

**See 2 DE Reg. 2042 (5/1/99)**

3.02 Appointment of Stewards:

There shall be three Stewards at each race meeting, each of whom shall be appointed by the Commission. If required by the Commission, biographical data setting out the experience and qualifications of the nominees shall be provided to the Commission by the Licensee. No Steward shall serve until approved by the Commission.

(a) ~~Stewards shall serve from one minute after midnight on the day before the first racing day until one minute before midnight on the day after the last racing day of the race meeting for which they are appointed; provided, in the event a dispute or controversy arises during a race meeting which is not settled at the conclusion of the race meeting, then the power of the Stewards shall be extended over the period necessary to resolve the matter, or until the matter is referred or appealed to the Commission; during the period of the Meeting as required by the Commission~~

(b) Stewards may be replaced by the Commission at any time for failure to perform their duties properly and diligently;

(c) In the event that during a racing meet a Steward becomes ill, resigns, or is unable to serve for any reason, then the remaining Stewards, after obtaining approval of the Commission, shall nominate a successor or temporary Steward to the Commission for approval. In emergencies, a single Commissioner by telephone may approve appointment of a successor Steward.

**See 4 DE Reg. 174 (7/1/00)**

3.03 General Powers of the Stewards

The Stewards shall exercise immediate supervision, control and regulation of racing at the race meeting for which they are appointed. By way of illustration and without in any way limiting them, the powers of the Stewards shall include:

(a) Authority over all horses and all persons (except members of the Commission and its representatives, and except Licensee's management personnel and staff) on Licensee's grounds during a race meeting as to all matters relating to racing;

(b) To determine all questions, disputes, protests, complaints, or objections concerning racing (as distinguished from Licensee's business operations and affairs) which arise during a race meeting, and to enforce such determinations. All three Stewards shall be on

Licensee's grounds before post time for the first race until conclusion of the last race. Except for good cause, all three Stewards shall be present in the Stewards' stand during the running of each race;

(c) It is preferred but not required that at least one Steward, or a designated representative of the Stewards, be present in the paddock at least 20 minutes before each race and remain there until the horses leave for the starting gate, to observe the conduct of all persons in and around the paddock and to inspect, with the Paddock Judge and Commission's Veterinarian, all horses for fitness;

(d) When requested by the Commission, to review all applications for registrations or permits to participate in racing, and, if requested by the Commission, to administer, or cause to be administered by technically qualified persons, standard examinations to all first-time applicants to be registered as or receive a permit to be a Trainer, Jockey, Apprentice Jockey, Veterinarian, Dental Technician, or Farrier, and, when requested, make recommendations as to the qualifications of all applicants for registrations or permits to participate in racing;

(e) When requested by the Commission, to review all licenses, registration certificates, and all contracts, papers, and other documents pertaining to the sale or ownership of a horse, payment of purse money, Jockey and Apprentice Jockey contracts, appointments of agents, adoptions of racing colors or stable name, and advise upon the eligibility and appropriateness thereof for participation in racing in Delaware;

(f) To call for proof of eligibility of a horse or person to participate in a race if such is in question, and in the absence of sufficient proof to establish eligibility, the Stewards may rule such horse or person ineligible;

(g) To review stall applications and advise Licensee of undesirable persons, if any, among Owners and Trainers applying for stalls, and provide the Licensee with information pertaining to such undesirable persons;

(h) To supervise the taking of entries and receive all declarations and scratches, and determine all questions arising and pertaining to same. The Stewards may in their discretion refuse the entry of any horse by any person or refuse to permit a declaration or scratch, or may limit entries in any way. Upon suspicion of fraud or misconduct, the Stewards may excuse a horse or replace any Jockey or Trainer, or Racing Official other than a Steward;

(i) All other powers enumerated in these Rules, together with such other powers as are necessary to promote and maintain stringent standards for honesty, integrity, and propriety for Thoroughbred Racing in Delaware.

**See 4 DE Reg. 174 (7/1/00)**

### 3.04 Duties and Responsibilities of Stewards:

In addition to the duties and responsibilities necessary and pertinent to the general supervision, control and

regulation of race meetings, and without limiting the authority of the Stewards to perform the same and other duties enumerated in these Rules, the Stewards shall have the following specific duties and responsibilities:

(a) To take cognizance of all misconduct or Rule infractions irrespective of whether complained of; to cause investigations to be made of all instances of possible Rule infractions; and to take such action as the Stewards may deem necessary to prevent a Rule infraction;

(b) At least one Steward, or his designated representative, shall be on Licensee's grounds from scratch time (or if not a racing day, when entries are first taken) until entries are closed. At least one Steward shall be present for the regular showing of racing films or video tapes.

(c) To suspend or revoke the registration or permit of a participant in racing, or eject or exclude from Licensee's grounds or any part thereof any person, whether a registrant or permittee or not, upon reasonable belief that a violation of these Rules has or is about to occur;

(d) To interpret and enforce these Rules, and to determine all questions pertaining to a racing matter not specifically covered by these Rules in conformity with justice and the customs of the turf;

(e) To issue decisions or rulings pertaining to racing which shall, if the Stewards deem proper, vary any arrangement for the conduct of a race meeting, to include without limiting thereby, postponing a race, or canceling a race, ruling a race run as "no contest", or the like;

(f) To request and receive assistance from the Commission, Racing Officials, members of the Thoroughbred Racing Protective Bureau, track security police, state or local police, in the investigation of possible Rule infractions;

(g) To conduct hearings on all questions concerning racing matters;

(h) In the event a regularly named Jockey or Trainer or Racing Official other than a Steward is unable for any reason to perform, the Stewards may select a substitute therefor.

(i) To see that all pari-mutuel betting machines are locked not later than the commencement of the race; to cause the "Inquiry" sign to be posted on the infield odds board as promptly as possible after the horses have crossed the finish line in a race if any doubt is held by a Steward or Patrol Judge as to the fairness of the running of such race; to cause the "Objection" sign to be posted on the infield odds board upon the lodging of same; to cause the "Official" sign to be posted on the infield odds board after determining the official order of finish for purposes of pari-mutuel payoff;

(j) To review the patrol films or video tapes of each day's races before commencement of the successive day's races, and to draw up a list of riders (including all Apprentice Jockeys) whom the Stewards feel should review such films for instructional purposes and cause same to be posted in the Jockey's Room; the Patrol Judges shall assist in

making up the film list and attend all film showings whenever their other duties permit;

(k) To maintain a daily log, reporting all actions taken by the Stewards on all controversies which arise during the day, such report to show name of track, date, weather, track conditions, claims, results of blood, saliva or urine tests to the extent available, rulings issued, and any other circumstances or condition regarded as unusual, such reports to be signed by all Stewards participating in such action and filed within 24 hours at such place as the Commission may designate;

(l) To make periodic inspections of the barn area and check track security; to make occasional, informal visits to the Jockeys' Room and observe weighing out and check security; such inspections and observations so made shall be noted in the Stewards' Report;

(m) To maintain a Minute Book which shall contain a detailed written record of all questions, disputes, protests, complaints or objections brought to the attention of the Stewards, summary of interviews taken thereon, reports of investigations thereon, together with rulings issued thereon; if a ruling is not unanimous, the dissenting Steward shall record his or her reasons for such dissent; such Stewards' Minute Book shall be available to the Commission for inspection at all times, but shall not be open to public inspection;

(n) When requested to do so, the Stewards shall submit to the Commission a written report setting out the condition of the meeting and Licensee's grounds, together with any recommendation for the improvement thereof which they may deem appropriate.

(o) To impose fines upon any corporation, association or person participating in any Thoroughbred horse race meet at which pari-mutual wagering is conducted, other than as a patron, and whether licensed or not by the Commission, for a violation of any provision of 3 Del. C. chapter 101 or these Rules and Regulations.

The Stewards may not impose a fine in excess of \$2500.00. If it is at any time deemed appropriate that a larger fine should be imposed, the Stewards shall so recommend to the Commission and shall refer the matter at hand forthwith to the Commission. The Stewards shall have the power to refer any matter before them to the Commission at any time if it appears proper because of the complexity, severity, uniqueness or extent of the activities involved or likely to be involved. Included within these powers is the authority to impose partial sanctions, such as a conditional limitation on any person's use of facilities or of the enclosure.

(p) In suspensions of jockeys for any offense other than an offense involving fraud, the:

1. Effective date of the suspension is determined at the discretion of the stewards; and
2. Jockeys serving a suspension of ten days or

less are permitted to ride in a designated race during the period of a suspension if the:

(a) Race is a stakes race with a purse of \$25,000 or more;

(b) Jockey is named not later than at the time set for the close of entries for the race; and

(c) Jockey agrees to serve an additional day of suspension in place of the day in which the jockey rides in a designated race.

Revised 10/20/93

Revised 5/26/93

## PART 19 -- HEARINGS, REVIEWS AND APPEALS

### 19.01 Procedure Before Stewards:

(a) Before holding any Stewards' hearing provided for under these Rules, notice in writing must be given to any party charged with a violation, other than a routine riding offense occurring in a race, unless such notice is waived in writing by the person charged.

(b) The notice required by the preceding subsection shall include:

1. Identification of the specific Rule or Rules involved, the infraction for which he is charged and a brief statement of the facts supporting such charge.

2. The time and place of hearing.

3. The statement that the party charged may be represented by legal counsel or by a representative of any racing trade organization of which he is a member.

(c) All Stewards' hearings shall be closed and the Stewards shall cause no public announcement to be made concerning a matter under investigation until the conclusion of the hearing and the party charged has been notified of the decision.

(d) The hearing shall be conducted by no less than two of the Stewards in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence. In emergencies during the live racing meet or during periods when there is no live racing, a hearing may be conducted by only one Steward.

(e) All testimony at such hearings shall be given under oath. A record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript, or otherwise, if funds for such are made available from any source. The Stewards will not be required to receive testimony under oath in cases where their ruling is based upon a review of the video tapes of a race.

(f) If, at the conclusion of their hearing, the Stewards find that a Rule has been violated, they promptly shall issue a written ruling which sets forth the name of every person charged with a violation, the Rule violated, their finding as to the violation of such Rule and the penalty affixed. Copies of such rulings shall be delivered to each party in interest and

to the Commission and the Licensee, and posted in the Racing Secretary's office.

#### 19.02 Review and Appeal:

Any party who is penalized by any order or ruling of the Stewards may apply to the Commission for a review of such Stewards' order or ruling.

#### 19.03 Application for Review:

An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or oral notice and shall:

- (a) Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee in the amount of \$250;
- (b) Contain the signature of the applicant and the address to which notices may be mailed to applicant;
- (c) Set forth the order or ruling requested to be reviewed and the date thereof;
- (d) Succinctly set forth the reasons for making such application;
- (e) Request a hearing;
- (f) Briefly set forth the relief sought; and
- (g) Provide assurance to the Commission that all expenses occasioned by the appeal will be borne by the applicant; and
- (h) Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.

**See 3 DE Reg. 1542 (5/1/00)**

#### 19.04 Disposition of Review Application:

After consideration of any such application for review, the Commission may grant the application, defer it or reject it. The applicant shall be advised of the Commission's disposition of his application for review.

#### 19.05 Commission Hearing:

If the Commission grants any such application for review, before holding any hearing thereon, it shall:

- (a) Give written notice forthwith to the applicant and all other necessary parties personally or by mail, including:
  1. Time and place of such hearing as designated by the Commission Chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing.
  2. Except to applicant, a copy of the application for review.
- (b) The Commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a Rule violation if the matter involves a Rule

violation and requires a proceeding of an adversary nature, such prosecutor being an attorney who has had no prior participation in the matter on review.

The Commission may request the Attorney General, or a member of his staff other than the special prosecutor, to serve as law officer for the Commission to assist the presiding officer in rendering decisions of a judicial nature.

(c) The Commission shall permit all parties that so desire to be represented by counsel and, to the extent it deems necessary or appropriate, shall permit all parties to respond and present evidence and argument on all issues involved.

(d) The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents, before the Commission, and may administer oaths or affirmations to the witnesses whenever, in the judgment of the Commission, it may be necessary for the effectual discharge of its duties.

If any person refuses to obey any subpoena or to testify or produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or produce any books, papers or documents.

Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.

False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

(e) All tape recordings or stenographic recordings taken and transcriptions made of the hearing or any part thereof shall be paid for by such parties as request that such a tape or stenographic record be made of the hearing, except that additional transcripts thereof shall be paid for by the person desiring such copies.

(f) The Commission may exclude evidence that is irrelevant, immaterial or unduly repetitious and may admit evidence that would be inadmissible under the Civil Rules of Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(g) All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.

(h) The Commission may take official notice of technical facts or customs or procedures common to racing.

(i) The Commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order or default.

(j) Upon conclusion of the hearing, the Commission shall take the matter under advisement, shall render a decision as promptly as possible and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth

the name of every person charged with a Rule violation; the Rule number and pertinent parts of the Rule alleged to have been violated; a separate statement of reasons for the decision; and penalties fixed by the Commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the Racing Secretary's office of the Licensee where the matter arose and forwarded to the national office of the National Association of State Racing Commissioners.

(k) The Commission, for just cause, may refund the filing fee to the applicant.

Added: 9/27/94

#### 19.06 Continuances:

(a) All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefor and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

(b) When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

(c) An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for a continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.

(d) If the Commission approves the application for continuance, it shall, concurrently with such postponement, set a date for the continued hearing.

See 3 DE Reg. 1542 (5/1/00)

### THOROUGHBRED RACING COMMISSION

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

Pursuant to 29 Del.C. §10113(b)(4) and 3 Del.C. §10103, the Delaware Thoroughbred Racing Commission ("the Commission") hereby issues this Order adopting an amendment to Commission Rule 13.05. The Commission makes the following findings and conclusions:

1. On March 11, 2002, the Commission adopted an amendment to Rule 13.05 which enacted a new provision to the Commission's claiming rules. The new Rule 13.05 as enacted provides that a claimed horse may not race for twenty days after being claimed in a race. The title of the rule however still contains the former title of the former 1995 version of the Rule which is "13.05 Thirty Day Prohibition-Racing Claimed Horse".

2. The Commission by motion at its July 15, 2003 meeting moved to correct the title of Rule 13.05 to properly reflect the provisions of Rule 13.05. This is a nonsubstantive change to correct a technical error which is exempt from the normal notice and publication requirements of the Administrative Procedures Act, 29 Del. C. §10115.

3. The Commission concludes that the title to Rule 13.05 shall be changed to: Rule 13.05 Twenty Day Prohibition-Sale of Claimed Horse.

4. This Order will be published in the next issue of the **Register of Regulations**.

**IT IS SO ORDERED** this 21st day of July, 2003

Bernard Daney, Chairman  
Duncan Patterson, Commissioner  
Carolyn Wilson, Commissioner

~~13.05 Thirty Day Prohibition — Racing Claimed Horse:~~  
Twenty Day Prohibition-Sale of Claimed Horse.

A claimed horse shall not run for twenty days after being claimed in a race in which the determining eligibility price is less than twenty-five percent more than the price for which the horse was claimed. The day claimed shall not count but the following calendar day shall be the first day, and the horse shall be entitled to enter whenever necessary so that it may start on the twenty-first day calendar following the claim. This provision shall not apply to starter handicaps, allowance and starter allowance races.

See 5 DE Reg. 1710 (3/1/02)

**DEPARTMENT OF EDUCATION**

14 DE Admin. Code 101  
Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 **Del.C.** § 101)

**Regulatory Implementing Order****101 Delaware Student Testing Program****I. Summary of the Evidence and Information Submitted**

Pursuant to 29 *Del.C.* § 10113(b)(5) and 14 *Del. C.* §153(d)(2)and 153(d)(12), the Secretary of Education seeks the consent of the State Board of Education to adopt an amendment to regulation 101 Delaware Student Testing Program Section 3.1. The amendment reflects the changes made to 14 *Del.C.* 153(d)(2) and 153 (d)(12) by the passage of Senate Bill 141 by the 142<sup>nd</sup> General Assembly on June 10, 2003 and signed by the Governor on July 15, 2003. The bill as signed amended the *Delaware Code* relating to the use of other indicators prior to requiring students to attend mandatory summer school. The following statement has been added to section 3.1, Pursuant to 14 **Del.C.** 153(d)(2) and 153 (d)(12), local school districts and charter schools may also consider other indicators of student performance relative to the state content standards when determining if a student may advance to the next grade level without attending summer school.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend this regulation to reflect the change in statute.

**III. Decision to Amend the Regulation**

For the foregoing reason, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 DE Admin. Code § 101 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.* §122 on August 21, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 21st day of August 2003.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 21<sup>st</sup> day of August, 2003

**STATE BOARD OF EDUCATION**

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**EXHIBIT A****101 Delaware Student Testing Program**

1.0 Definition: The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades K-10 in the areas of reading, writing and mathematics and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.

1.1 All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

1.2 The Department of Education shall determine the dates upon which the DSTP will be administered, and will advise the school districts and charter schools of those dates.

2.0 Levels of Performance: There shall be five levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3, 5, 8 and 10 in reading, mathematics and writing and to students

in grades 4, 6, 8 and 11 in social studies and science. In reading, writing and mathematics at grades 3, 5, 8 and 10 and science and social studies at grades 4, 6, 8 and 11 the cut points for Exceeds the Standard and Meets the Standard shall be determined by the Department of Education with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation. Beginning with the 2006 assessments, there shall be the same five levels of performance for students in grades 4, 6, 7 and 9 in reading, mathematics and writing. Said levels are defined and shall be determined as follows:

2.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education.

2.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance Standard shall be determined by the Department of

Education, with the consent of the State Board of Education.

2.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

### 3.0 Other Indicators of Student Performance

3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 **Del.C.** §153(b) when determining the placement of students who score at Level 1 or Level II on a mandated retake of a portion of the DSTP. Pursuant to 14 **Del.C.** 153(d)(2) and 153 (d)(12), local school districts and charter schools may also consider other indicators of student performance relative to the state content standards when determining if a student may advance to the next grade level without attending summer school. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 **Del.C.** §153(e)(1); student performance on end-of-course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 **Del.C.** §153(a).

3.2 Any local school district or charter school planning to use other indicators of student performance shall submit the proposed indicators to the Department of Education by September 1st of each year

3.2.1 Any such submission must include a demonstration of how an indicator of student performance aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.

3.2.2 Any proposed indicators of student performance must be approved by the Department of Education following consultation with the Student Assessment and Accountability Committee and the State Board of Education.

3.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of Education.

3.3.1 The academic review committee shall be

composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member and two school building administrators.

3.3.2 The supervisor of curriculum or instruction for the school district or charter school or his/ her designee shall chair the committee.

3.3.3 Placement of students with disabilities who are eligible for special education and related services is determined by the student's IEP team.

#### 4.0 Individual Improvement Plan (IIP)

4.1 The following students are required to have an Individual Improvement Plan: Students who score below Level 3 Meets the Standard, on the reading portion of the 3<sup>rd</sup>, 5<sup>th</sup> or 8<sup>th</sup> grade Delaware Student Testing Program or the mathematics portion of the 8<sup>th</sup> grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

4.1.1 Students assessed on the DSTP in grades K, 1, 2, 4, 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in reading shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student. Students assessed on the DSTP in grades 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in mathematics shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

4.2 The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).

4.3 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and/or mentoring programs.

4.4 Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or

designee and the parent or legal guardian of the student. A parent or the student's legal guardian must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

4.5 Disputes initiated by a student's parent or legal guardian concerning the student's IIP shall be decided by the academic review committee. Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the Regulations, Children with Disabilities.

5.0 Summer school programs for students in grades 3, 5, and 8 as required pursuant to 14 *Del.C.* § 153.

5.1 Summer school programs shall be provided by the student's district of residence with the following exceptions:

5.1.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.

5.1.2 Where by mutual agreement of both districts or a charter school and the parent or guardian of the student another district provides services.

5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's parent or guardian, the parent or guardian arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent or guardian shall be responsible for the cost of providing non-public school instruction unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.

5.1.4 Where a student has been offered admission into a vocational technical school district or charter school that district or charter school may provide summer school services.

6.0 High School Diploma Index As Derived from the 10<sup>th</sup> Grade Assessments Pursuant to 14 *Del.C.* § 152.

6.1 Students who graduate from a Delaware public high school, as members of the class of 2004 and beyond shall be subject to the diploma index as stated herein.

6.1.1 Beginning in 2002 for the graduating class of 2004, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics.

6.1.2 Beginning in 2005 for the graduating class of 2006, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.

6.2 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve



his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.

6.3 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.

6.3.1 Beginning with the year 2002, the assigned weights shall be .40 for reading, .40 for mathematics, and .20 for writing for the graduating class of 2004 and 2005.

6.3.2 Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006 and beyond.

6.4 Students shall qualify for State of Delaware High School diplomas as follows:

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 provided that the student has attained a Performance Level 3 or higher in each content area and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.2 A student shall be awarded a Standard State Diploma upon attainment of a diploma index greater than or equal to 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.3 A student shall be awarded a Basic State Diploma upon attainment of a diploma index less than 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.5 Parent or Guardian Notification: Within 30 days of receiving student performance levels and/or diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to the student's parent or legal guardian.

7.0 Security and Confidentiality: In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

7.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the certification provided by the Department of Education regarding test security before, during and after test administration.

7.2 Violation of the security or confidentiality of any test required by the Delaware Code and the Regulations of the Department of Education shall be prohibited.

7.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate

test administration materials in 14 Del.C. §170 through §174.

7.4 Procedures for Reporting Security Breaches

7.4.1 School Test Coordinators shall report any questionable situations to the District Test Coordinators immediately.

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

7.4.2.1 Within 5 days of the incident the District Test Coordinator shall file a written report with the State Director of Assessment and Analysis that includes the sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district.

7.4.2.2 Following a review of the report by the State Director of Assessment and Analysis and the Associate Secretary of Education for Assessment and Accountability, an investigator from the State Department of Education will be assigned to verify the district report.

7.4.2.3 Within 10 days of the receipt of the report from the District Test Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be provided access to all parties involved and/or to any witnesses.

7.4.2.4 The investigator shall report the findings to the Associate Secretary for Assessment and Accountability. Following the review the Associate Secretary shall make a ruling describing any recommendations and or required actions.

7.4.2.5 The ruling shall be delivered within 10 days of the receipt of all reports and information and records shall be kept of all investigations.

8.0 Procedures for reviewing questions and response sheets from the Delaware Student Testing Program (DSTP)

8.1 School personnel, local school board members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education.

8.1.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as

requested and keep records of all reviews.

8.1.3 In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.

8.2 Parent/guardian(s) may request to view the test questions and their student's responses. In order to review the DSTP questions and their student's responses parents/guardian(s) shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.

8.2.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.2.3 In the case of the stand-alone writing response, the parent/guardian(s) may go to the local school district or charter school to view the test responses.

## 9.0 Invalidations and Special Exemptions

9.1 Invalidations for students in grades 3, 5, 8 and 10 for reading, writing and mathematics and grades 4, 6, 8 and 11 for science and social studies: Invalidations are events or situations that occur during the administration of the DSTP assessments which may result in a statistically unreliable score report for a student. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.

9.1.1 Reporting of situations that occur during testing.

9.1.1.1 The school building principal or designee shall notify the District Test Coordinator in writing within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).

9.1.1.2 The District Test Coordinator shall notify the Department of Education staff person assigned to the district for test security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).

9.1.1.2.1 The District Test Coordinator shall submit a DSTP Incident Report Form within three business days of the events. Written reports from the building principal or designee and any staff must be

included with the DSTP Incident Report Form.

9.1.1.3 The Director of Assessment for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score and such decision shall be final.

9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district for test security purposes.

9.1.2 Consequences of invalidations.

9.1.2.1 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an intentional act of the student, the student will be assigned a performance level 1 (well below standard) for that assessment and will be subject to such consequences as may otherwise be imposed pursuant to law for students who score at performance level 1 of the assessment; the assessment test score of any such student shall be reported and counted in the test scores of the student's school for all purposes, including school and district accountability.

9.1.2.2 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an event which is unforeseen and beyond the control of the student and if the student is unable to participate in a regularly scheduled test make-up, the student shall not be subject to any of the consequences as would otherwise be imposed pursuant to law; the assessment score of any such student shall not be reported or counted in the test scores of the student's school for any purpose, including school and district accountability.

9.2 Special Exemptions for students in grades 3, 5, 8, and 10 for reading, writing and mathematics and grades 4, 6, 8 and 11 for science and social studies: A special exemption may be available when a student's short-term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.

9.2.1 Special exemptions for students who are tested according to the Department of Education's Guidelines for Inclusion of Students with Disabilities and Students with Limited English Proficiency are also available as provided in the Guidelines.

9.2.2 Requests for special exemptions based on physical or mental condition.

9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short-term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or

extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception ; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

9.2.2.2 The District Test Coordinator shall submit a completed Request for Special Exemption Form to the Director of Assessment for the Department of Education at least 60 calendar days before the first day of testing. A copy of the physician's statement required in the preceding subsection will accompany the request.

9.2.2.2.1 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.2.2.2 The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.3 Request for special exemptions based on emergency.

9.2.3.1 Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.

9.2.3.2 Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.

9.2.3.3 The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.

9.2.3.3.1 The District Test Coordinator shall submit a completed DSTP Request for Special Exemption Form to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which describes the nature of the situation.

9.2.3.3.2 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit a recommendation on each request to the Associate Secretary

for Assessment and Accountability.

9.2.3.3.3 The Associate Secretary shall decide whether a request for a special exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.4 Consequences of Special Exemptions.

9.2.4.1 Any special exemption granted by the Department of Education is limited to the testing period for which it was requested and does not carry forward to future test administrations.

9.2.4.2 Students who are granted a special exemption shall not be reported or counted in the school's test scores for any purpose, including school and district accountability.

9.2.4.3 Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades 3, 5, or 8 for the testing period to which the exemption applies.

**See 4 DE Reg. 464 9/1/00**

**See 5 DE Reg. 620 (9/1/01)**

**See 5 DE Reg. 2115 (5/1/02)**

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## Regulatory Implementing Order

### 215 Strategic Planning

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to repeal regulation 215 Strategic Planning. The regulation directs the local school districts to maintain a strategic planning process. The local school districts have the authority to administer and supervise their schools under the *Delaware Code* in Chapter 10 which includes establishing policies on strategic planning. In addition, the districts are required by numerous state and federal laws to produce planning documents. The Department of Education does not need to regulate the planning processes of the local school districts.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 18, 2003, in the form hereto attached as *Exhibit "A"*. No comments were received.

#### II. Findings of Facts

The Secretary finds that it is appropriate to repeal this regulation because the planning process is within the authority of the local school districts as per 14 *Del. C.* Chapter 10.

### III. Decision to repeal the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby repealed.

### IV. Text and Citation

The text of the regulation repealed hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation 14 DE Admin. Code § 215 shall be removed from 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.* §122 on August 6, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 6<sup>th</sup> day of August 2003.

#### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

#### ~~215 Strategic Planning~~

~~1.0 Each school district shall maintain a multi-year strategic planning process to serve as the foundation for all other required plans and grant applications and for the purpose of assuring and monitoring continuous program improvement and student achievement.~~

**See 2 DE Reg. 961 (12/1/98)**

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### Regulatory Implementing Order

#### **610 Treatment of Severe Discipline Problems Component (14 Del.C. Section 1604 of Chapter 16 Comprehensive School Discipline Improvement Program August 1998)**

#### I. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to re-adopt regulation 610 Treatment of Severe Discipline Problems Component (14 Del.C. Section 1604 of Chapter 16 Comprehensive School Discipline Improvement Program August 1998). The regulation is due for action as per the regulation review cycle and although adjustments need to be made to the regulation, the regulation is being recommended

for re-adoption until the needed research is completed and the adjustments can be made.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 18, 2003, in the form hereto attached as *Exhibit "A"* Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The comments received on regulation 610 concerning Sections 1.0 and 8.0 are currently being reviewed along with the data collected relevant to the amendments that are planned immediately following the re-adoption of the regulation.

### II. Findings Of Facts

The Secretary finds that it is appropriate to re-adopt this regulation since is due for action as per the regulation review cycle and although adjustments need to be made to the regulation, the regulation is being re-adoption until the needed research is completed and the adjustments can be made.

### III. Decision to re-adopt the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to re-adopt the regulation. Therefore, pursuant to 14 *Del. C.* Chapter 16, the regulation attached hereto as *Exhibit "B"* is hereby re-adopted. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby re-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 re-adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code §610 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.* Chapter 16 on August 6, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 6<sup>th</sup> day of August 2003.

#### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

**610 Treatment of Severe Discipline Problems**  
**Component (14 Del.C. Section 1604 of Chapter 16**  
**Comprehensive School Discipline Improvement Program**  
**August 1998)**

**1.0 Population to be Served:** Except as otherwise provided herein, all students who are expelled by a local school district or are in danger of being expelled shall be placed in the alternative program unless the student is expelled for an offense equivalent to a violation of one of the following: 11 Del.C. §613 (Assault in the First Degree); or 11 Del.C. §1457 (Possession of a Weapon in a Safe School and Recreation Zone); or 11 Del.C. §802 (Arson in the Second Degree); or 11 Del.C. §803 (Arson in the First Degree); or 11 Del.C. §771 (Unlawful Sexual Penetration in the Second Degree); or 11 Del.C. §772 (Unlawful Sexual Penetration in the First Degree); or 11 Del.C. §773 (Unlawful Sexual Intercourse in the Third Degree); or 11 Del.C. §774 (Unlawful Sexual Intercourse in the Second Degree); or 11 Del.C. §775 (Unlawful Sexual Intercourse in the First Degree); or 16 Del.C. §4753A (Trafficking Marijuana, Cocaine, Illegal Drugs or Methamphetamine).

**2.0 Non-referral of Students:** In any case in which an expelled student is not referred to an alternative program, the decision of the local school district to expel shall state with specificity the reason for non-referral and the evidence in support thereof.

**3.0 Informing the Legal Guardian:** Districts shall inform the legal guardian of students for whom expulsion is being considered or who are expelled of the alternative education options that are then currently available to the students. These options shall include but not be limited to the alternative program, GED programs, James H. Groves High School and others.

**4.0 Age/Grade Level to be Served:** Eligible students shall be primarily those who are enrolled in grades 6 through 12, however students in lower grades may also be served through these funds.

**5.0 Placement in Alternative Programs:** Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for each student. The Placement Team, in concert with the Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both the student and his/her family. The ISP shall include a tentative re-entry/transition plan. The Alternative Placement Team shall be composed of a representative of the Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level

principal, assistant principal or other person as appropriate; student's custodial adult; guidance counselor and/or school social worker; representatives from DSCYF such as Youth Rehabilitation Service or other worker with whom the family is involved as appropriate. Other school, alternative program, or agency personnel may be invited as needed and determined by the Placement Team. Students who are being placed in the Alternative Program as a transition from DSCYF facilities will have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult. If students from either a school district or DSCYF facility are students with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the IEP Team may be the same.

**6.0 September 30 Enrollment Count:** A student enrolled in an Alternative Program may be counted in the regular school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.

**7.0 Alternative Program Setting:** The Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs so long as the students do not interact with the regular school population or use any school facility at the same time as the regular school population. Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Settings shall meet safety regulations for student occupancy as outlined in Delaware Code.

**8.0 Alternative Program Design:** The Alternative Program shall include an educational program designed to maintain and improve skills at least in core academic areas such as English/language arts, mathematics, science, and social studies that will allow students to re-enter the regular school program with a reasonable chance and expectation for success. Every effort shall be made to provide courses comparable to the regular school setting for each student. Opportunities for academic acceleration will also be provided. The academic program should focus on applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Credit for work accomplished in the Alternative Program setting shall be automatically transferred to the regular school. Included in the academic core studies should be study skills, test taking strategies, and academic confidence building. Counseling and other services shall be delivered on-site for

students.

**9.0 Staffing:** Instructional staff shall include at least two certified teachers in the major academic subject areas who can provide the lead for academic instruction and at least two instructional/service aides. Priority should be given to hiring staff who are qualified to teach special education.

**10.0 Students With Disabilities:** Notwithstanding any of the provisions to the contrary, students with disabilities shall be served pursuant to the provisions of Regulation 925, Children with Disabilities.

**See 2 DE Reg. 374 (9/1/98)**

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**Regulatory Implementing Order**

**878 School District Compliance With the Gun Free School Act**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend regulation 878 School District Compliance with the Gun Free School Act. The title has been changed by removing the words "School District" to reflect that charter schools must also comply with this regulation. The number has been changed to 603 placing the regulation in the Discipline section (600) of the *Regulations of the Department of Education* rather than in the Health and Safety section (800) since the focus of the regulation is the penalties for gun possession. The amended version of the regulation still requires school districts to have a Gun Free Schools policy implementing the *Gun Free Schools Act* (20 USC § 7175) but the policy now also includes charter schools. The amended regulation continues to contain reporting requirements but the specific content of those requirements has been updated to reflect the language of the No Child Left Behind Act of 2001.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 18, 2003, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities.

The reference number for the Federal statute pointed out in regulation 878 has been corrected and the Department carefully considered the concern that Section 3.0 of the proposed regulation is under inclusive because it mentions only the IDEA, and does not specifically refer to the Section 504 of the Rehabilitation Act. The Department respectfully disagrees.

The Gun-Free Schools Act does not mention the Rehabilitation Act or any of the other federal laws which

protect persons with disabilities from unlawful discrimination. Instead, the GFSA only specifically requires that the GFSA be construed consistent with the IDEA. (20 U.S.C. Section 7151(c)). The proposed regulation reflects this requirement.

Also, the federal regulations implementing Section 504 for preschool, elementary and secondary education programs apply to programs and recipients that receive or benefit from federal financial assistance. (34 C.F.R. Section 104.31). Department regulation 225 already prohibits discrimination on the basis of disability in these programs. It is unnecessary to repeat the prohibition in each Department regulation. Section 504 and the federal policy statements do not require the state educational agencies to repeat the Section 504 regulations in its own regulations. Instead, compliance with Section 504 falls primarily on the local agencies.

The proposed regulation fulfills the Department's duties under federal law and aligns exactly with the approach taken by Congress in the Gun-Free Schools Act. Accordingly, it will be adopted as originally proposed (except for correcting the citation error).

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend this regulation in order to comply with the language of the No Child Left Behind Act of 2001 and to add Charter Schools to the regulation.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code § 603 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.* §122 on August 6, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.



IT IS SO ORDERED the 6th day of August 2003.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

**~~878 School District Compliance With Gun-Free Schools Act~~**

The Gun-Free Schools Act was enacted on March 31, 1994, as part of the Goals 2000: Educate America Act. The Gun-Free Schools Act amends the current Elementary and Secondary Education Act of 1965 (20 USC 2701 *et seq*) ESEA.

~~1.0 Each school district requesting assistance under the Elementary and Secondary Education Act shall, according to the Federal Statute:~~

~~1.1 Have a written policy requiring the expulsion from school of not less than one year of any student who brings a weapon (see Section 921 of Title 18, US Code) to a school under the jurisdiction of the district. Modification to the expulsion requirement may be made on a case-by-case basis.~~

~~1.2 Submit by June 1 (annually) to the Department of Education an assurance that the required policy is in effect. This requirement can be met by submitting a copy of the District Code of Conduct with the requested policy included.~~

~~1.3 Submit to the Department of Education:~~

~~1.3.1 Description of the circumstances of each and every expulsion imposed under the policy through the reporting requirements for 16 Del.C. §4112, Reporting School Crimes.~~

~~1.3.2 Annual report of all expulsions imposed under this policy through the annual suspension and expulsion reporting system.~~

~~2.0 Each school district requesting assistance under the ESEA shall develop and submit to the Department of Education (beginning in December, 1994), for review and approval, a written policy which includes the following at a minimum:~~

~~2.1 The use of the following definition in the district policy: The term weapon as used in the Gun-Free Act means a firearm as defined in Section 921 of Title 18, United States Code.~~

~~2.2 Expulsion from school of not less than one year for any student who brings a weapon (firearm) to a school under the jurisdiction of the district.~~

~~2.3 An outline of the modification process that may be used on a case-by-case basis.~~

~~2.4 A statement that the policy shall apply to all students; except for students with disabilities, the federal law will be followed and a determination will be made prior to any discipline or change of placement in connection with the policy as to whether or not the violation of the firearm policy~~

~~was due to the student's handicapping condition.~~

~~2.5 A system of notification of each student and his/her parent/guardian/ custodial adult at the beginning of the school year, and whenever a student enters or re-enters the school during the school year of the policy.~~

~~See 1 DE Reg. 1976 (6/1/98)~~

**603 Compliance with the Gun-Free Schools Act**

1.0 Each school district and charter school requesting assistance under the Elementary and Secondary Education Act (ESEA) shall have a written policy implementing the Gun Free Schools Act [~~20 USC §4141~~] (20 USC § 7151) and 11 Del.C. §1457(j) or its successor statute. At a minimum, the policy must contain the following elements:

1.1 A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than one year.

1.2 Modification to the expulsion requirement may be made on a case-by-case basis. Any modification to the expulsion requirement must be made in writing.

1.3 The definition of "firearm" shall be the same as the meaning given to the term in 18 USC §921(a).

2.0 Each school district and charter school requesting assistance under the ESEA shall submit the following to the Department by June 1 each year, in such form as the Department requires:

2.1 An assurance that its policies comply with this regulation and with 11 Del.C. §1457(j) or its successor statute.

2.2 Descriptions of the expulsions imposed under 11 Del.C. §1457(j) or its successor statute and under the policy implemented in accord with this regulation.

3.0 Nothing in this regulation shall alter a district or charter school's duties pursuant to the Individuals with Disabilities Education Act.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**

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

**ORDER**

**Nature Of The Proceedings:**

Delaware Health and Social Services ("Department") /  
Division of Social Services (DSS) initiated proceedings to

amend the Division of Social Services Manual (DSSM) as it relates to food stamp benefits to certain qualified aliens. These mandatory provisions must be implemented on October 1, 2003, in accordance with Title IV of the Farm Security and Rural Investment Act of 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 July 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2003 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**

Restores food stamp eligibility to qualified aliens who are under the age of eighteen (18) regardless of their date of entry and who are otherwise eligible. Current law requires them to have been in the country on August 22, 1996.

#### **Summary Of Comments Received With Agency Response**

The State Council for Persons with Disabilities (SCPD) offered the following comment:

SCPD endorses the amendment since Federal law apparently mandates it and access to sufficient nourishment is correlated with health.

**Agency Response:** DSS thanks you for the endorsement.

#### **Findings Of Fact:**

The Department finds that the proposed changes as set forth in the July 2003 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the policy of the Food Stamp Program as it relates to certain qualified aliens is adopted and shall be final effective September 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 8/15/03

#### **DSS Final Order Regulation #03-28 DSSM 9007.1 Citizenship And Alien Status**

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;

### DIVISION OF SOCIAL SERVICES

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

### ORDER

#### Nature Of The Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend the Division of Social Services Manual (DSSM). DSS is proposing to amend the its Food Stamp Program as it relates to anticipating income and reporting changes. These mandatory provisions will be implemented on October 1, 2003. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the July 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No comments were received during the public comment period.

#### Summary Of Proposed Changes

- DSSM 9038 – Requires verification of changes in income when the change is greater than \$50 in stead of the current \$25. Removes language about actual utilities since DSS does not use actual utilities in food stamps anymore.

- DSSM 9063.3 – Allows States to average the income of households with fluctuating income without the household opting to have its income averaged. Clarifies that conversion of income is not averaging of income.
- DSSM 9085 – Six-month reporting is now known as simplified reporting. Changes the reporting threshold of \$25 per month to \$50 per month for regular change reporting households. Adds a sentence about changes in the sources of income. For reportable changes in income, allows the change to be reported within 10 days of the date when the household receives its first payment.
- DSSM 9085.2 – clarifies that action is to be taken on a change that is anticipated to continue into the month after the month the change is reported.

#### Citations:

- 7 CFR §§273.10 and 273.12
- Federal Register, Volume 68, Number 82, Food Stamp Program: Anticipating Income and Reporting Changes by FNS/USDA, effective May 29, 2003 and, must be implemented by November 1, 2003.

#### Findings Of Fact:

The Department finds that the proposed changes as set forth in the July 2003 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Food Stamp Program policy as it relates to anticipating income and reporting changes is adopted and shall be final effective September 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 8/15/03

#### DSS Final Order Regulations #03-29 DSSM 9038 Verification Subsequent to Initial Certification

[273.2(f)(8)]

A. Recertification - Verify a change in income ~~or actual utility expenses~~ if the source has changed or the amount has changed by more than ~~\$25~~ \$50. Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25 shall also be verified at recertification. Do not verify income if the source has not changed and if the amount is unchanged or has changed by ~~\$25~~ \$50 or less unless the information is incomplete, inaccurate or inconsistent. Do not verify total medical

expenses or actual utility expenses claimed by households which are unchanged or have changed by \$25 or less, unless the information is incomplete, inaccurate or inconsistent.

Verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of actual payments made to non household members for households eligible for the child support deduction. Verify unchanged child support payments only if questionable.

Verify newly obtained Social Security Numbers at recertification according to procedures outlined in DSSM 9032.5.

Other information which has changed may be verified at recertification. Do not verify unchanged information unless the information is incomplete, inaccurate or inconsistent.

B. Changes - Changes reported during the certification period are subject to the same verification procedures as apply at initial certification, except that we shall not verify changes in income if the source has not changed and if the amount has changed by ~~\$25~~ \$50 or less, unless the information is incomplete, inaccurate or inconsistent. Do not verify total medical expenses, ~~or actual utility expenses~~ unless the information is incomplete, inaccurate or inconsistent.

For individuals who are satisfying the ABAWD work requirements by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State, the individuals' work hours shall be verified.

### **9063.3 Income Averaging**

[273.10(c)(3)]

~~Households, except destitute households and PA households subject to a monthly reporting requirement, may elect to have income averaged.~~

~~Do not average income for a destitute household since averaging would result in assigning to the month of application income from future periods which is not available to the destitute household for its current food needs.~~

~~To average income, use the household's anticipation of income fluctuations over the certification periods. The number of months used to arrive at the average income need not be the same as the number of months in the certification period. For example, if fluctuating income for the past 30 days and the month of application are known and, with reasonable certainty, are representative of the income fluctuations anticipated for the coming months, the income from the two (2) known months may be averaged and projected over a certification period of longer than two (2) months.~~

Income may be averaged when the household has fluctuating income. When averaging income, use the

household's anticipation of monthly income fluctuations over the certification period. Averages are recalculated at recertification and when changes in income are reported.

Conversion of income received weekly or biweekly according to DSSM 9063.2 is not averaging income.

Households which, by contract or by self-employment, derive their annual income in a period of time shorter than one (1) year will have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, share croppers, farmers and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in DSSM 9075. Contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be prorated over the period the income is intended to cover.

For food stamp purposes, a contract employee is one that has an agreement with an employer to work a certain length of time or perform a specific job. It may be either a written contract or an implied contract. Acceptable verification would be a statement from the employer or a written document, such as a copy of the contract or agreement, that shows the terms of employment.

The following shows an example of contract and hourly work:

A teacher's aid works 10 months of the year for \$9.16 per hour and 6 hours per day. She does not sign a "contract" but it is implied that she will be "rehired" for the following school year. She will be considered a contract employee whose income must be annualized.

An employee who is paid hourly is one that is paid based on the number of hours he works when there is no established work schedule such as a handyman who does odd jobs around the school.

Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

### **9085 Reporting Changes**

[273.12]

Certified food stamp households are required to report the following changes in circumstances:

Six-Month Simplified Reporting Requirements

The following reporting requirements are for all households 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~~ simplified reporting requirements above:

- ~~Changes in the sources of or~~ in the amount of gross unearned income of more than ~~\$25~~ \$50, 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;
- A change in the source of income, including starting or stopping a job or changing jobs, if the change in employment causes a change in income.
- 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.

For reportable changes of income, households must report the change within 10 days of the date the household receives its first payment.

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.

#### **9085.2 DSS Responsibilities: Action on Changes** [273.12(c)]

Take prompt action on all changes to determine if the changes affect the household's eligibility or allotment. Even if there is no change in the allotment, document reported changes in the case file, provide another change report form to the household, notify the household of the effect of the change, if any, on its benefits. Document the date of receipt of the report form or the date a change is reported by phone or in person. If a household reports a change in income which is expected to continue for a least one month beyond the month in which the change is reported, act on the change according to DSSM 9085.3 and 9085.4. If DSS fails to take action on a change within the time limits specified in DSSM 9085.3, restore the lost benefits.

PA households have the same reporting requirements as any other food stamp household and shall use the change report form. PA households who report changes to their workers for PA purposes will be considered to have reported the change for food stamp purposes as well.

**DIVISION OF SOCIAL SERVICES**

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

**ORDER****Nature Of The Proceedings:**

Delaware Health and Social Services (“Department”) / Division of Social Services (DSS) initiated proceedings to amend the Division of Social Services Manual (DSSM). DSS is proposing to amend the policy of the Transitional Medicaid Program. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the July 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No comments were received during the public comment period.

**Summary Of Proposed Change - DSSM 15120.2 And 15200**

This rule amendment corrects language in the recently revised regulations related to transitional coverage. The revised regulations were originally adopted on May 10, 2003 in order to continue Medicaid coverage absent a TANF waiver for families that lose coverage because of earnings.

**Findings Of Fact:**

The Department finds that the proposed changes as set forth in the July 2003 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Transitional Medicaid Program policy is adopted and shall be final effective September 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 8/15/03

**DSS Final Order Regulations #03-30****15120.2 Financial Eligibility**

TANF rules on income standards and methodologies

(disregards, exclusions, allocations) apply to Section 1931 Medicaid except as provided in this section.

For Section 1931 Medicaid, 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. For the gross income test, compare the family's gross income to 185% of the applicable standard of need. For the net income test, compare the family's net income to the applicable standard of need.

Financial eligibility for both applicant and recipient families will be calculated using the 30 and 1/3 disregard if applicable. This disregard allows the deduction of \$30 plus 1/3 of the remaining earned income after the standard allowance for work connected expenses is subtracted.

The \$30 plus 1/3 disregard is applied to earned income for four (4) consecutive months. If Medicaid under Section 1931 or employment ends before the fourth month, the earner is eligible for the disregard for four (4) additional months upon reapplication or re-employment.

When an earner's wages are so low (\$90 or less in the month) that the income is zero before any part of the \$30 plus 1/3 disregard can be applied, that month does not count as one of the four (4) consecutive months and the earner is eligible for the disregard for four (4) additional months.

After the \$30 plus 1/3 disregard has been applied for four (4) consecutive months, the 1/3 disregard is removed from the budget. The \$30 disregard continues to be deducted from earned income for eight (8) consecutive months. The \$30 disregard is not repeated if an individual stops working or 1931 Medicaid ends before the completion of the eight (8) consecutive months. If 1931 Medicaid ends and the family reapplies, the \$30 disregard from earned income is continued until the end of the original eight (8) consecutive months.

Unlike the \$30 plus 1/3 disregard which is dependent upon the family having sufficient earned income and being 1931 Medicaid recipients, the \$30 disregard is for a specific time period. This time period begins when the \$30 plus 1/3 disregard ends and is not dependent upon the family having earned income or 1931 Medicaid.

When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received ~~the 30 and 1/3 disregard~~ Medicaid under Section 1931 for twelve (12) consecutive months.

All earned income is disregarded for the second and third months of eligibility.

All earned income is disregarded for recipients for 12 months after employment causes ineligibility.

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section

1931.

**15200 Transitional Medicaid**

The Family Support Act of 1988, PL 100-485, mandated that effective April 1, 1990, states provide health care coverage known as Transitional Medical Assistance for up to twelve months for families who become ineligible for AFDC due to increased earnings, increased hours of employment, or loss of earned income disregards.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, repealed the AFDC program and replaced it with a program of block grants to states for Temporary Assistance for Needy Families (TANF). Delaware implemented its TANF program, Delaware's A Better Chance Welfare Reform Program (DABC), on March 10, 1997.

Prior to PRWORA, a family's eligibility for Transitional Medicaid was linked to receipt of AFDC. Under PRWORA, a family's eligibility for transitional Medicaid is linked to receipt of Medicaid under Section 15120, "Low Income Families with Children under Section 1931".

The eligibility group described in "Low Income Families with Children under Section 1931", will be referred to as "receiving Medicaid under Section 1931" throughout this section.

Delaware's welfare reform waiver, "Delaware's A Better Chance Welfare Reform Program" (DABC) included a modification to the length of the Transitional Medicaid period. The DABC waiver extended Transitional Medicaid benefits for up to 24 months. This waiver expired on September 30, 2002. DSS will use the option under Section 1931(b)(2)(C) of the Social Security Act to disregard all earned income for 12 months after employment causes ineligibility for a family under Section 1931. (See DSSM 15120.2.)

Effective October 1, 2002, Transitional Medicaid coverage extends for up to one year. The year is divided into two periods of six months each. Families who establish eligibility for Transitional Medicaid prior to October 1, 2002, may be eligible for up to 24 months of Transitional Medicaid. These are families who establish eligibility for Transitional Medicaid under the DABC waiver authority. Families who establish eligibility for Transitional Medicaid on or after October 1, 2002, may be eligible for up to 12 months of Transitional Medicaid.

Families must meet the initial eligibility requirements described in this section to receive the first six months of coverage. Families can be eligible when their income exceeds either 185% of the standard of need or the standard of need.

To continue to receive Medicaid for the second six months, the family's gross earned income less dependent care costs must be at or below 185% FPL. Dependent care costs are for the care of dependent children or incapacitated

persons living in the home. Family income will be budgeted prospectively.

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## DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

### DIVISION OF FAMILY SERVICES

Statutory Authority: 16 Delaware Code,  
Chapter 9 (16 Del.C. Ch. 9)

#### ORDER

#### Nature of the Proceedings:

The Delaware Department of Services for Children, Youth and Their Families, Division of Family Services requested public comment on "Regulations Pursuant to 16 Del. C. Ch. 9 for Designation of Substantiated Acts of Abuse or Neglect to Child Protection Levels and for Classifying Unsubstantiated Cases of Abuse or Neglect in the Division of Family Services' Internal Information System." Legislation regarding the Child Protection Registry (formerly known as the Central Child Abuse Registry) was signed into law by Governor Ruth Ann Minner on July 22, 2002.

The Child Protection Registry is a database of information about persons the Division of Family Services substantiated to have committed child abuse or neglect. The statute assigns individuals who are substantiated for child abuse or neglect to one of four levels for a specific number of years. The levels also address who may be reported out to child care, health care, and public school employers for employment purposes. In addition, the statute mandates that all appeals be heard in Family Court instead of by private attorneys contracted by the Division of Family Services. Under the revised Regulations, the Division of Family Services will classify unsubstantiated cases on its internal system utilizing two categories: Unsubstantiated – No Evidence and Unsubstantiated with Concern. Finally, the statute required that the Division of Family Services "develop regulations that assess the risk of future harm to children from acts of abuse or neglect and designate Child Protection Levels."

A request for public comment on the proposed Regulations was placed in the Legal Notices Classified Sections of the *News Journal* and *Delaware State News* on November 27, 2002 and December 1, 2002. The comments had to be postmarked by December 30, 2002. Written comments were received via electronic mail, regular mail, and fax to Linda M. Shannon, Program Manager, Intake and

Investigation, Division of Family Services.

**Summary of the Evidence and Information Submitted:**

Six written comment documents were provided by the State Council for Persons with Disabilities (2), the Delaware Developmental Disabilities Council, Community Legal Aid Society, Inc., the Christian Science Committee on Publication for the State of Delaware, and Grassroots Citizens for Delaware.

**Issue 1:** The State Council for Persons with Disabilities, the Delaware Developmental Disabilities Council, and Community Legal Aid Society, Inc. took issue with most of the categories listed under Section 7.0 Child Protection Level I. Specifically, the concerns focused on labeling incarceration, mental incapacitation, relative placement, non-relative placement, physical incapacitation, runaway, and uncontrollable behavior as incidents of abuse and neglect. It was further felt that persons could be discriminated against based on the disabilities of mental or physical incapacitation.

**Issue 2:** The State Council for Persons with Disabilities and the Delaware Developmental Disabilities Council recommended that Section 8.0 numbers be sequenced correctly.

**Issue 3:** The State Council for Persons with Disabilities and the Delaware Developmental Disabilities Council stated Section 8.1.2 "Other Physical Abuse" seems overly broad because there is no observable injury.

**Issue 4:** The State Council for Persons with Disabilities and the Delaware Developmental Disabilities Council stated 8.1.6 "Lack of Supervision, ages 7-11" seems overly broad because a parent taking a nap in the same room while an 11 year old watches television is guilty of Level II child abuse/neglect.

**Issue 5:** The State Council for Persons with Disabilities and the Delaware Developmental Disabilities Council stated that the use of the word "odd" in Section 9.1.2 "Bizarre Treatment" to describe behavior toward a child was somewhat overly broad. They suggested that extreme or significantly disproportionate to the precipitating event or outlandish be used instead.

**Issue 6:** The State Council for Persons with Disabilities and the Delaware Developmental Disabilities Council recommended that Section 9.1.7 "Lock In/Out, ages 7-11" consider using deliberately or non-accidentally or intentionally prior to locks so that locking a door by mistake does not equate with child abuse/neglect. In addition, it was recommended that such conduct be categorized in different Levels based on more discrete age groups since the risk is higher to an infant, for example, than to an 11 year old.

**Issue 7:** The State Council for Persons with Disabilities and the Delaware Developmental Disabilities Council advocated that the Regulations include the concept

of parent/caretaker inaction or failure to protect. An example would be a parent/caretaker who stands by idly while someone hurts his or her child.

**Issue 8:** Grassroots Citizens for Children recommended that "choking" and "use of a deadly weapon" in Level II "Other Physical Abuse" be placed in Level III "Bizarre Treatment."

**Issue 9:** The Christian Science Committee on Publication stated that Level III "Other Medical Neglect" and Level IV "Life-Threatening Medical Neglect" did not recognize accommodations for parents to provide treatment by spiritual means.

**Summary Of Findings Of Fact With Agency Response:**

**Issue 1:** Incarceration, mental incapacitation, non-relative placement, physical incapacitation, relative placement, runaway, and uncontrollable behavior are findings related to incidents of dependency. Dependency findings have never been entered on the Registry and will not be entered on the Registry in the future. Therefore, these findings were classified as Level I in the proposed Regulations because Level I case findings are not entered on the Registry. Nevertheless, to eliminate confusion about the dependency findings, the Division will delete dependency findings from the Regulations and add them to the Division's Policy and User Manuals. Finally, all findings in the Division's internal database (FACTS) related to adolescent issues (e.g., runaway, uncontrollable behavior) were removed as a finding effective February 1, 2003.

**Issue 2:** Section 8.0 was renumbered.

**Issues 3 – 9** will require substantive changes and will require further public comment.

**DECISION/ORDER:**

The Department finds that the changes made in response to the comments received during the public comment period do not substantially change the nature of the Regulations. Thus, the Regulations, as set forth in the attached version, should be issued, in the best interest of the general public of the State of Delaware.

**THEREFORE, IT IS ORDERED**, that the Regulations governing the Child Protection Registry are adopted, as herein revised, and shall become effective no less than ten days after publication of the final Regulations in the Delaware Register of Regulations.

Cari DeSantis, Secretary  
August 13, 2003



**Regulations Pursuant To 16 Del.C. Ch. 9 For Designation Of Substantiated Acts Of Abuse Or Neglect To Child Protection Levels And For Classifying Unsubstantiated Cases Of Abuse Or Neglect In The Division Of Family Services' Internal Information System.**

**1.0 Legal Authorization**

The legal authority for these regulations is found in the Delaware Code: Title 16, Chapter 9.

**2.0 Purpose**

The purpose of these regulations is (1) to develop regulations that assess the risk of future harm to children from acts of abuse or neglect and to designate each such act of abuse or neglect to a Child Protection Level, pursuant to 16 Del.C. §923; and (2) to develop regulations for classifying unsubstantiated cases of abuse or neglect within the Division of Family Services' internal information system, pursuant to 16 Del.C. §924.

**3.0 Date of Implementation**

These regulations become effective ~~February 1, 2003,~~ no less than ten days after publication.]

**4.0 Applicability**

These regulations apply to acts of abuse or neglect that are alleged to have occurred on or after February 1, 2003; and to the designation to Child Protection Levels of each case substantiated for abuse or neglect that was placed on the Central Registry (also known as the Central Child Abuse Registry, the Child Abuse Registry, and the Central Abuse Registry) between August 1, 1994 and February 1, 2003.

**5.0 Definition**

**"Parent/caretaker"** means those responsible for the care, custody, and control of the child as that term is defined in §902 of Title 16 of the Delaware Code.

**6.0 Assessment of the Risk of Future Harm and Designation of Child Protection Levels**

6.1 During an investigation of an incident of abuse or neglect, the Division of Family Services shall be guided by 16 Del.C. §906 (b).

6.2 A person who has been substantiated for abuse or neglect must be entered on the Child Protection Registry at one of four designated Child Protection Levels related to the risk of future harm to children arising from the incident under investigation or for which a person has been substantiated.

**7.0 Child Protection Level I**

7.1 The following incidents of abuse or neglect shall be deemed to present a low risk of future harm to children and shall be designated to Child Protection Level I:

7.1.1 **"Educational Neglect"** means failure by a

parent/caretaker to follow through with Court-ordered activity for the child after conviction in Court for "Failure to Send Child to School."

7.1.2 **"Emotional Neglect"** means mild to moderate and/or isolated incidents of isolating/shunning, rejecting, or ignoring a child.

~~7.1.3 "Incarceration" means a parent/caretaker of a child is unable to provide for the basic needs of the child because they are being detained in a correctional facility.~~

~~7.1.4 "Mental Incapacitation" means a parent/caretaker of a child has a medically diagnosed mental condition that renders them unable to meet the basic needs of the child.~~

~~7.1.5 "Non-Relative Placement" means a child whose needs are being met by a non-relative/non-family member, through no neglect or fault of the parent/caretaker.~~

~~7.1.6 "Parent Child Conflict" means unresolved conflict between a parent/caretaker and a child over rules, expectations, and responsibilities.~~

~~7.1.7 "Physical Incapacitation" means a parent/caretaker of a child has a medically diagnosed physical condition that prevents them from meeting the basic needs of the child.~~

~~7.1.8 "Relative Placement" means a child whose needs are being met by a relative or family as those terms are defined in 10 Del.C. §901, through no neglect or fault of the parent/caretaker.~~

~~7.1.9 "Runaway" means a child is absent without the permission of the parent/caretaker.~~

~~7.1.10 "Uncontrollable Behavior" means a child is unwilling to abide by rules and boundaries set by the parent/caretaker.~~

7.2 Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to present a low risk of future harm to children and shall be designated Child Protection Level I:

7.2.1 violation of compulsory school attendance requirements or truancy

7.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 7.2.1 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

**8.0 Child Protection Level II**

8.1 The following incidents of abuse or neglect shall be deemed to present a moderate risk of future harm to children and shall be designated Child Protection Level II:

8.1.1 **"Bruises, cuts and lacerations not requiring intervention by a medical professional"** means injury caused by a parent/caretaker to the body tissue of a child causing discoloration, but without breaking the skin

(bruise) or an injury which causes an open wound (cut/laceration) of a child over the age of six months. The injuries did not require medical treatment beyond medical examination.

8.1.2 **“Emotional Abuse”** includes, but is not limited to, behaviors by a parent/caretaker toward a child such as ridiculing, demeaning, making derogatory remarks, cursing, or threatening to inflict physical or emotional harm.

8.1.3 **“Lack of Supervision, ages 7 – 11”** means the parent/caretaker of a child is not providing immediate care, thereby ensuring the well-being and safety for the child, who is unable to care for him/herself or respond appropriately to an emergency. These are incidents in which the parent/caretaker is physically present, but is not attending to the child due to behaviors such as sleeping or intoxication.

8.1.4 **“Lock In/Out, ages 12 – 17”** occurs when a parent/caretaker locks a child in a confined area such as a bedroom, closet, and car or locks the child out of the home.

8.1.5 **“Moderate Physical Neglect”** means failure by a parent/caretaker of a child to provide for the basic needs (e.g., food, clothing, shelter) of the child, for no apparent financial reason, and this failure decreases the child’s safety or general well-being.

8.1.6 **“Other Physical Abuse”** means actions prohibited by **Delaware Code** such as punching, kicking, biting, pulling hair, pushing/shoving, choking, and use of a deadly weapon by a parent/caretaker of a child which have not resulted in observable injury to the child.

8.1.7 **“Severe Emotional Neglect”** includes behaviors by a parent/caretaker such as chronically isolating/shunning, rejecting, or ignoring a child. Child witnessing of domestic violence is also included at this level.

8.1.8 **“Verbal Innuendo”** means inappropriate sexualized statements to a child by a parent/caretaker intended to entice or alarm.

8.2 Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to present a moderate risk of future harm to children and shall be designated Child Protection Level II:

8.2.1 interference with custody or

8.2.2 indecent exposure in the second degree.

8.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 8.2.1 or 8.2.2 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

## **9.0 Child Protection Level III**

9.1 The following incidents of abuse or neglect shall be deemed to present a high risk of future harm to children and shall be designated Child Protection Level III:

9.1.1 **“Abandonment, ages 13 – 17”** means the parent/caretaker fails to assume or refuses to assume

responsibility or to provide basic care for a child on a daily basis. The basic care consists of food, clothing, shelter, medical care, reasonable and consistent financial support, and the maintenance of regular communication/contact between the parent/caretaker and child.

9.1.2 **“Bizarre Treatment”** means behavior toward a child by a parent/caretaker that is odd, extreme, or significantly disproportionate to the precipitating event initiated by the child, or would not be perceived as a logical consequence by a reasonable person.

9.1.3 **“Bruises, cuts, lacerations requiring intervention by a medical professional”** means injury caused by a parent/caretaker to the body tissue of a child causing discoloration, but without breaking the skin (bruise) or an open wound (cut/laceration) necessitating medical treatment beyond medical examination. All children under the age of six months are included at this level, regardless of the need for medical treatment beyond medical examination. Current evidence of historical injuries (perhaps appearing on an x-ray) that would have required medical treatment at the time of the injuries, but which do not necessitate current treatment, also require a finding at this level.

9.1.4 **“Child, Ages 7 – 11, Left Alone”** means a child who is unable to care for him/herself, or to respond to an emergency, has not been left in the care of anyone by the parent/caretaker.

9.1.5 **“Dislocation/Sprain”** means a medically diagnosed displacement of a bone or injury to a ligament or muscle caused by a parent/caretaker.

9.1.6 **“Lack of Supervision, Age 6 and Younger”** means the parent/caretaker is not providing immediate care, ensuring well-being and safety, for a child who is unable to care for him/herself or respond appropriately to an emergency. These are incidents in which the parent/caretaker is physically present, but is not attending to the child due to behaviors such as sleeping or intoxication.

9.1.7 **“Lock In/Out, ages 0 – 11”** occurs when a parent/caretaker locks a child in a confined area such as the bedroom, closet, and car or locks the child out of the home.

9.1.8 **“Malnutrition”** means a medically diagnosed condition of poor nourishment of a child resulting from insufficient food or an improper diet caused by a parent/caretaker.

9.1.9 **“Non-Organic Failure to Thrive”** means medically diagnosed Failure to Thrive that is documented as life-threatening.

9.1.10 **“Other Medical Neglect”** means failure by a parent/caretaker to obtain proper or necessary medical care, but the medical care is not life-threatening.

9.1.11 **“Serious Physical Neglect”** means failure by the parent/caretaker of a child to provide for the basic needs (e.g., food, clothing, shelter) of the child, for no apparent financial reason, and this failure could result in



bodily harm or death.

9.2 Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to present a high risk of future harm to children and shall be designated Child Protection Level III:

- 9.2.1 abandonment of a child,
- 9.2.2 assault in the third degree,
- 9.2.3 indecent exposure in the first degree,
- 9.2.4 menacing,
- 9.2.5 misdemeanor endangering the welfare of a child or an incompetent person.
- 9.2.6 offensive touching,
- 9.2.7 reckless endangering,
- 9.2.8 sexual harassment,
- 9.2.9 terroristic threatening,
- 9.2.10 unlawful administration of drugs or controlled substances, or

- 9.2.11 unlawful imprisonment.

9.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 9.2.1 - 9.2.11 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

#### **10.0 Child Protection Level IV**

10.1 The following incidents of abuse or neglect shall be deemed to present the highest risk of future harm to children and shall be designated Child Protection Level IV:

10.1.1 “Abandonment 0 – 12” means the parent/caretaker fails to assume or refuses to assume responsibility or to provide basic care for a child on a daily basis. The basic care consists of food, clothing, shelter, medical care, reasonable and consistent financial support, and the maintenance of regular communication/contact between the parent/caretaker and child. This finding does not include the voluntary surrender of a baby pursuant to the Safe Arms for Baby Act.

10.1.2 “Anal Intercourse” means penetration of the anus of a child by parent/caretaker for reasons other than appropriate medical diagnosis/treatment such as using a rectal thermometer or giving a child an enema or suppository. The penetrating object could be the parent/caretaker’s tongue, penis or fingers, or might involve inanimate objects such as crayons or pencils.

10.1.3 “Blunt Force Trauma” means serious or life-threatening bruises, cuts, lacerations caused by a parent/caretaker that require medical treatment beyond medical examination.

10.1.4 “Bone Fracture” means a medically diagnosed break or crack in a bone or cartilage caused by a parent/caretaker.

10.1.5 “Burn/Scald” means a medically diagnosed injury intentionally or recklessly inflicted by the parent/caretaker to a child by contacting the child’s skin/hair

to a flame, hot object, hot liquid, electrical source, or a chemical source.

10.1.6 “Child, Aged 6 or Younger, Left Alone” means a child who is unable to care for him/herself, or to respond to an emergency, has not been left in the care of anyone by the parent/caretaker.

10.1.7 “Death” means a child’s loss of life due to abuse or neglect by parent/caretaker.

10.1.8 “Driving Under the Influence (DUI)” means incidents documented by law enforcement of a parent/caretaker driving a vehicle under the influence of alcohol or drugs with a child present.

10.1.9 “Exploitation” occurs when a parent/caretaker behaves unethically toward a child, using the parent’s/caretaker’s position of power to solicit sexual acts in an attempt to obtain some type of sexual gratification. This category includes situations in which a parent/caretaker prostitutes a child or knowingly permits a child to be “used” by another party, regardless of whether the parent/caretaker receives sexual gratification or other compensation (money, drugs) or no compensation at all.

10.1.10 “Head Trauma” means a medically diagnosed serious or life-threatening injury inflicted by a parent/caretaker to a child’s face or head.

10.1.11 “Inappropriate Touching” means intentional touching of the breasts, abdomen, genital area, inner thighs or buttocks by a parent/caretaker for the sexual gratification of the parent/caretaker. The parent/caretaker and child may be clothed or unclothed and this finding is also appropriate in cases in which the parent/caretaker has asked the child to touch them. This category does not include touching by the parent/caretaker necessary to provide routine hygienic care such as bathing or to administer medications such as a menthol rub for a chest cold.

10.1.12 “Internal Injury” means a medically diagnosed serious injury within the abdominal or chest area inflicted by a parent/caretaker.

10.1.13 “Life-Threatening Medical Neglect” means a parent’s/caretaker’s failure to obtain medical care for a child has resulted in permanent functional impairment attributable to neglect. Medical diagnosis is necessary to support this finding. This category also includes failure by a parent/caretaker to use equipment such as an apnea monitor or respirator, to provide medications for health problems such as diabetes or asthma, or to practice therapies in the home for a child such as suctioning of the airway as directed by a physician for the purpose of preventing death and sustaining life.

10.1.14 “Operating a Vessel or Boat Under the Influence (BUI)” means incidents documented by law enforcement of a parent/caretaker driving a vessel or boat under the influence of alcohol or drugs with a child present.

10.1.15 “Oral Intercourse” means oral (mouth) –

genital (penis, vagina) contact between a parent/caretaker and a child.

10.1.16 "Other Sexual Abuse" means sexually inappropriate behavior between a parent/caretaker and a child which is not included in 10.1.2, 10.1.9, 10.1.11, 10.1.15, 10.1.18 and 10.1.22.

10.1.17 "Poisoning" means a parent/caretaker non-accidentally over-medicates or causes a child to ingest alcohol, drugs (legal/illegal) not prescribed for that child, or other toxic substances, resulting in significant and/or enduring functional impairment.

10.1.18 "Pornography" means production or possession of visual material (e.g., pictures, films, video) by a parent/caretaker depicting a child engaged in a sexual act or a simulation of such an act. The visual material involves sexualized content, as opposed to "naked baby" pictures.

10.1.19 "Puncture/Stab" means a parent/caretaker inflicts injury, piercing the child's body with a pointed object, which requires medical treatment beyond medical examination.

10.1.20 "Shaken Baby" means a medically diagnosed condition in which violent shaking of an infant by a parent/caretaker has resulted in subdural hematomas (blood clots on the surface of the brain), and/or retinal hemorrhages (bleeding behind the eyes), causing serious and permanent brain damage.

10.1.21 "Suffocation" means a parent/caretaker deliberately interferes with child's ability to breathe, by strangling, smothering or otherwise depriving the child of oxygen.

10.1.22 "Vaginal Intercourse" occurs when a parent/caretaker of a female child penetrates the child's vagina with a penis, fingers, or with an inanimate object; or when a parent/caretaker manipulates a child of either sex to penetrate the parent's/caretaker's vagina.

10.2 Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to present the highest risk of future harm to children and shall be designated Child Protection Level 4:

- 10.2.1 assault in the first degree,
- 10.2.2 assault in the second degree,
- 10.2.3 bestiality,
- 10.2.4 coercion,
- 10.2.5 continuous sexual abuse of a child,
- 10.2.6 criminally negligent homicide,
- 10.2.7 dangerous crime against a child,
- 10.2.8 dealing in children,
- 10.2.9 felony endangering the welfare of a

child or an incompetent person,

- 10.2.10 incest,
- 10.2.11 kidnapping,
- 10.2.12 manslaughter,
- 10.2.13 murder,

10.2.14 murder by abuse or neglect,

10.2.15 possession of child pornography,

10.2.16 promoting suicide,

10.2.17 rape,

10.2.18 sexual exploitation of a child,

10.2.19 sexual extortion,

10.2.20 sexual solicitation of a child,

10.2.21 unlawful dealing with a child,

10.2.22 unlawfully dealing in child pornography,

10.2.23 unlawful sexual contact,

10.2.24 vehicular assault, or

10.2.25 vehicular homicide,

10.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 10.2.1 - 10.2.25 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

### **11.0 Unsubstantiated Investigations**

11.1 If the Division determines from its investigation [~~not~~ there is not a preponderance of evidence] to substantiate the person for abuse or neglect, the person may not be entered on the Child Protection Registry for that reported incident. The Division shall indicate in its internal information system that the incident is unsubstantiated, and so notify the person in writing.

11.2 If the Division determines from its investigation that there is no credible evidence to substantiate the person for abuse or neglect for that incident, the internal information system will indicate that the finding is "Unsubstantiated - No Evidence."

11.3 If the Division determines from its investigation that substantiation proceedings for that incident of abuse or neglect are not warranted or justified, but that there are reasons for concern, the internal information system will indicate that the finding is "Unsubstantiated with Concern."

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**  
Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)

**Secretary's Order No.: 2003-A-0046**

**RE: Proposed "Delaware 1999 Milestone Compliance Demonstration" For the 1-hour National**

**Ambient Air Quality Standard Of  
Ground-Level Ozone**

**Delaware Department of Natural Resources  
and Environmental Control  
June 2003**

**Date of Issuance:** August 11, 2003

**Effective Date:** September 11, 2003

**I. Background**

On Thursday, June 26, 2003, at approximately 6:25 p.m., a public hearing was begun in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of this hearing was to receive public comment on the proposed 1999 Milestone Compliance Demonstration as specified above. 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 July 22, 2003, and that Hearing Officer's report is expressly incorporated herein by reference.

**II. Findings and Conclusions**

All of the findings and conclusions contained in the Hearing Officer's Report dated July 22, 2003, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

**III. Order**

In view of the above, I hereby order that the proposed Delaware 1999 Milestone Demonstration planning document be promulgated in the manner and form provided for by law.

**IV. Reasons**

The proposal documents Delaware's progression towards the improvement of air quality in the State while maintaining consistency with applicable Federal requirements, in furtherance of the policies and purposes of 7 Del.C. Chapter 60.

John A. Hughes, Secretary

**Delaware 1999 Milestone Compliance Demonstration  
For Kent And New Castle Counties  
Demonstrating Adequate Progress toward Attainment of  
the 1-Hour  
National Ambient Air Quality Standard  
for Ground-Level Ozone  
Submitted to:  
US Environmental Protection Agency  
By**

Acronym List

AQM	Air Quality Management Section of DNREC
CAAA	Clean Air Act Amendments of 1990
CMSA	Consolidated Metropolitan Statistical Area
CO	Carbon Monoxide
DAWM	Division of Air and Waste Management of DNREC
DeIDOT	Delaware Department of Transportation
DNREC	Delaware Department of Natural Resources and Environmental Control
EID	Emission Inventory Development
EPA	United States Environmental Protection Agency
FMVCP	Federal Motor Vehicle Control Program
HPMS	Highway Performance Monitoring System
I/M	Inspection and Maintenance
LEV	Low Emission Vehicle
NAA	Nonattainment Area
NAAQS	National Ambient Air Quality Standard
NLEV	National Low Emission Vehicle
NOx	Oxides of Nitrogen
OAQPS	Office of Air Quality Planning and Standards of EPA
OTAG	Ozone Transport Assessment Group
OTC	Ozone Transport Commission
OTR	Ozone Transport Region
PCP	Planning and Community Protection Branch of DNREC
PEI	Periodic Emission Inventory
PERC	Perchloroethylene
RACT	Reasonably Available Control Technology
RPP	Rate-of-Progress Plan
RVP	Reid Vapor Pressure
SCC	Source Classification Code
SIC	Standard Industrial Classification
SIP	State Implementation Plan
TPD	Tons per day
TPY	Tons per year
VHB	Vanasse Hangen Brustlin, Inc.
VOC	Volatile Organic Compound

**References:**

1. *Guidance on the Relationship between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA-452/R-93-007, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, May 1993.
2. *The 1990 Base Year Ozone SIP Emissions Inventory*

for VOC, CO, and NOx. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, revised as of May 3, 1994.

3. *The Delaware 15% Rate-of-Progress Plan.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 1995.

4. *The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, December 1997, as amended in June 1999.

5. *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration, Ozone/Carbon Monoxide Branch, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, February 18, 1994.*

6. *Regulations Governing the Control of Air Pollution.* Air Quality Management Section, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, March 1995.

7. *Procedures for Preparing Emissions Projections.* EPA-450/4-91-019, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, July 1991.

8. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans.* EPA-452/R-93-002, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

9. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans.* EPA-452/R-93-005, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

10. *The 1993 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, January 1998.

11. *The 1996 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, November 1999.

12. *Delaware 1996 Milestone Demonstration for Kent and New Castle Counties.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 2000.

## Summary

Under the Clean Air Act Amendments of 1990 (CAAA), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour ozone standard. This document addresses Delaware's 1999 milestone year compliance demonstration regarding progress toward attainment of the 1-hour National Ambient Air Quality Standard for the ground-level ozone.

Under Sections 182(b)(1) and 182(d) of CAAA, Delaware is required (1) by 1996 to achieve a 15% reduction in emissions of volatile organic compounds (VOCs) from its 1990 level in the two nonattainment counties, (2) by 1999 to achieve an additional 9% reduction in emissions of either VOCs or oxides of nitrogen (NOx) from the 1990 levels. Under these requirements, the 1999 target levels of VOC and NOx emissions for the two nonattainment counties have been determined to be 110.21 tons per day (TPD) and 148.96 TPD, respectively. To achieve these targets, Delaware implemented numerous control measures over a large variety of VOC and NOx emission sources from 1990 to 1999. Delaware's 1999 periodic emission inventory (PEI), which has been recently compiled, shows that the 1999 inventoried VOC and NOx emissions in Kent and New Castle Counties are 88.69 TPD and 117.68 TPD, respectively. These inventoried VOC and NOx emissions are significantly lower than the required targets levels. Thus, Delaware demonstrates herein that its 1999 milestone for complying with VOC and NOx emission reductions has been successfully met.

## 1. Introduction

### 1.1 Background

The Clean Air Act Amendments of 1990 (CAAA) set forth National Ambient Air Quality Standards (NAAQS) for six air pollutants that pose public health risks and environmental threats. Delaware exceeds the standard for only one of these pollutants, i.e., the ground-level ozone. High levels of ozone can harm the respiratory system and cause breathing problems, throat irritation, coughing, chest pains, and greater susceptibility to respiratory infection. Children, the elderly and individuals with respiratory diseases are especially vulnerable to the threat of ozone. Even healthy individuals can be harmed if they attempt strenuous activity on days with high ozone levels. High levels of ozone also cause serious damage to forests and agricultural crops, resulting in economic losses to logging and farming operations.

The CAAA classifies five nonattainment areas (NAA) that exceed the 1-hour ozone NAAQS based on the severity of the pollution problem. In the order of increasing severity, they are marginal, moderate, serious, severe, and extreme. According to Section 181 of CAAA, attainment dates for individual areas depend on their nonattainment

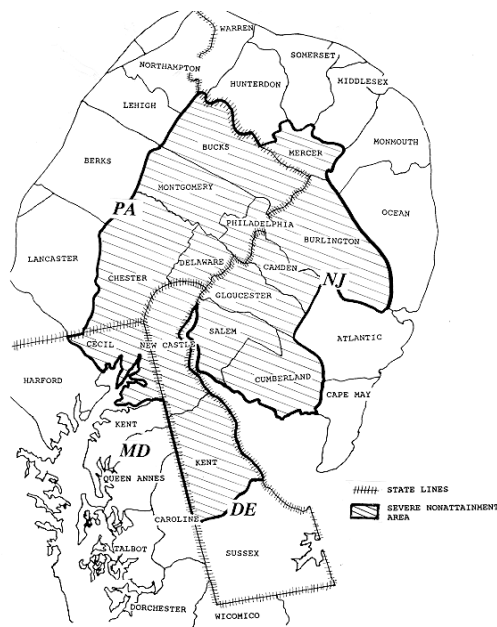
designations. The Philadelphia Consolidated Metropolitan Statistical Area (CMSA) is classified as a severe nonattainment area (Figure 1), which has an attainment date of 2005. As shown in Figure 1, Kent and New Castle Counties in Delaware fall within the Philadelphia CMSA. Thus, these two counties are subject to all requirements set forth for the severe ozone nonattainment class. All discussions and data presented in this document apply only to Kent and New Castle Counties.

Generally, ground level ozone is not directly emitted to the atmosphere, but formed in the lower atmosphere by photochemical reactions mainly between volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in the presence of sunlight. Thus, VOC and NO<sub>x</sub> are defined as two major ozone precursors. In order to reduce ozone concentrations in the ambient air, the CAAA requires all ozone nonattainment areas to achieve specific reductions in anthropogenic VOC emissions and/or NO<sub>x</sub> emissions over several specified periods of years until the ozone standard is attained. This requirement for periodic emission reductions is termed as "rate of progress" toward the attainment of the 1-hour ozone standard (Reference 1).

Under Section 182(d) of CAAA, Delaware is required to develop and submit a State Implementation Plans (SIP) revision to the United States Environmental Protection Agency (EPA) for each of the milestone years of 1996, 1999, 2002 and 2005. In these plans, Delaware has to show that, by adopting and implementing adequate control measures, it can achieve adequate rate-of-progress reductions in VOC and/or NO<sub>x</sub> emissions for its severe ozone nonattainment area, i.e., Kent and New Castle Counties. Since these state implementation plans construct the path of Delaware's rate of progress toward the attainment of ozone standard, they are termed as Delaware's Rate-of-Progress Plans (RPPs).

Under Section 182(a) of the CAAA, Delaware is required to develop comprehensive emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005 to monitor actual VOC and NO<sub>x</sub> emissions from its nonattainment areas along the path of rate of progress. These emission inventories are termed as Delaware's periodic emission inventories (PEIs). Under Sections 182(a) and 182(g) of the CAAA, Delaware is required to use these periodic emission inventories (except the 1993 PEI) to demonstrate whether Delaware meets its required emission reductions as specified in its rate-of-progress plans in individual milestone years. This demonstrating process is termed as milestone compliance demonstration (Reference 1).

**Figure 1. Philadelphia Consolidated Metropolitan Statistical Area (CMSA) Nonattainment Area.<sup>1</sup>**



This document is to demonstrate Delaware 1999 milestone year compliance with adequate progress in emission reductions toward attainment of the 1-hour ozone NAAQS as required by the CAAA. The document is hereafter referred to as "Delaware 1999 Milestone Compliance Demonstration."

### 1.2 Responsibilities

The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management (DAWM), Air Quality Management Section (AQM), under the direction of Ali Mirzakhali, Program Administrator. The Delaware Department of Transportation (DelDOT), in conjunction with its consulting firm Vanasse Hangen Brustlin, Inc. (VHB), Watertown, MA, is responsible for performing the work associated with the on-road mobile source emissions included in this document.

The working responsibility for Delaware's air quality management planning falls within the Planning and Community Protection (PCP) Branch of AQM Section,

1. This map is adopted from Major CO, NO<sub>2</sub> and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area, EPA/4-92-005a, U.S. Environment Protection Agency, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, NC, February, 1992.

DAWM of DNREC, under the management of Raymond H. Malenfant, Program Manager. Ronald A. Amirikian, Planning Supervisor of the PCP Branch, is the project manager of this document. Frank F. Gao, Environmental Engineer of Airshed Assessment and Improvement Program in the PCP Branch, is the project leader and principal author of this document. Questions or comments regarding this document should be addressed to R. Amirikian or F. Gao, (302)739-4791, AQM, 156 South State Street, Dover, DE 19901.

## 2. Submittal and Summary of Delaware State Implementation Plans

### 2.1 Delaware 1990 Base Year Emission Inventory

Section 182(a)(1) of CAAA requires each state with ozone nonattainment areas to develop a comprehensive 1990 emission inventory for ozone precursors for its nonattainment areas. The emission inventory must be submitted as a state implementation plan (SIP) revision to EPA for approval. This "1990 base year emission inventory" is used as the basis for a state to develop its rate-of-progress plans and control strategies toward attainment of the 1-hour ozone standard. Delaware's 1990 base year emission inventory was submitted to the EPA in May 1994, and approved by EPA in March 1996 (Reference 2, hereafter referred to as the 1990 Base Year Inventory). A summary document of the 1990 Base Year Emission Inventory is provided in Appendix A of this document.

The 1990 Base Year Inventory is categorized by five source sectors, i.e., point, stationary area, off-road mobile, on-road mobile and biogenic source sectors (Appendix A). Since volatile organic compounds (VOC), nitrogen oxides (NOx) and carbon monoxide (CO) are precursors forming the ground level ozone, their emissions from these source sectors in 1990 are inventoried and reported in the 1990 Base Year Inventory. Because the contribution of CO to ozone formation is considered insignificant and Delaware does not contain any CO nonattainment area, the CO component of the 1990 Base Year Inventory is not included in Delaware's rate-of-progress planning for attainment of ozone standard. A summary of VOC and NOx emissions by county in the 1990 Base Year Inventory is presented in Table 1. The unit of emissions reported in Table 1 is tons per day (TPD) in the peak ozone season. The peak ozone season in Delaware is defined as from June 1 through August 31.

**Table 1. Summary of VOC and NOx Emissions (in TPD) in 1990 Base Year Inventory\***

Source Sector	Kent		New Castle	Total	NAA	
	VOC	NOx	VOC	VOC	NOx	NOx
Point Sources	3.24	6.13	27.08	85.77	30.32	91.90
Stationary Area Sources	12.97	1.20	34.75	5.40	47.72	6.60
Off-Road Mobile Sources	3.49	7.89	16.67	18.78	20.17	26.67
On-Road Mobile Sources	13.07	10.62	35.28	27.06	48.35	37.68
Biogenic Sources**	32.46	0.00	17.51	0.00	49.97	0.00
<b>Total Emissions</b>	<b>65.23</b>	<b>25.84</b>	<b>131.30</b>	<b>137.00</b>	<b>196.53</b>	<b>162.85</b>

\*Data obtained from Delaware 1990 Base Year Emission Inventory (Reference 2).

\*\* Biogenic NOx emissions are assumed to be negligible.

### 2.2 Delaware 1996 and 1999 Rate-of-Progress Plans

Under Sections 182(b)(1) and 182(d), Delaware is required to develop a rate-of-progress plan (as a SIP revision) for the period from 1990 to 1996. This plan must describe how Delaware could achieve an actual VOC emission reduction of at least 15% of its 1990 VOC emission level, and thus is termed as the Delaware 1996 Rate-of-Progress Plan or 15% Rate-of-Progress Plan (RPP). Delaware developed the 1996 RPP and submitted it to EPA for approval in February 1995 (Reference 3, hereafter referred to as the 1996 RPP). A summary of the 1996 RPP is provided in Appendix B of this document.

In addition to the 15% VOC emission reduction, Section 182(d) of CAAA requires Delaware to submit a rate-of-progress plan, as a SIP revision, that will lead to VOC and/or NOx emission reductions of at least 3% per year between 1996 and 1999. These rate-of-progress emission reductions are based on the states' 1990 emission levels. This SIP revision for achieving VOC/NOx emission reductions in the 1997-1999 period is termed as "Delaware 1999 Rate-of-Progress Plan (RPP)" (Reference 4, hereafter referred to as the 1999 RPP). Delaware submitted the 1999 RPP to EPA for approval in December 1997, and amended the plan in June 1999. A summary of the 1999 RPP is provided in Appendix C of this document.

In the 1999 RPP, Delaware first established VOC

and NOx emission targets for the milestone year of 1999 to meet the rate-of-progress requirements specified in the CAAA. Delaware then presented relevant control measures being promulgated before the peak ozone season of 1999, and demonstrated that through these control measures the required VOC and NOx emission targets could be met in 1999. This subsection presents a brief discussion of the major contents of the 1999 RPP.

#### 2.2.1 Delaware 1999 VOC and NOx Emission Targets

The rate-of-progress reductions in VOC and NOx emissions for the period of 1990 to 1999 are estimated from the 1990 baseline level. Before the 1999 VOC and NOx emission targets can be calculated, the 1990 base year emissions must be adjusted. First, Section 182(b)(1)(B) defines the baseline emissions as the total actual VOC emissions from all anthropogenic sources in the nonattainment areas. Thus, the 1990 Base Year Inventory VOC emissions in Table 1 must be modified to exclude emissions from biogenic sources and sources outside the nonattainment areas. In addition, emissions of perchloroethylene (PERC) were included in the 1990 Base Year Inventory because it was originally classified by EPA as a photochemically reactive VOC contributing to the formation of ozone. After Delaware's 1990 Base Year Inventory was compiled, EPA reclassified PERC as photochemically non-reactive. Therefore, PERC emissions need to be subtracted from the 1990 Base Year Inventory. The biogenic VOC emissions in the 1990 Base Year Inventory are 32.460 TPD and 17.510 TPD for Kent and New Castle Counties, respectively (Table 1). The PERC emissions in Kent County are 0.188 TPD, all from the area source sector. For New Castle County, the PERC emissions are 0.140 TPD from the point source sector and 0.388 TPD from the area source sector. Details of determination of the PERC emissions can be found in Appendix A of Reference 4. After this modification, the total 1990 VOC and NOx baseline emissions are 145.84 TPD and 162.85 TPD, respectively.

The second adjustment is for the on-road mobile source sector. According to Section 182(b)(1)(D) of CAAA, emission reductions resulted from the Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP) regulations promulgated prior to 1990 are not creditable for achieving the rate-of-progress emission reductions in the 1999 RPP. Therefore, the 1990 baseline VOC and NOx emissions must be adjusted by removing the VOC and NOx emission reductions expected from FMVCP and RVP. Details of the adjustments are provided in Part 1 of Delaware 1999 RPP (Reference 4). For VOC emissions, the FMVCP/RVP adjustments for Kent and New Castle Counties are 3.48 TPD and 8.02 TPD, respectively. For NOx emissions, the FMVCP/RVP adjustments for Kent and New Castle Counties are 1.46 TPD and 2.49 TPD,

respectively. The results after these adjustments are the 1990 Baseline Emissions Adjusted to 1999, which are the basis for calculating the required rate-of-progress emission reductions and the emission targets for the milestone year 1999. The adjustments and results are summarized in Table 2.

**Table 2. Delaware 1990 Baseline and Adjusted Baseline Inventory**

	Kent		New Castle		Total	NAA
	VOC	NOx	VOC	NOx	VOC	NOx
1990 Base Year	65.23	25.84	131.30	137.00	196.53	162.85
Biogenic/ PERC Adjustments	32.65	0.00	18.04	0.00	50.69	0.00
1990 Baselines	32.58	25.84	113.26	137.00	145.84	162.85
FHMV/ RVP Adjustments	3.48	1.46	8.02	2.49	11.50	3.95
1990 Baselines adjusted to 1999	<b>29.10</b>	<b>24.38</b>	<b>105.24</b>	<b>134.51</b>	<b>134.34</b>	<b>158.90</b>

According to EPA's Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration (Reference 5), the following equation should be used for calculating emission targets for the milestone year of 1999:

$$ET_{1999} = ET_{1996} - ER_{1990-1999} - FT_{1996-1999} \quad (1)$$

where  $ET_{1999}$  = emission target for milestone year 1999,  $ET_{1996}$  = emission target for milestone year 1996,  $ER_{1990-1999}$  = emission reduction based on the 1990 baseline adjusted to 1999 (in Table 2), and  $FT_{1996-1999}$  = fleet turnover correction from 1996 to 1999. The fleet turnover correction accounts for the emission reductions from the gradual replacement of older pre-control vehicles by newer vehicles with the control required by the CAAA. These fleet turnover reductions cannot be used for achieving rate-of-progress emission targets (Reference 5). Therefore, the emission reductions due to any fleet turnover during the post-1996 milestone periods are not creditable for the corresponding milestone year.

Details of using Eq. (1) to calculate the 1999 rate-of-progress VOC and NOx emission targets have been provided

in Delaware 1999 RPP, as amended in June 1999 (Reference 4). The emission targets of 1999 for the entire Delaware nonattainment area are **110.21 TPD** and **148.96 TPD** for VOC and NO<sub>x</sub>, respectively.

### 2.2.2 Control Measures and Expected VOC/NO<sub>x</sub> Emissions in 1999 RPP

To meet the 1999 VOC and NO<sub>x</sub> emission targets determined in the previous subsection, Delaware has proposed numerous control measures in its 1999 RPP. The control measures include federal mandatory rules and Delaware's regulations to be promulgated prior to the peak ozone season of 1999 (Reference 4). These rules and regulations cover a large variety of VOC and NO<sub>x</sub> emission sources in all baseline source sectors. A list of the control measures, along with their implementation dates, is given in Table 3. Detailed descriptions of individual rules and regulations have been presented in Delaware 1999 RPP, as amended in June 1999 (Reference 4), and Delaware Regulations Governing Control of Air Pollution (Reference 6).

**Table 3. Control Measures Proposed in Delaware's 1999 RPP**

Control Measures and Regulations	Creditability	Effective Date
<b>Point Source Controls</b>		
RACT "Catch-Ups" in Kent County:		
Solvent Metal Cleaning	Creditable	31-May-95
Surface Coating of Metal Furniture	Creditable	31-May-95
Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufact. Equip.	Creditable	31-May-95
New RACT Regulations:		
Bulk Gasoline Marine Tank Vessel Loading Facilities	Creditable	31-Dec-95
SOCMI Reactor Processes and Distillation Operations	Creditable	01-Apr-96
Batch Processing Operations	Creditable	01-Apr-96
Offset Lithography	Creditable	01-Apr-96
Aerospace Coatings	Creditable	01-Apr-96
Industrial Cleaning Solvents	Creditable	29-Nov-94
Non-CTG RACT	Creditable	31-May-95
Delaware NO <sub>x</sub> RACT	Creditable	31-May-95
Regional NO <sub>x</sub> Control OTC MOU	Creditable	01-May-99

Federal Benzene Waste Rule	Creditable	Spring 1995
Sanitary Landfills	Creditable	09-Oct-93
Irreversible Process Changes	Creditable	01-Jan-96
<b>Stationary Area Source Controls</b>		
RACT "Catch-Ups" in Kent County:		
Solvent Metal Cleaning	Creditable	31-May-95
Cutback Asphalt	Creditable	31-May-95
New RACT Regulations:		
Stage I Vapor Recovery-Gasoline Dispensing Facilities	Creditable	15-Nov-94
Emulsified Asphalt	Creditable	31-May-95
Motor Vehicle Refinishing	Creditable	01-Apr-96
Offset Lithography	Creditable	01-Apr-96
Aerospace Coatings	Creditable	01-Apr-96
Stage II Vapor Recovery	Creditable	15-Nov-94
Open Burning	Creditable	08-Feb-95
<b>Off-Road Mobile Source Controls</b>		
Reformulated Fuel	Creditable	01-Jan-95
New Emission Standards		
Spark Ignition Engines	Creditable	Court-Ordered
Compression Ignition Engines	Creditable	Court-Ordered
Marine Engines	Creditable	Court-Ordered
<b>On-Road Mobile Source Controls</b>		
FMVCP and RVP	Noncreditable	Pre-1990
Tier I Vehicle Emissions Standards	Creditable	Model Year 1994
a. Basic I/M for Kent County	Creditable	01-Jan-91
b. ATP and Pressure Test for Kent	Creditable	01-Jan-95
ATP and Pressure Test for New Castle	Creditable	01-Jan-95
Reformulated Fuel	Creditable	01-Jan-95

In the 1999 RPP, Delaware also projects the 1999 VOC and NO<sub>x</sub> emissions in the peak ozone season assuming all control measures listed in Table 3 could be implemented as expected. The projections are termed as "control strategy projections" and conducted following the methods and procedures specified in EPA's guidance documents (References 7, 8 and 9). In the projection calculations,



factors such as growth, control efficiency, rule effectiveness, and rule penetration, are considered and incorporated whenever appropriate for point sources, stationary area sources and non-road mobile sources. Emission projections for on-road mobile sources are conducted using EPA's MOBILE5a software. Details of the control strategy projections are presented in the 1999 RPP (Reference 4). A summary of the 1999 VOC and NO<sub>x</sub> control strategy emission projections is given in Table 4.

**Table 4. Delaware 1999 Control Strategy Projections for VOC and NO<sub>x</sub> Emissions (TPD)**

Source Sector	Kent		New	Castle	Total	NAA
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Point Sources	1.28	5.03	21.33	67.06	22.61	72.09
Stationary Area Sources	10.25	0.96	28.00	4.72	38.25	5.68
Off-Road Mobile Sources	3.44	8.27	15.87	19.17	19.31	27.43
On-Road Mobile Sources	7.55	10.27	22.49	28.51	30.04	38.78
<b>Total Emissions</b>	<b>22.51</b>	<b>24.52</b>	<b>87.69</b>	<b>119.46</b>	<b>110.21</b>	<b>143.98</b>

As shown in Table 4, the total VOC and NO<sub>x</sub> emissions projected for 1999 in Delaware's nonattainment area (Kent and New Castle Counties) are 110.21 TPD and 143.98 TPD, respectively. The VOC projection is equal to the emission target, while the NO<sub>x</sub> projection is lower than the target (148.96 TPD). Therefore, the 1999 RPP concludes that its proposed control measures are adequate and enough for Delaware to meet CAAA's rate-of-progress requirements on VOC and NO<sub>x</sub> emission reductions in the milestone year of 1999.

### 2.3 Delaware 1993, 1996 and 1999 Periodic Emission Inventories

Under Section 182(a) of the CAAA, Delaware is required to compile comprehensive periodic emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005. The emission data in these periodic inventories are either reported directly by individual sources (e.g., point sources such as industrial facilities), or calculated from the subject year activity data obtained from relevant sources or other agencies (e.g., area sources). These periodic emission inventories cover all sources included in Delaware 1990 Base Year Emission Inventory. Delaware's 1993 periodic emission inventory (PEI) was submitted to EPA as a SIP

revision in January 1998 (Reference 10). A summary of the 1993 PEI is provided in Appendix D of this document. Delaware's 1996 PEI was completed and submitted to EPA in November 1999 (Reference 11). A summary of the 1996 PEI is provided in Appendix E of this document. Delaware's 1999 PEI was completed and its summary was submitted to EPA in June 2002.

Emissions in the periodic emission inventories are reported in tons per year (TPY) and in tons per day (TPD) in the peak ozone season. For the purpose of this document, only daily emissions (TPD) are needed. A summary of the 1993, 1996, and 1999 PEIs is presented in Table 5. In the next section, the 1999 emission data in Table 5 will be used to conduct the 1999 milestone compliance demonstration.

**Table 5. Summary of Delaware's 1993, 1996 and 1999 Periodic Emission Inventories (TPD)**

Source Sector	1993 PEI		1996 PEI		1999 PEI	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Point Sources	27.77	95.57	14.98	44.48	13.01	50.50
Stationary Area Sources	47.02	9.18	32.21	5.33	24.09	6.67
Off-Road Mobile Sources	20.50	26.80	21.08	27.03	20.76	23.23
On-Road Mobile Sources	40.51	41.25	33.61	44.72	30.83	37.28
<b>TOTAL EMISSIONS</b>	<b>135.80</b>	<b>172.80</b>	<b>101.87</b>	<b>121.55</b>	<b>88.69</b>	<b>117.68</b>

### 2.4 Delaware 1996 Milestone Compliance Demonstration

As mentioned earlier, under Sections 182(d) of CAAA, Delaware was required to achieve in 1996 an actual VOC emission reduction of at least 15% from its 1990 VOC emission level. After Delaware finished its 1996 PEI in November 1999, Delaware developed its 1996 milestone compliance demonstration SIP in February 2000, in which Delaware demonstrated that its 1996 VOC emission target was successfully met (Reference 12). A copy of the 1996 Milestone Demonstration is provided in Appendix F of this document. The main results of the 1996 demonstration document are presented in Table 6. As indicated in Table 6, the 1996 PEI VOC emission is 101.87 TPD, which is 12.0% lower than the 1996 VOC emission target required by CAAA. Therefore, the 1996 compliance with the rate-of-progress emission reduction requirement is successfully

demonstrated.

**Table 6. 1996 Milestone Compliance Demonstration Results\***

Emission (TPD)	1996 Required Emission Target	1996 Control Strategy Projection	1996 PEI Actual Emission
VOC	115.81	115.37	101.87

\*Data obtained from Reference 12.

### 3. Delaware 1999 Milestone Compliance Demonstration

#### 3.1 Milestone Compliance Demonstration

In the 1999 RPP, Delaware determined that the 1999 targets of VOC and NO<sub>x</sub> emissions for its nonattainment area (i.e., Kent and New Castle Counties) were 110.21 TPD and 148.96 TPD, respectively, in the peak ozone season. The 1999 RPP also assessed that, through implementing necessary emission control measures proposed therein, these emission targets could be achieved. In the 1999 PEI, Delaware has shown that the actual total VOC and NO<sub>x</sub> emissions in 1999 are 88.69 TPD and 117.68 TPD, respectively, in the peak ozone season. The 1999 emission targets and the 1999 PEI actual emissions are summarized in Table 7. As indicated in Table 7, both actual VOC and NO<sub>x</sub> emissions in the 1999 PEI are lower than the required emission targets. Therefore, Delaware demonstrates herein that its 1999 milestone compliance for VOC and NO<sub>x</sub> emission reductions under CAAA's rate-of-progress requirements has been successfully met.

**Table 7. Milestone Compliance Demonstration for 1999**

Emission (TPD)	1999 Required Emission Target	1999 PEI Actual Emission	PEI vs. Target* Lower(-)/ Higher(+)
VOC	110.21	88.69	-19.5%
NO <sub>x</sub>	148.96	117.68	-21.0%

\*(1999 PEI – 1999 Target)/1999 Target

### 4. Documentation

APPENDIX A. Summary of Delaware's 1990 Base Year Emission Inventory

APPENDIX B. Summary of Delaware's 1996 (15%) Rate-of-Progress Plan

APPENDIX C. Summary of Delaware's 1999 Rate-of-Progress Plan and Its amendments APPENDIX D. Summary of Delaware's 1993 Periodic Emission Inventory

APPENDIX E. Summary of Delaware's 1996 Periodic

Emission Inventory

APPENDIX F. Delaware's 1996 Milestone Compliance Demonstration

(Hard copies of these appendixes are available upon request. Written requests should be addressed to Mr. R. Amirikian, Planning Supervisor, PCP-AQM-DAWM, DNREC, 156 South State Street, Dover, DE 19901, or at e-mail address: [ronald.amirikian@state.de.us](mailto:ronald.amirikian@state.de.us). The documents can be also obtained from DNREC's website at [http://www.dnrec.state.de.us/air/aqm\\_page/aqm\\_nets.htm](http://www.dnrec.state.de.us/air/aqm_page/aqm_nets.htm)).

## DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

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

**Secretary's Order No.: 2003-A-0047**

**RE: Proposed Revision to the State Implementation Plan (SIP) Entitled "Amendments to Delaware Phase II Attainment Demonstration" For the 1-hour National Ambient Air Quality Standard Of Ground-Level Ozone**

**Date of Issuance:** August 11, 2003

**Effective Date of the SIP Revision:** September 11, 2003

### I. Background

On Thursday, June 26, 2003, at approximately 6:15 p.m., a public hearing was begun in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of this hearing was to receive public comment on the proposed revisions to the State Implementation Plan (SIP) as specified above. 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 July 22, 2003, and that Hearing Officer's report is expressly incorporated herein by reference.

### II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Report dated July 22, 2003, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

### III. Order

In view of the above, I hereby order that the proposed revision to the State Implementation Plan (SIP) for the Attainment of the National Air Quality Standard for Ground-Level Ozone be promulgated in the manner and form provided for by law.

### IV. Reasons

The proposed revision to Delaware's State Implementation Plan will contribute to the improvement of air quality in the State while maintaining consistency with applicable Federal requirements, in furtherance of the policies and purposes of 7 Del.C. Chapter 60.

John A. Hughes, Secretary

**AMENDMENTS TO**  
**Delaware Phase II Attainment Demonstration For The**  
**Philadelphia-Wilmington-Trenton**  
**Ozone Non-Attainment Area**  
**Including A**  
**Revision of the 2005 Mobile Source Emission Budgets**  
**Using MOBILE6**  
**Submitted To**  
**U.S. Environmental Protection Agency**  
**By**  
**Delaware Department of Natural Resources and**  
**Environmental Control Dover, Delaware**  
**June 2003**

#### List of References

1. *Federal Clean Air Act*, 42 U.S.C.A. '7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

2. *Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, May 1998, as amended in January 2000, December, 2000, and July 2001.

3. *Memorandum: Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity*, from John S. Seitz, Director of Office of Air Quality Planning and Standards, and Margo T. Oge, Director of Office of Transportation and Air Quality, US EPA, Washington D.C., January 18, 2002.

4. *Delaware 1996 Milestone Demonstration for Kent and New Castle Counties: Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, January 2000.

5. *The Delaware 2005 Rate-of-Progress Plan for Kent*

*and New Castle Counties*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, December 2000.

6. *Delaware 1999 Milestone Compliance Demonstration for Kent and New Castle Counties: Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, as proposed in June 2003.

7. *64 FR 70444, December 16, 1999*; Approval and Promulgation of Air Quality Implementation Plans; Delaware; One-hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; proposed rule.

8. *66 FR 54598, October 29, 2001*; Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post-1996 Rate-of-Progress Plans and One-hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; final rule.

9. *Memorandum: Clarification of Policy Guidance for MOBILE6 SIPs in Mid-Course Review Areas*, from T. Helms and L. Cook, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, North Carolina, February, 2003.

#### 1. Introduction

Under the Clean Air Act Amendments of 1990 (CAAA, Reference 1), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour National Ambient Air Quality Standard (NAAQS) for ground-level ozone. The CAAA requires Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate that the 1-hour ozone standard can be attained in 2005 in these two counties with necessary and adequate control measures for VOC and NOx emission sources. That SIP revision, entitled "Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area," was originally submitted to EPA in May 1998, and amended three times thereafter (Reference 2).

One requirement of EPA for a state's attainment demonstration SIP revision is to set up on-road motor vehicle VOC and NOx emission budgets for use in transportation conformity analysis in that state. In its amendments to the Phase II Attainment Demonstration SIP in January 2000, Delaware set up these two budgets for 2005 using EPA's MOBILE5b model and including MOBILE5-based Tier 2 benefits. In its amendments to the Phase II Attainment Demonstration SIP in December 2000, Delaware committed that it would revise the budgets within one year after the release of the then-anticipated MOBILE6 model. In January 2002, EPA officially released the MOBILE6 model.

The document proposed herein is to use MOBILE6 model to revise the on-road motor vehicle VOC and NOx emission budgets in Delaware Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2). The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Ali Mirzakhali, Program Administrator. The working responsibility for this document falls within the Planning and Community Protection (PCP) Branch of AQM, under the management of Raymond H. Malenfant, Program Manager II, and Ron Amirikian, Planning Supervisor. The following staff members of PCP are responsible for the preparation of this document:

Frank Gao, Ph.D., P.E., Environmental Engineer  
Principal Author and Project Leader

Philip Wheeler, MRP, Environmental Planner  
Lead person for MOBILE6 modeling

Comments and/or questions regarding this document should be addressed to F. Gao at (302)323-4542, e-mail [Frank.Gao@state.de.us](mailto:Frank.Gao@state.de.us), or P. Wheeler at (302)739-4791, e-mail [Philip.Wheeler@state.de.us](mailto:Philip.Wheeler@state.de.us), Air Quality Management Section, DAWM-DNREC, 156 South State Street, Dover, DE 19901.

## 2. Requirements from EPA on Use of MOBILE6 Model

In January 2002, EPA officially released the MOBILE6 model for states to use in their ozone SIP revisions and transportation conformity analysis. In a policy guidance regarding the use of MOBILE6 model (Reference 3), EPA requires that, if a state used MOBILE5-based Tier 2 benefits when it determined its previous on-road motor vehicle emission budgets, the state must revise those budgets within one year after MOBILE6 is released, and submit the revised budgets to EPA as a SIP revision. Since Delaware used the MOBILE5-based Tier 2 benefits in its last mobile budget SIP submittal, Delaware needs to meet this requirement upon the MOBILE6 release (See also References 7 and 8).

According to the same guidance, Delaware can revise its motor vehicle emission budgets using MOBILE6 without revising the entire Phase II Attainment Demonstration SIP or completing additional modeling, if Delaware can satisfy the following two criteria: (1) the SIP continues to demonstrate attainment when the MOBILE6 is used to estimate motor vehicle emissions and to set up new emission budgets, and (2) the growth and control strategy assumptions for stationary sources and non-road mobile sources continue to be valid to maintain the overall conclusions of the SIP.

Delaware has decided not to revise the entire Phase II

Attainment Demonstration SIP and not to conduct additional modeling. The second criterion above can be satisfied by the following two documents: (1) Delaware 1996 Milestone Demonstration for Kent and New Castle Counties (Reference 4), and (2) Delaware 1999 Milestone Compliance Demonstration for Kent and New Castle Counties (Reference 6). In these two documents, Delaware has successfully demonstrated that the overall emissions of VOC and/or NOx in the 1996 and 1999 Periodical Emission Inventories are below the rate-of-progress emission targets for these two milestone years, which indicates continuous adequate progress toward the attainment of the 1-hour ozone standard in 2005.

In the following sections of this document, Delaware will show that EPA's first criterion will be satisfied by demonstrating that the MOBILE6 estimates of motor vehicle emissions are equal to or lower than the previous MOBILE5 estimates for the attainment year of 2005, and that the percentage changes in on-road motor vehicle emissions when using MOBILE6 are the same or higher than the percentage changes calculated using MOBILE5.

## 3. MOBILE6 Estimates of On-Road Mobile Source Emissions

The MOBILE6 modeling has been conducted in-house cooperatively by staff members of DNREC Air Quality Management Section and DeIDOT Division of Planning. The modeling includes all control measures specified in Delaware's 2005 Rate-of-Progress Plan (Reference 5). Using the emission factors generated by MOBILE6 and the latest planning assumption (i.e., the 2002 vehicle registration data, VMT/speed data) currently available to the responsible agencies (DNREC and DeIDOT), the MOBILE6-based motor vehicle emissions can be calculated. A detailed summary of MOBILE6-based emission estimates is presented in Appendix A of this document. The MOBILE6 model input files, output files, the emission factors generated by MOBILE6, and the emission calculations are provided in Appendix B of this document. The MOBILE6 estimates of on-road motor vehicle emissions in the attainment year 2005 are summarized in Table 1.

**Table 1. MOBILE6 Estimates of On-Road Motor Vehicle Emissions in 2005.**

Attainment Year	Kent County		New Castle County		Total NAA*	
	VOC	NOx	VOC	NOx	VOC	NOx
2005 Emissions (TPD)	5.14	8.42	15.08	21.28	20.22	29.70

\*NAA: Non-Attainment Area.

#### 4. Comparison of MOBILE6-Based Estimates and MOBILE5-Based Estimates

The MOBILE5-based estimates of on-road motor vehicle emissions in 2005 are presented in Table 2. These estimates are also the on-road motor vehicle emission budgets as specified in Delaware's Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2). Details of how Delaware conducted MOBILE5 modeling work and obtained these estimates are provided in Delaware's 2005 Rate-of-Progress Plan (Reference 5).

**Table 2. MOBILE5 Estimates of On-Road Motor Vehicle Emissions in 2005.**

Attainment Year	Kent County		New Castle		Total NAA*	
	VOC	NOx	VOC	NOx	VOC	NOx
2005	4.84	7.91	14.76	22.92	19.60	30.83
Emission (TPD)						

\*NAA: Non-Attainment Area.

\*\* Estimates based on emission factors generated by MOBILE5b model.

Comparison of MOBILE6-based estimates and MOBILE5-based estimates can be made through the following steps.

(1) For the total non-attainment area (NAA), the MOBILE6-based VOC emission is 0.62 TPD higher than the MOBILE5-based VOC emission ( $20.22 - 19.60 = +0.62$  TPD), while the MOBILE6-based NOx emission is 1.13 TPD lower than the MOBILE5-based NOx emission ( $29.70 - 30.83 = -1.13$  TPD).

(2) Delaware's 1990 baseline VOC and NOx emissions, as adjusted to the attainment year of 2005 using MOBILE6 model, are 128.46 TPD and 152.83 TPD, respectively (Appendix A). The ratio of VOC to NOx baseline emissions is

$$\text{VOC} : \text{NOx} = 128.46 : 152.83 = 1 : 1.19$$

Using the above VOC-to-NOx emission ratio, the 0.62 TPD VOC emission increase due to using MOBILE6 is equivalent to a 0.74 TPD NOx emission increase ( $0.62 \times 1.19 = 0.74$  TPD). This equivalent NOx emission increase is smaller than the 1.13 TPD NOx emission decrease as indicated in (1) above.

The above comparison indicates that in the attainment year of 2005, the new MOBILE6 estimates are lower than the MOBILE5 estimates previously presented in Delaware's Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2).

In February 2003, EPA issued a memorandum that provided additional clarifying guidance on how to demonstrate attainment when using MOBILE6-based

estimates to replace MOBILE5-based estimates (Reference 9). According to this latest clarifying guidance, Delaware should compare the percentage changes in the on-road mobile source emissions between the 1990 base year and the attainment year of 2005. If the percentage changes in the on-road emissions when using MOBILE6 are the same or higher than the percentage changes based on MOBILE5, a shortfall is not indicated and Delaware's attainment demonstration SIP continues to demonstrate attainment.

The above-mentioned comparison is accomplished and summarized in Table 3. The MOBILE6 estimates in Table 3 are obtained from Appendix A of this document, while the MOBILE5 estimates are obtained from Delaware 2005 Rate-of-Progress Plan (Reference 5). As indicated in Table 3, the percentage changes in the on-road mobile emissions using MOBILE6 are 62.6% and 26.2% for VOC and NOx, respectively. The percentage changes using MOBILE5 are 58.3% and 18.1% for VOC and NOx, respectively. It is clear that percentage changes in both VOC and NOx emissions in the mobile sector are higher when using MOBILE6 than using MOBILE5, which indicates that Delaware continues to demonstrate attainment. Therefore, the first criterion specified in EPA's MOBILE6 guidance document (Reference 3) is satisfied. As mentioned in Section 2 of this document, the second criterion has been satisfied as well.

**Table 3. Comparison of Percentage Changes in On-Road Mobile Emissions.**

	Kent County		New Castle County		Total NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
<b>MOBILE6 Estimates</b>						
1990 Base Year	11.84	9.24	42.16	31.03	54.00	40.27
2005 Attainment Year	5.14	8.42	15.08	21.28	20.22	29.70
% reduction	56.6%	8.9%	64.2%	31.4%	62.6%	26.2%
<b>MOBILE5b Estimates</b>						
1990 Base Year	12.89	10.62	34.07	27.04	46.96	37.66
2005 Attainment Year	4.839	7.905	14.76	22.92	19.60	30.83
% reduction	62.5%	25.6%	56.7%	15.2%	58.3%	18.1%

#### 5. New MOBILE6-Based Motor Vehicle Emission Budgets

Since the two criteria specified in EPA's MOBILE6 guidance document (Reference 3) are satisfied, Delaware has decided to set the new MOBILE6-based estimates to be the new on-road motor vehicle emission budgets for Kent and New Castle Counties in the attainment year of 2005, as

presented in Table 4. After EPA determines that mobile budgets established by this SIP revision are adequate, these budgets shall be used to determine the conformity of transportation plans and programs to the SIP (References 3, 7 and 8).

\* Non-attainment area.

**Table 4. New MOBILE6-Based Motor Vehicle Emission Budgets for 2005.**

Attainment Year	Kent County		New Castle County		Total NAA*	
	VOC	NOx	VOC	NOx	VOC	NOx
Budgets (TPD)	5.14	8.42	15.08	21.28	20.22	29.70

## Appendixes Appendix A: Summary of MOBILE6-Based Emission Estimates

Inventory Title	Kent County		New Castle County		Total		NAA	
	VOC	NOx	VOC	NOx	VOC	NOx	VOC	NOx
1990 Base Year Mobile Sector	11.84	9.24	42.16	31.03	54.00	40.27		
1990 Baseline Mobile Sector								
Adjusted to 1996	10.80	8.68	28.63	23.17	39.42	31.85		
Adjusted to 1999	9.51	7.98	24.20	21.40	33.71	29.38		
Adjusted to 2002	8.69	7.67	24.40	20.94	33.09	28.62		
Adjusted to 2005	7.90	7.32	23.07	20.34	30.97	27.66		
1990 Baseline All Sectors								
Adjusted to 2005*					128.46	152.83		
Emissions with controls								
1996	9.77	9.08	26.65	23.66	36.42	32.74		
1999	8.56	8.42	24.14	22.03	32.69	30.45		
2002	7.00	7.89	16.88	18.94	23.87	26.83		
2005**	5.14	8.42	15.08	21.28	20.22	29.70		

Notes:

\* MOBILE6-based 1990 Baseline All Sector Adjusted to 2005 =

    MOBILE5-based 1990 Baseline All Sector Adjusted to 2005 –

    MOBILE5-based 1990 Baseline Mobile Sector Adjusted to 2005 +

    MOBILE6-based 1990 Baseline Mobile Sector Adjusted to 2005 where MOBILE5-based data are obtained from Delaware 2005 Rate-of-Progress Plan (Reference 5).

\*\* The 2005 emissions with controls are calculated using the 2002 vehicle registration data, daily Vehicle Miles Traveled

(VMT) and speeds of vehicles on the FHWA Functional Classes of Highways (as the latest planning assumptions currently available to DNREC and DeIDOT).

### Appendix B: MOBILE6 Input/Output Files and Emission Calculations

Due to the large volumes of the input and output files, hard and/or electric copies will be available only upon request. Written request should be addressed to Phil Wheeler at [Philip.Wheeler@state.de.us](mailto:Philip.Wheeler@state.de.us) or AQM-DNREC, 156 South State Street, Dover, DE 19901.

**STATE OF DELAWARE**  
**EXECUTIVE DEPARTMENT**  
**DOVER**

**EXECUTIVE ORDER**  
**NUMBER FORTY-SIX**

**RE: THE DELAWARE HOMELAND SECURITY COUNCIL**

**WHEREAS**, on September 11, 2001, the United States was attacked by a foreign enemy intent on weakening its national infrastructure, institutions, and resolve through the application of terrorism; and

**WHEREAS**, the magnitude and nature of the September 11, 2001 terrorist attacks, the anthrax crisis, and national alerts have led governors to initiate unprecedented efforts to implement comprehensive state-based strategies to prevent, prepare for, respond to, and recover from terrorist attacks; and

**WHEREAS**, the State of Delaware, through the efforts of numerous persons representing private, municipal, county, state and federal agencies, has upgraded the Delaware Emergency Operations Plan; and

**WHEREAS**, homeland security is the prevention, preemption, and deterrence of, and defense against, aggression targeted at U.S. territory, sovereignty, domestic population, and infrastructure as well as the management of the consequences of such aggression and other domestic emergencies; and

**WHEREAS**, the State of Delaware is committed to protecting the lives and property of citizens and visitors to our state; and

**WHEREAS**, a new Department of Safety and Homeland Security has been formed to help protect the lives and property of citizens and visitors to the State of Delaware;

**NOW, THEREFORE, I, RUTH ANN MINNER, BY THE POWER VESTED IN ME AS GOVERNOR OF THE STATE OF DELAWARE, HEREBY DECLARE AND ORDER THAT:**

1. The Delaware Homeland Security Council (hereinafter, "the Council") is hereby created.

2. The Council shall be composed of the following members:

- a. The Secretary of the Department of Safety and Homeland Security, who shall serve as chair;
- b. The Governor's Homeland Security Advisor;

- c. The Adjutant General of the National Guard;
- d. The Chief Information Officer;
- e. The Director of Public Health; °
- f. The Director of the Delaware Emergency

Management Agency;

- g. The Director of the Division of Motor Vehicles;
- h. The Superintendent of the Delaware State Police;
- i. The Chair of the Public Health Emergency Planning Commission;
- j. The Executive Secretary of the Delaware Volunteer Firemen's Association;
- k. The Chair of the Delaware Police Chiefs' Council;
- l. A federal representative for Homeland Security, who shall be appointed by the Governor; and
- m. Other representatives of local, county and emergency organizations as recommended by the Council and appointed by the Governor.

3. The purpose of the Council shall be to provide advice, counsel and assistance to the Secretary of Safety and Homeland Security and, the Governor's Homeland Security Advisor concerning:

- a. The prevention, detection, preparation for, protection against, response to, and recovery from terrorist threats or attacks;
- b. The exchange of intelligence and information concerning homeland security;
- c. Interoperability of equipment and technologies;
- d. The comprehensive state strategy to address terrorism;
- e. The dissemination of information to the public and other state entities concerning homeland security;
- f. Interaction and coordination between the Secretary of Safety and Homeland Security and other executive agencies;
- g. Completion of any plans relating to homeland security which are not specifically assigned to another entity by statutory or executive order; and
- h. Other matters of homeland security as determined by the Secretary of Safety and Homeland Security or the Governor's Homeland Security Advisor.

4. The Council shall meet at the Secretary of Safety and Homeland Security's direction. The Secretary of Safety and Homeland Security, in concert with the Governor's Homeland Security Advisor, shall be responsible for



determining the agenda of the Council meetings. For administrative purposes the Council will be located within the Department of Safety and Homeland Security, which shall provide staff support to the Council.

Approved this 22nd day of July, 2003

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor  
Secretary of State



**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council on Tidal Finfisheries, Chair	Mr. William D. Seamans	6/30/2008
Board of Parole	Mr. Joe F. Garcia Mr. James F. Jestice Mr. George H. Williamson, III	6/16/2005 6/30/2007 6/30/2007
Council on Correction	Ms. Nona J. Cunane	6/12/2006
Council on Transportation	Mr. Lee J. Beetschen	7/9/2006
Delaware Alcoholic Beverage Control Appeals Commission	Mr. J. Edwin James	Pleasure of the Governor
Delaware Commission on Veterans' Affairs	Mr. Jesse E. Kitson	10/23/2005
Delaware Harness Racing Commission	Mr. George P. Staats	4/22/2007
Delaware Health Care Commission	Joseph A. Lieberman, M.D.	6/13/2007
Diamond State Port Corporation, Board of Directors	Mr. J. Brian Murphy	6/30/2006
Environmental Appeals Board	Stanley Tocker, Ph.D. Ms. Kathryn J. Way	6/30/2006 6/30/2006
Family Court, Commissioner	Ms. Jennifer Mayo	6/12/2007
Justice of the Peace	The Honorable Harvey D. Leighty The Honorable John C. Martin	7/10/2009 7/17/2009
Kent County Board of Elections	Ms. Mary Jane Behrens Mr. David E. Burke Ms. Mable K. Glanden Ms. Sally J. Verma	6/30/2007 6/30/2007 6/30/2007 6/30/2007
New Castle County Board of Elections	Mr. Ross E. Austin Mr. Edmund S. Krzyzanowski Mr. James A. Sterling, III Ms. Marilyn P. Whittington	6/30/2007 6/30/2007 6/30/2007 6/30/2007
Professional Standards Board	Ms. Sharon L. Brittingham Mr. Heath B. Chasanov Mr. Edward J. Czerwinski Ms. Karen P. Gordon Ms. Barbara Grogg Bruce Harter, Ph.D. Mr. Leslie E. Holden Ms. Carla Z. Lawson Ms. Karen M. Schilling-Ross Carol Vukelich, Ph.D.	6/30/2006 6/30/2006 6/30/2006 6/30/2006 6/30/2006 6/30/2006 6/30/2006 6/29/2004 7/8/2003 6/30/2006

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**GOVERNOR'S APPOINTMENTS**

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361

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Public Integrity Commission	Ms. Geraldine Ann Magee Williams	6/30/2006
	Ms. Marla L. Tocker	6/30/2010
State Board of Education	Mr. Richard M. Farmer	6/30/2009
	Mr. Dennis J. Savage	6/30/2009
State Employee's Charitable Campaign Steering Committee	Ms. Jennifer L. Garey	Pleasure of the Governor
Statewide Labor Management Committee	Mr. James R. Morris	Pleasure of the Governor
Sussex County Board of Elections	Ms. Deborah B. Burris	6/30/2007
	Mr. Vaughn L. Callaway	6/30/2007
	Ms. Elizabeth D. Elliott	6/30/2007
	Mr. Gerald W. Pepper	6/30/2007
Unemployment Insurance Appeals Board	Reverend H. Milton Cole, Jr.	5/1/2009
	Mr. George D. Dryden	5/1/2009

**DEPARTMENT OF EDUCATION**

The Department of Education proposes to enter into two Interagency Agreements. The Agreements are:

1. Interagency Agreement between the Division for the Visually Impaired, Delaware Department of Health and Social Services, and the Exceptional Children and Early Childhood Education Group, Delaware Department of Education, Local Educational Agencies/Charter Schools Serving Children with Visual Impairments.
2. Interagency Agreement Between the Exceptional Children and Early Childhood Education Group, Delaware Department of Education and the Christina School District as the Administering District for the Statewide Program for Children with Autism.

The purpose of these agreements is to ensure the implementation of a free appropriate public education for children with disabilities who are classified as blind or visually impaired (Agreement 1) or autistic (Agreement 2). The Department has prepared and plans to enter into these Agreements as part of its general supervisory responsibility and obligation to ensure services under the Individuals with Disabilities Education Act (20 U.S.C. §§1412(a)(11) and 1412(a)(12); 34 CFR §§300.142 and 300.600) and Chapter 31 of Title 14 of the Delaware Code. The Agreements outline the roles and responsibilities of the participating agencies.

The sixty day public comment period for these agreements extends from September 1, 2003 through October 30, 2003. Written comments should be forwarded to:

Dr. Martha Brooks, Director  
 Exceptional Children and Early Childhood Education  
 Group  
 Delaware Department of Education  
 P.O. Box 1402  
 Dover, DE 19903  
 or  
 mbrooks@doe.k12.de.us

Two hearings to receive public comment are scheduled for:

Thursday, October 9, 2003, 7:00 p.m.  
 William Penn High School Auditorium  
 713 East Basin Road  
 New Castle, DE 19720  
 Thursday, October 16, 2003, 7:00 p.m.

Polytech High School Adult Education Building  
 Room 516  
 823 Walnut Shade Road  
 Woodside, DE 19980

**I. Title of the Agreement**

Interagency Agreement between the Division for the Visually Impaired, Delaware Department of Health and Social Services, and the Exceptional Children and Early Childhood Education Group, Delaware Department of Education, Local Educational Agencies/Charter Schools Serving Children with Visual Impairments. 34 CFR§300.142

**II. Parties involved and their authority to provide special education and related services 34 CFR§300.142(b)**

The agencies involved in this Interagency Agreement are the Division for the Visually Impaired (DVI), Department of Health and Social Services (DHSS), the Exceptional Children and Early Childhood Group, Delaware Department of Education (DDOE), the Local Education Agencies (LEAs), and Charter Schools. The DDOE ensures that each educational program for students with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision and direction of the State Educational Agency (SEA), in accordance with the Federal Individuals with Disabilities Education Act (IDEA) and the State Administrative Manual For Special Education Services (AMSES). The DVI is authorized to provide related services to children and youth with visual impairments, age of birth to 21, in accordance with the rules and regulations of the DDOE and Delaware Law. The Local Education Agencies (LEAs) and Charter Schools carry the primary responsibility for the education of children and youth with visual impairments who are enrolled in their school districts/Charter Schools, in accordance with the rules and regulations of the IDEA and the DDOE. This Agreement is written specifically to delineate services provided to children and youth with visual impairments.

**III. Purpose of the Agreement**

The purpose of this Interagency Agreement is to ensure through a cooperative effort, that a free, appropriate public education is provided to all children and youth with visual impairments who are served by the DVI, the LEAs, and Charter Schools under the general supervision and direction of the DDOE. The eligibility criterion for children with visual impairments refers to those definitions contained in AMSES and the DVI State Rehabilitation Plan. The roles and responsibilities of each agency are documented in this Agreement which shall become effective under the

following conditions:

- When either DVI, an LEA/Charter school, or a sub-contracted agency provides educational services to a child or youth with a visual impairment or,
- When a child or youth with a visual impairment is identified as eligible to either DVI or an LEA/Charter school.

**IV. Roles and responsibilities of each Agency, including access to records and transfer procedures, implementation, dissemination and training activities, funding amounts, and sources [34 CFR§300.142(a), (b) & (c)(2)]**

**Division for the Visually Impaired**

The DVI agrees to the following for infant and toddler programs and for pre-school, elementary, and secondary educational and transitional programs for children and youth with visual impairments under its jurisdiction. The scope of educational and rehabilitation services offered by DVI is influenced by federal and state enactments, funding levels, and eligibility criteria. Services provided by DVI include, but are not limited to, assistive technology, consultant services, diagnostic and regularly prescribed ophthalmologic, optometric, and low vision examinations and aids, itinerant teacher services, orientation and mobility training, specialized equipment, and vocational services. Any services that cannot be provided by DVI, due to lack of funding or other uncontrollable circumstances, are the responsibility of the student's school district of residence or, the responsibility of a participating Charter school or agency in accordance with the child's IEP. The DVI assures that services to children and youth with visual impairments shall be provided in accordance with the DVI Vocational Rehabilitation State Plan. Situations in which services may not be available include (a) a certified professional person not available for the position, (b) DVI's budget limitations, or, (c) a State mandated "spending freeze." When services cannot be rendered according to a student's IEP, a meeting will be called between the DVI and the LEA/Charter school staffs within three (3) weeks from notification that such service(s) is, are not available in order to determine alternative strategies for providing services.

**DVI will:**

1. Serve all educational programs for children and youth with visual impairments in compliance with the Federal IDEA, the State regulations as defined in the AMSES and the DVI Vocational Rehabilitation State Plan.
2. Develop policies in accordance with the AMSES, which shall include access to records and transfer procedures.
3. Participate in the Partners Council for Children with Disabilities (PCCD) of DDOE and in the provision of

in-service, technical assistance and dissemination of relevant information to staff serving children and youth with visual impairments. A representative of DVI will serve on the PCCD committee.

4. Conduct training activities with appropriate staff members concerning this Agreement and its implementation and provide the necessary training to appropriate staff, in cooperation with DDOE, which delineates the specific procedure to be followed by DVI, DDOE, and LEA/Charter Schools in the coordination of educational programs, placement, and the appointment of educational surrogate parents for children and youth with visual impairments who are receiving cooperative services from those agencies.

5. Request State funding on an annual basis sufficient for the provision of those components of a free appropriate public education for children and youth with visual impairments for whom the DVI is responsible. Develop and submit annual proposals for federal funds to supplement services for children and youth with visual impairments, which funds include, but are not limited to IDEA-Part B.

6. Provide consultant services, upon request, to those districts that house a State supported resource room for children and youth with visual impairments. Those consultant services include, but are not limited to, programming, in-service training, ordering of equipment, program evaluation, and coordination of inclusive placements in the least restrictive environment.

7. Provide consultant services to all school districts and Charter Schools when Unique Alternative Services (including private placement) are being considered or provided for a child with a visual impairment.

8. Provide itinerant teacher, consultant, orientation/mobility, family, child, and vocational counseling services to all children who meet the eligibility criteria as a visually impaired student. Actual services provided are defined by the child's IEP.

9. Provide funding for diagnostic and regularly prescribed ophthalmological, optometrical, or low vision examinations and purchase the prescribed glasses or low vision aids, if the family cannot afford them, and if the services are not covered by private insurance or Medicaid. *"a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with 34 CFR§300.500(b)(1)."* The use of a parent's private insurance shall not be requested for the provision of services, as part of the free, appropriate public education for each child and youth with a visual impairment, if such use would cause an increase in the cost of premiums or if the lifetime benefits of the policy would be reduced, or if the parent would be required to pay a deductible.

10. Administer the Annual Quota funds provided by the American Printing House for the Blind, and purchase and maintain all textbooks and equipment purchased for children and youth with visual impairments under these accounts.

The Annual Quota funds are based on an annual student count.

11. Develop and implement additional interagency agreements, as needed, with school districts, Charter Schools and other public agencies to ensure a free, appropriate public education for children and youth with visual impairments under the jurisdiction of DVI, in cooperation with DDOE.

12. Provide specialized equipment, textbooks and materials for children and youth with visual impairments to the extent that DVI budget constraints allow and to maintain the Instructional Materials Center (IMC), coordinate volunteer Braille, and research the availability of all Braille and alternate media educational materials.

13. Provide in-service training for all LEA/Charter Schools personnel, as needed or requested, in visual impairment, and special programming for children and youth with visual impairments.

14. Plan transition services which are related to a child or youth with a visual impairment, beginning at age 14 or the 9th grade, whichever comes first. A vocational rehabilitation counselor will work with the child's IEP Team and itinerant teacher to develop a transition plan for secondary level programming and post school services.

15. Keep lines of communication open with LEAs/Charter Schools and disseminate procedures for keeping lines of communication open.

16. Actively participate in the development and revision of IEPs for children and youth with visual impairments.

17. Participate in the Continuous Improvement Compliance Monitoring System (CCMS) with the DDOE in order to assess and assure compliance with the IDEA and the AMSES.

### **Delaware Department of Education**

The DDOE shall ensure that services for children and youth with visual impairments shall be provided in accordance with the IDEA, State regulation as defined in the AMSES and the DVI Vocational Rehabilitation State Plan.

#### **DDOE will:**

1. Disseminate and provide technical assistance to DVI and LEA/Charter Schools on the rules and regulations pertaining to the education of children and youth with visual impairments contained in the IDEA and AMSES.

2. Provide technical assistance to DVI and review the DVI Vocational Rehabilitation State Plan, in accordance with the AMSES.

3. Ensure participation of appropriate representatives of DVI in the Partners Council for Children with Disabilities (PCCD) and in the coordination of activities for the provision of in-service, pre-service, technical assistance, and dissemination of relevant information to DVI staff.

4. Conduct training activities with appropriate staff concerning this Agreement and its implementation, in

cooperation with DVI, which delineates specific procedures to be followed by DVI, DDOE, and LEA/Charter school personnel in the coordination of educational programming, placement, and the appointment of educational surrogate parents for children and youth with visual impairments who are receiving cooperative services from those agencies.

5. Provide technical assistance to DVI and review and approve proposals for federal funds based upon the annual count of students served, to supplement services for children and youth with visual impairments, and to provide technical assistance to obtain such funds.

6. Coordinate in consultation with DVI the development of county level agreements to define process and procedures for use of the county visually impaired resource rooms.

7. Provide technical assistance to DVI in the development of additional interagency agreements, as needed, with school districts, Charter Schools, and other public and private agencies.

8. Coordinate with DVI and LEA/Charter Schools in the development of policies and procedures designed to ensure the provision of a free, appropriate public education for children and youth with visual impairments served by DVI.

9. Include in the CCMS monitoring procedures, methods to review a sample of files of DVI-DDOE placed students with visual impairments.

### **LEAs and Charter Schools**

#### **LEAs and Charter Schools will:**

1. Provide special education services to children and youth with visual impairments in compliance with the IDEA, the AMSES, and other State and federal rules and regulations that apply in providing a free and appropriate public education in the least restrictive environment.

2. Include appropriate staff from the DVI in the IEP process for children and youth with visual impairments.

3. Provide appropriate facilities and mobility equipment for DVI itinerant staff to work with LEA children and youth with visual impairments.

4. Collaborate with DVI to enable all LEA employees who work with children and youth with visual impairments to have the opportunity to attend approved in-service programs operated by DVI or DDOE.

5. Provide for children and youth with visual impairments all required related services, equipment, and textbooks which cannot be provided by DVI or other agencies, in accordance with the IEP.

6. Designate an individual in each building in which there are children and youth with visual impairments to assist DVI each spring through summer, to determine what book(s) for each student will be needed in Braille or alternate media for the next school year.

7. Coordinate and implement the IEP process for

children and youth with visual impairments in the same manner as other special education students.

8. Notify appropriate DVI staff of IEP and related meetings with 10 days notice.

9. Ensure that resource room aides become certified as Braille transcribers through the Library of Congress within 2 years of hiring date as required by Delaware Law [14 Del. C. §206(d)].

10. Notify DVI, by August 1 of each school year with tentative class schedules (to give sufficient time prior to the beginning of the school year) for the orientation and mobility skill training of children and youth with visual impairments.

### **Joint Roles and Responsibilities of the Delaware Department of Education and the Division for the Visually Impaired**

#### **The DDOE and the DVI agree to:**

1. Request funding for jointly operated programs on an annual basis sufficient for the provision of a free appropriate public education for children and youth with visual impairments served in collaborative programs.

2. Seek federal funding to supplement services for children and youth with visual impairments including, but not limited to, America's Schools Act (ASA)-Title I (H), Carl Perkins Vocational Technical Education Act-Title II (CPVTEA) & IDEA-B.

3. Coordinate the development of policies and procedures necessary to ensure the provision of appropriate services and compliance with federal and State rules and regulations.

4. Coordinate legislative activities that impact children and youth with visual impairments; specifically, to propose amendments to the Delaware Code to further delineate responsibilities of DVI and DDOE and to propose improvements in funding and policy.

5. Share responsibility for the planning and provision of transition services for students who will be moving between the educational system and DVI, other adult service providers, and the community.

6. Maintain funding and staff levels sufficient to meet agreed upon commitments.

7. Cooperate in the development of new programs and in the revisions of existing programs.

8. Review and revise certification requirements for teachers of children and youth with visual impairments.

9. Ensure participation of representatives of DVI, if appropriate, in the CCMS when monitoring resource rooms for children with visual impairments.

10. Ensure participation of appropriate representatives of DVI, in the Unique Alternative process of children and youth with visual impairments.

### **V. Procedures to Resolve Disputes Regarding Program and Fiscal Issues [34 CFR§300.142(A)(3)]**

The Procedures for resolving disputes between any of the parties to this Interagency Agreement shall be as follows:

1. All attempts should be made to resolve disputes at the program implementation level.

2. When disputes cannot be resolved at the program implementation level, they shall be referred, in writing, to The State Director of the Exceptional Children and Early Childhood Education Group, DDOE; the State Director of the Division for the Visually Impaired, DHSS; and the Superintendent of the School District/CEO of the Charter School involved. These individuals will review the situation and determine how the dispute should be resolved. Their decision shall be shared, in writing, with the parties involved in the dispute within thirty (30) days of receipt of the request.

3. If the dispute cannot be resolved as described in #2, the dispute shall be referred in writing to the Cabinet Secretary, DDOE; the Cabinet Secretary, DHSS; and the President of the Chief School Officers Association. Further, any party to this Interagency Agreement disagreeing with the decision reached in step #2 may submit a written request for review within thirty (30) days of the decision to the Cabinet Secretary, DDOE; the Cabinet Secretary, DHSS; and the President of the Chief School Officers Association, outlining their specific disagreement with the decision. The Cabinet Secretaries' and the President's decision shall be final and binding on all parties and shall be communicated, in writing, to all parties within thirty (30) days of referral of the matter to them or request for review.

4. This Interagency Agreement does not restrict or otherwise limit any additional rights or remedies any party may have under state or federal law, nor extend the rights or remedies of one party to the other. This Interagency Agreement does not restrict or otherwise limit the Delaware Department of Education's general supervision authority to ensure that the requirements of state and federal law concerning the education of children with disabilities are carried out.

### **VI. Agreement Review**

This ongoing Agreement shall be effective immediately upon the written signatures of all parties and shall remain in effect until a new agreement is signed. This Agreement shall be reviewed annually by appropriate personnel from each agency and shall be reauthorized at least every five (5) years by the Department of Education, the Department of Health and Social Services, and the Local Education Agencies/Charter Schools. Renegotiation of any portion of this Agreement may occur at any time, for good cause, upon the written request of any of the participating agencies. This agreement may be terminated by any party upon ninety (90) days written notice.

**GLOSSARY/INTERAGENCY AGREEMENT****Consultant Services for Visually Impaired Students:**

Consultant services refer to that sharing of extended expertise that can be provided by the DVI staff. Consultation services may be specific to an individual child or to visually impaired students in general. For example, this expertise can be extended but not limited to regular classroom teachers, administrators, personnel staff, and school nurses. Inservice training can be provided as requested.

**Diagnostic and Regularly Prescribed Ophthalmological, Optometric, and Low Vision Examinations and Aids:**

These services refer to the medical and low vision eye care necessary for children and youth with visual impairments to function visually as effectively as possible, and to maintain eye health. These measures do not include exotic and extremely expensive low vision aids, nor do they include vision training, as it relates to learning disabilities or visual perception.

**Itinerant Teacher/Services for visually Impaired Students:**

DVI's Itinerant teachers travel to wherever children and youth with visual impairments attend school (or the home, in the case of an infant) and teach those skills specific to the visual impairment. The itinerant teachers also provide consultation in adaptations to visual impairment to regular classroom teachers and staff. Itinerant services generally do not exceed 3-5 hours/week for each child with the philosophy being that children who need more hours of services may be more appropriately served in a resource room for the visually impaired.

**Related Educational Services Specific to Visually Impaired Students:**

Related educational services refer to those educational services provided by DVI that are specifically related to the visual impairment. The intent is that the DVI educational staff will provide instruction in those skills that are designed to teach the student to utilize any remaining vision to the greatest extent possible, to use specialized skills such as Braillle reading, and to adapt the educational environment so as to minimize the disability of low vision. Such specialized skills include, but are not limited to, Braillle, typing, computer, orientation/mobility, use of low vision aids, and the optacon. Related educational services also refer to the provision of Braillle, large print, taped textbooks and materials.

**Resource Room for Visually Impaired Students:**

A resource room is a room in a school that is set aside for academic support for visually impaired students and is staffed by a certified VI teacher. Delaware law establishes three visually impaired resource rooms – one in each county.

They are currently located in Colonial School District (New Castle County), Caesar Rodney School District (Kent County), and Indian River School District (Sussex County). [14 Del. C. Section 1703(d)]

**Specialized Equipment for Visually Impaired Students:**

Specialized equipment for the children and youth with visual impairments can mean everything from a Braillle watch to a Kurzweil reading machine. DVI will provide specialized equipment to the extent of its budget, as long as the equipment is agreed upon as appropriate in the IEP.

**Vocational Services for Visually Impaired Students:**

Vocational services refers to those vocational, or prevocational assessments, counseling, and training specifically designed for children and youth with visual impairments and provided in a cooperative effort between DVI teachers and child/youth counselors counsel and LEA staff.

**SIGNATURE AND TITLE OF EACH AUTHORIZED SCHOOL DISTRICT & AGENCY ADMINISTRATOR**

Mrs. Valerie A. Woodruff  
Secretary of Education  
Department of Education

Mr. Vincent P. Meconi  
Secretary  
Dept. of Health & Social Services

Dr. Nancy J. Wilson  
Associate State Secretary  
Curriculum & Instructional Improvement  
Department of Education

Mr. Robert T. Goodhart  
Deputy Director  
Division for the Visually Impaired  
Department of Health and Social Services

Dr. Martha Brooks, State Director  
Exceptional Children and Early  
Childhood Education  
Department of Education

Mr. Tony J. Marchio, Superintendent  
Appoquinimink School District

Dr. Bruce Harter, Superintendent  
Brandywine School District

Dr. David E. Robinson, Superintendent  
Caesar Rodney School District

Dr. Dane A. Brandenberger, Superintendent  
Cape Henlopen School District

Dr. Michael D. Thomas, Superintendent  
Capital School District

Dr. Joseph Wise, Superintendent  
Christina School District  
Dr. George Meney, Superintendent  
Colonial School District

Dr. George E. Stone, Superintendent  
Delmar School District

Mrs. Lois M. Hobbs, Superintendent  
Indian River School District

Dr. Diane G. Sole, Superintendent  
Polytech School District

Dr. Daniel Curry, Superintendent  
Lake Forest School District

Mr. Keith Duda, Superintendent  
Laurel School District

Dr. Robert D. Smith, III, Superintendent  
Milford School District

Dr. Steve Godowski, Superintendent  
New Castle County Vo-Tech School District  
Dr. Robert Andrzejewski, Superintendent  
Red Clay Consolidated School District

Dr. Russell H. Knorr, Superintendent  
Seaford School District

Mrs. Deborah D. Wicks, Superintendent  
Smyrna School District

Dr. George L. Frunzi, Superintendent  
Sussex Technical School District

Dr. Kevin E. Carson, Superintendent  
Woodbridge School District

Ms. Ruby Coppadge  
Academy of Dover Charter School

Ms. Gloria Homer  
Campus Community Charter School

Mr. Raymond Seigfried  
Charter School of Wilmington  
Mr. Will Robinson  
Delaware Military Academy

Ms. Sandra Johnson  
East Side Charter School

Ms. Raye Jones Avery  
Kuumba Academy Charter School

Reverend Clifford Johnson  
Marion T. Academy Charter School

Mr. Kevin Hensley  
MOT Charter School

Mr. Gary Fredericks  
Newark Charter School

Mr. Pierre Stevens  
Positive Outcomes Charter School

Ms. Jennifer Meekins  
Providence Creek Academy

Ms. Maribeth Dockety  
Sussex Academy of Arts and Sciences

Dr. Nikki Castle  
Thomas A. Edison Charter School

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**I. Title of the Agreement**

Interagency Agreement Between the Exceptional Children and Early Childhood Education Group, Delaware Department of Education and the Christina School District as the Administering District for the Statewide Program for Children with Autism.

**II. Parties involved and their authority to provide special education and related services**

The agencies involved in this Interagency Agreement are the Exceptional Children and Early Childhood Education Group, Delaware Department of Education, and the Christina School District as the Administering District for the Statewide Program for Children with Autism. The Department of Education ensures that each educational program for students with disabilities administered within the State, including programs administered by any other public agency, is under the general supervision and direction of the State Educational Agency (SEA), in accordance with the Federal Individuals with Disabilities Education Act (IDEA) and the State Administrative Manual for Special Education Services (AMSES). The Christina School District, under the terms of this agreement, is authorized to provide the services outlined in this agreement to children and youth with autism, ages birth to 21, in accordance with the rules and regulations of the Delaware Department of Education and Delaware Law. The three County Consortia programs, local education agencies (LEAs), and charter



schools carry the primary responsibility for the education of children and youth with autism who are enrolled in their school districts/charter schools, in accordance with the rules and regulations of the IDEA and the DDOE. This Agreement is written specifically to delineate services provided to children and youth with autism through the Statewide Program for Children with Autism.

### III. Purpose of the Agreement

The purpose of this agreement is to define those services offered through the Statewide Program that are available to students with autism served in approved programs across the State in LEAs and charter schools. The roles and responsibilities of each agency are documented in this Agreement, which shall become effective upon signature of the parties.

### IV. Roles and responsibilities of each Agency, including access to records and record transfer procedures, program implementation, dissemination, training activities, funding amounts, and sources

#### Christina School District

The Christina School District shall maintain the Office of the Director of the Statewide Program for Children with Autism. The Office of the Director will:

1. Maintain the Statewide Parent Advisory Committee as per AMSES 21.4.
2. Maintain the Peer Review Committee as per AMSES 21.5.
3. Maintain the Human Rights Committee as per AMSES 21.6.
4. Maintain the Statewide Monitoring Review Board as per AMSES 21.2 and Section 1332 (f) of Title 14 of the Delaware Code..
5. Direct and manage the Residential Program for Children with Autism.
  - a. Develop and implement criteria and procedures for accessing services offered through the residential program. Assure all approved programs serving students with autism understand how to access residential services;
  - b. Oversee the hiring, training and supervision of staff in the residential facilities;
  - c. Establish a separate funding line for the residential program;
  - d. Oversee the budget for the residential program, including development of the annual budget; and
  - e. Develop and implement a system to cover tuition for all aspects of the residential program. Tuition for excess costs (all costs beyond State allocations) will be charged to the district of residence of the child and be based on time actually spent in the residential program.
6. Direct and manage the Respite Care Program for Children with Autism.

- a. Maintain the procedures for accessing respite care services across all approved programs serving students with autism.
- b. Maintain the list of qualified respite care providers.
- c. Establish a separate funding line for respite services.
- d. Oversee the budget for respite services, including development of the annual budget.
- e. Process all payments for respite services.
- f. Develop and implement a system to cover tuition for all aspects of the respite care system. Tuition for respite care costs will be charged to the district of residence of the child and be based on time actually used.
7. Coordinate Professional Development.
  - a. Serve as a liaison to Delaware Institutions of Higher Education to maintain the content of courses required for certification of teachers of children with autism.
  - b. Conduct a biennial needs assessment of training needs of staff and parents of children with autism. This needs assessment will include data from the Monitoring Review Board, as well as staff and parent input.
  - c. Coordinate the provision of a minimum of two in-service days of training each year for staff serving children with autism.
  - d. In collaboration with representatives from each of the approved programs, develop and implement new teacher orientation and training modules.
  - e. Develop and implement a system (to include state, federal, and local tuition funds) to financially support the provision of professional development and technical assistance to all approved programs serving children with autism in the State.
  - f. Serve as a member of the Partners' Council for Children with Disabilities.
8. Develop, implement and maintain a plan to recruit teachers and related services personnel in collaboration with program coordinators and personnel directors in the LEAs/Charter Schools with approved programs serving students with autism.
9. Provide data for reporting and program accountability as requested by the DDOE.
10. Oversee the budget of the Office of the Director, including the development of an annual budget in consultation with the DDOE..

#### Delaware Department of Education

Through the Exceptional Children and Early Childhood Education Group the Department will:

1. Coordinate the Development of Guidelines for Research Based Best Practices for the Education of Children with Autism.
2. Maintain regulations required in order to implement the IDEA and State Law related to programs for children

with autism.

3. Work with Delaware Institutions of Higher Education to ensure courses required for certification of teachers of children with autism are available.

4. Work with the Professional Standards Board to maintain the requirements for licensure and certification for teachers of children with autism.

5. Review and take action as appropriate on the Annual Report of the Statewide Monitoring Review Board.

6. Monitor programs serving children with autism through the Comprehensive Continuous Improvement Monitoring System (CCMS).

7. Provide a liaison to the Statewide Monitoring Review Board.

8. Develop and maintain the consultant contracts with the Peer Review Committee members subject to availability of funds.

9. Provide access to the DDOE data base relative to students classified as Autistic and staff working with these students in all school districts and charter schools as permitted by state and federal laws governing personal privacy and the confidentiality of education records.

#### **V. PROCEDURES TO RESOLVE DISPUTES REGARDING PROGRAM AND FISCAL ISSUES [34 CFR §§300.142(a)(3) and 300.600(b)]**

The procedures for resolving disputes between any of the parties to this Interagency Agreement shall be as follows:

1. All attempts should be made to resolve disputes at the program implementation level.

2. When disputes cannot be resolved at the program implementation level, they shall be referred, in writing, to the State Director of the Exceptional Children and Early Childhood Education Group, DDOE; and the Director of the Statewide Program. These individuals will review the situation and determine how the dispute should be resolved. Their decision shall be shared, in writing, with the parties involved in the dispute within thirty (30) days of receipt of the request.

3. If the dispute cannot be resolved as described in #2, the State Director of the ECECEG and the Director of the Statewide Program shall refer the dispute in writing to the Secretary of the DDOE; and the Superintendent of Christina School District, Administering Agency for the Statewide Program. Further, any party to this Interagency Agreement disagreeing with the decision reached in step #2 may submit a written request for review within thirty (30) days of the decision to the Secretary of the DDOE; outlining their specific disagreement with the decision. The Secretary's and the Superintendent's decision shall be final and binding on all parties and shall be communicated, in writing, to all parties within thirty (30) days of referral of the matter to them or request for review.

4. This Interagency Agreement does not restrict or

otherwise limit any additional rights or remedies either party may have under state or federal law, nor extend the rights or remedies of one party to the other. This Interagency Agreement does not restrict or otherwise limit the Department's general supervision authority to ensure that the requirements of state and federal law concerning the education of children with disabilities are carried out.

#### **VI. Agreement Review**

This ongoing Agreement shall be effective immediately upon the written signatures of all parties and shall remain in effect until a new agreement is signed or this agreement is otherwise terminated in accordance with this paragraph. This Agreement shall be reviewed annually by appropriate personnel from each agency and shall be reauthorized at least every five (5) years by the Department of Education and the Christina School District as the Administering Agency for the Statewide Program. Renegotiation of any portion of this Agreement may occur at any time, for good cause, upon the written request of any of the participating agencies. This agreement may be terminated by any party upon ninety (90) days written notice to the other party.

Signatories:

Mrs. Valerie A. Woodruff  
Secretary of Education  
Department of Education

Dr. Martha Brooks, State Director  
Exceptional Children and Early Childhood Education  
Department of Education

Dr. Joseph Wise  
Superintendent  
Christina School District

Ms. Sally Farr  
Supervisor, Special Education  
Christina School. District

Dr. Peter Doehring  
Director, Delaware Autism Program  
Christina School District

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## DEPARTMENT OF INSURANCE

**Forms And Rates Bulletin No. 26****Credit Scoring Filing Requirements**

Issued: August 22, 2003

To: All Insurance Companies And Other Regulated Entities

From: Donna Lee H. Williams, Insurance Commissioner  
State Of Delaware Insurance Department

**I. Purpose**

The purpose of this bulletin is to assist insurers in complying with the newly issued Regulation No. 906. Regulation No. 906 was adopted by the Commissioner pursuant to the authority granted by 18 *Del. C.* §§ 311, 2501, 2304(15)(c), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, Title 29 *Del. C.* Chapter 101.

**II. General Propositions**

Regulation No. 906 requires that each insurer proposing to use an insurance score as part of its rating or underwriting criteria shall file with the Commissioner such supporting models, algorithms, actuarial and statistical data and reports sufficient to permit the Commissioner to determine proper compliance with said Regulation.

No insurer shall implement credit scoring for rate making or underwriting purposes without first having obtained the approval of the Commissioner as part of a rate filing under 18 *Del. C.* Chapter 25. Policies and renewal notices issued on or before the effective date of Regulation No. 906 in which credit information was used in the underwriting or rating of the policy shall be deemed valid for the term thereof but not for any renewal thereunder in the absence of compliance with said regulation.

**Confidentiality**

Any document, report, model or other supporting information filed with the Commissioner, irrespective of the format or media in which it is contained, shall be considered proprietary or trade secret and subject to the confidentiality provisions of 18 *Del. C.* § 321(g) and/or, upon the request of the insurer or owner of the document, 29 *Del. C.* 10002(d)(2). Where an insurer or third party is required to file proprietary or trade secret insurance scoring algorithms, models etc., the insurer or third party may elect to segregate such documents from the remainder of its rate filing by filing such documents

separately in a sealed envelope or container.

**III. Filing Guidance****Algorithms, Models, Actuarial and Statistical Data**

Filings will be reviewed to ensure that at least the following three elements are included: (1) the manner in which Credit Score is derived; (2) the statistical relevance of the Credit Score to risk; and (3) the rules for application of Credit Score in the underwriting or rating process. With regard to (1) and (2) above, the insurer should indicate which of the following three categories applies:

Independent Derivation of Credit Score / Independent Statistical Model; or

Third-Party Derivation of Credit Score / Third-Party Statistical Model; or

Third-Party Derivation of Credit Score / Independent Statistical Model.

**Independent Derivation of Credit Score / Independent Statistical Model**

Insurers who elect to use an independently-developed model shall file supporting information as specified in Regulation No. 906.

**Third-Party Derivation of Credit Score / Third-Party Statistical Model**

Insurers using algorithms and statistical models etc. developed by a third party contractor (e.g. Fair-Isaac, ChoicePoint, etc.) without modification are not required to file supporting information for the algorithms/models, but are required to identify the third party and the name of the proposed algorithms/models. Insurers using algorithms and statistical models developed by a third party contractor where the algorithms/models have been modified are required to identify the third party and the name of the proposed algorithms/models, and are required to file supporting information for the modifications in accordance with Regulation No. 906. Any other statistical data and/or reports unique to the insurer must be filed in accordance with Regulation No. 906.

**Third-Party Derivation of Credit Score / Independent Statistical Model**

Insurers using only the Credit Score algorithms developed by a third party vendor without modification are not required to file supporting information for the Credit Score algorithms, but are required to identify the third party and the name of the proposed Credit Score algorithm. Insurers using Credit Score algorithms developed by a third party contractor where the Credit Score algorithms have been modified are required to identify the third party and the name of the proposed Credit Score algorithm, and are required to file supporting information for the modifications

in accordance with Regulation No. 906. The supporting statistical data and/or reports independently developed by the insurer must be filed in accordance with Regulation No. 906.

**Duties of Third-Party Vendors**

Third party vendors must file with the Delaware Insurance Department their Credit Score algorithms. Any new algorithms or changes to filed algorithms must be filed with the Delaware Insurance Department.

**Additional Duties of Insurers**

Insurers should clearly state the rules of application of the credit score in its underwriting or rating process, and should further relate such rules to the modeled statistical relevance to risk in accordance with Regulation No. 906.

**Regulation Compliance**

Insurers found in non-compliance with Regulation No. 906 will have sixty days to remediate and make a corrective filing to the Department. After sixty days, the insurers will be disallowed from using credit scoring on new business and renewals until such time as the insurer's filing(s) have come into compliance with Regulation No. 906.

Filing extensions will be considered on a case-by-case basis.

**Transmittal Headers**

All insurers must provide specific references in the required Transmittal Headers to be filed with rate and form filings. In particular, under "Filing Description" (on page 2 of 2 of the Transmittal Header), the insurer should state whether the Credit Score algorithms are derived from a third party without modification, with modification, or are independently derived. The insurer should also state whether the models demonstrating statistical relevance to risk are provided by a third party or are independently derived. Whenever third party information is used, the insurer must identify the third party and the names of any models referenced in the filing.

**Confidentiality**

All insurers making filings whereby models/algorithms are required should stamp those documents "Confidential or Proprietary" to better assist the Department in filing maintenance.

**Filing Fees**

Insurers making new automobile and homeowners filings and insurers making changes to automobile and homeowners rate filings as a result of Regulation 906 must pay a filing fee in accordance with 18 *Del. C.* § 702. Insurers with rate filings already "filed" with the Department, and not making any changes as a result of

Regulation 906, will not be subject to 18 *Del. C.* § 702, unless it is determined after review that the "filed" rate filing must be amended.

**Cost of Review**

The cost to review filed algorithms, statistical reports etc., by the Department's outside actuaries will be borne by the insurer.

The contact person at the Delaware Insurance Department is Mr. Darryl Reese. The mailing address is Delaware Insurance Department, 841 Silver Lake Boulevard, Dover, DE 19904-2465.

Donna Lee H. Williams, Insurance Commissioner  
August 22, 2003

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

PLEASE TAKE NOTICE, pursuant to 29 Del. C. §2509, the Delaware Board of Pharmacy (Board) proposes to modify Regulation 11.0 as it relates to emergency use medication, labeling, consultant pharmacist duties, and drug disposal in nursing homes. The changes to Regulation 11 were made in response to public comment from an earlier proposal that was not enacted.

A public hearing will be held on October 8, 2003 at 10:00 a.m. in the Jesse Cooper Building, Room309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. Written comments can be submitted at any time prior to the public hearing in care of David Dryden, Executive Director, at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained by calling (302)739-4798.

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**PUBLIC SERVICE COMMISSION**

**Electric Service Reliability and Quality Standards**

The previously designated Hearing Examiner, Robert P. Haynes, shall conduct a public hearing on the proposed regulations on September 22, 2003. After such hearing and the close of the comment period as set forth in Exhibit B, Hearing Examiner Haynes shall file a Report organizing, classifying, and summarizing the administrative record in this matter along with his recommendations concerning the materials and the proposed regulations. Hearing Examiner Haynes shall submit such Report at a time to allow for its consideration by the Commission by December 1, 2003. Hearing Examiner Haynes is delegated the power to request additional comments and conduct additional hearings (after appropriate notice), if he deems such additional procedures necessary or appropriate.

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**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, September 18, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF FINANCE  
OFFICE OF THE STATE LOTTERY**

The Lottery issues this proposed rule amendment pursuant to 29 *Del. C.* §4805(a) and 29 *Del. C.* §10115. The Lottery will accept written comments from September 1, 2003 through September 30, 2003. The Lottery will hold a public hearing on the proposed rule amendment on October 2, 2003 at 9:00 a.m. in the second floor conference room at the Delaware Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments should be submitted to Brian Peters, Delaware Lottery Office, at the same above-listed address. The Lottery proposes to amend Rule (30)(6a) pertaining to permitted exemptions to clarify that retailers or license applicants may apply for an exemption to the standards of accessibility in the rule.

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

**Notice Of Public Hearing**

The Authority on Radiation Protection will hold a public hearing to discuss the proposed changes to the Regulation for the Certification of Radiation Technologists/Technicians. This public hearing will be held on Monday, September 22, 2003, at 5:00 pm in the Pritchett Conference Room, Delaware Hospital for the Chronically Ill on DuPont Highway, in Smyrna, Delaware.

Copies of the proposed regulations along with a listing of substantial changes are available for review by contacting:

Office of Radiation Control  
Jesse Cooper Building  
P.O. Box 637  
Federal and Water Streets  
Dover, Delaware 19903  
Telephone: (302) 744-4546

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by close of business Friday, September 19, 2003. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business September 30, 2003 to:

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

**DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****Prescribed Pediatric Extended Care Program and Title XIX Medicaid State Plan**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Division of Social Services Provider Manual and the Title XIX Medicaid State Plan to revise and clarify the criteria and reimbursement methodology for Prescribed Pediatric Extended Care 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 September 30, 2003.

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****TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) 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 September 30, 2003.

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 under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to rehabilitated drug felons.

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 September 30, 2003.

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

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**DEPARTMENT OF INSURANCE****Notice Of Public Hearing**

Insurance Commissioner Donna Lee H. Williams hereby gives notice that a public hearing will be held on Thursday September 25, 2003, at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider Proposed Regulation 1406 relating to the licensing and regulation of third party administrators.

The purpose for promulgating Regulation 1406 is to comply with 74 *Del. Laws* Ch. 157 which became law on July 15, 2003 requiring the Delaware Insurance Department



to enact regulations governing the licensure and regulation of third party administrators doing business in Delaware.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 *Del. C.* Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than 4:30 p.m., Thursday, October 2, 2003, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904.

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**DEPARTMENT OF NATURAL  
RESOURCES & ENVIRONMENTAL  
CONTROL**

**DIVISION OF FISH AND WILDLIFE**

**TITLE OF THE REGULATIONS:**

Tidal Finfish Regulations, Shellfish Regulations.

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

To create a new Tidal Finfish Regulation 3565 and a new Shellfish Regulation S-76 that establish procedures for conducting the first lottery and subsequent lotteries of available commercial gill net permits and authorization for commercial hook and line permits (Tidal Finfish Regulation 3565), and commercial crab dredge, conch pot, and conch dredge licenses (Shellfish Regulation S-76). It is proposed that the first lottery for available licenses be held on January 2, 2004 and subsequent lotteries will be held the first working day in January of each year thereafter, as long as one or more licenses are available. Participants in the lotteries shall include current participants in the apprentice program who have completed the required and properly documented 150 days of commercial fishing activities over no less than a 2-year period dating from the specific date the applicant signed up as an apprentice, according to the provisions of §915(e), (k), and (n); and §1920, 7 Delaware Code.

**NOTICE OF PUBLIC COMMENT:**

Individuals may present their opinions and evidence and/or request additional information by writing, or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment and new regulation will be held at the Department of Natural Resources and Environmental Control Auditorium 89 Kings Highway, Dover, DE at 7:30

PM on October 1, 2003. The record will remain open for written or e-mail comments to [roy.miller@state.de.us](mailto:roy.miller@state.de.us) until 4:30 PM on October 6, 2003.

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**DELAWARE RIVER BASIN  
COMMISSION**

**25 STATE POLICE DRIVE  
P.O. BOX 7360  
WEST TRENTON, NJ 08628-0360**

The Delaware River Basin Commission will meet on Wednesday, September 3, 2003 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Council, at (609) 883-9500 ext. 203.

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**DELAWARE RIVER BASIN  
COMMISSION**

**25 STATE POLICE DRIVE  
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**REGISTER NOTICE**

**Clean Water Act Section 303(d): Notice of Availability of  
4 Total Maximum Daily Loads (TMDLs), Informational  
Meetings and Public Hearing**

**Brief Synopsis of the Subject, Substance and Issues**

The United States Environmental Protection Agency (USEPA) proposes to establish total maximum daily loads for polychlorinated biphenyls (PCBs) in the Delaware River Zones 2 through 5 (from Trenton, New Jersey to the head of Delaware Bay). Technical development and interstate coordination necessary to support the TMDLs for PCBs in the Delaware River have been provided by the Delaware River Basin Commission. Adoption of the TMDLs will implement the requirements of the USEPA's Water Quality Planning and Management regulations (40 CFR 130) to establish TMDLs.

**Possible Terms of the Agency Action:**

N/A

**Statutory Basis or Legal Authority to Act:**

Section 303(d) of the Federal Clean Water Act (33 U.S.C. 1251 et seq.)

**List of Other Regulations that may be Impacted or Affected by the Proposal:****Notice Of Public Comment:**

This notice announces the date of availability for comment on the basis and background document explaining the background and calculations for 4 total maximum daily loads for polychlorinated biphenyls (PCBs) in Delaware River Zones 2 through 5 (from Trenton, New Jersey to the head of Delaware Bay). This notice also announces three informational meetings and a single public hearing on the proposed adoption of the TMDLs by the U.S. EPA, jointly with the Delaware Department of Natural Resources and Environmental Control (DNREC), the New Jersey Department of Environmental Protection (NJDEP), the Pennsylvania Department of Environmental Protection (PADEP), and the Delaware River Basic Commission (DRBC).

A draft report, including the basis and background document for the TMDLs and calculations for the TMDLs, will be published on the DRBC web site, <http://www.drbc.net>, on or before September 15, 2003.

The dates and locations of the three information meetings are: September 22, 2003 from 7:00–9:00 p.m. at the Carvel State Office Building, 820 North French Street, 2<sup>nd</sup> Floor, Wilmington, Delaware; September 24, 2003, in the public hearing room at the offices of the NJDEP, 401 East State Street in Trenton, New Jersey, and September 25, 2003 from 7:00-9:00 p.m. at the PADEP Southeast Regional Office, Lee Park, Hearing Room, 555 North Lane, Conshohocken, Pennsylvania. The informational meeting will begin with a presentation by representatives of DNREC, USEPA, and the DRBC. The presentation will be followed by a question and answer session that will not be conducted as part of the record.

The public hearing on the TMDLs will be held on October 16, 2003, from 7:00-9:00 p.m. at the Independence Visitor Center, Independence Ballroom, 2nd Floor, One North Independence Mall West (6th & Market Streets) in Philadelphia. Comments for the record will be accepted at the public hearing, but no agency responses will be offered at that time. Written comments will be accepted through October 21, 2003 and should be submitted electronically to [berlin.lenka@epamail.epa.gov](mailto:berlin.lenka@epamail.epa.gov) or by mail to Lenka Berlin, Office of Watersheds (3WP10), USEPA, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

EPA will review all data and information submitted during the comment period and will revise the TMDLs as appropriate. A written response document will be prepared prior to final EPA action. For further information contact: Susan Schulz, EPA Region 2, at 212-637-3829; Mary Kuo, EPA Region 3, at 215-814-5721; or Pamela Bush, DRBC, at 609-883-9500 x 203.



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