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# Delaware Register of Regulations

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Issue Date: December 1, 2006

Volume 10 - Issue 6 Pages 917 - 1073

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Mont Morenci Staircase  
Winterthur Museum, Wilmington, Delaware

## IN THIS ISSUE:

Regulations:  
Proposed  
Final  
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 November 15, 2006.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

- Governor's Executive Orders
- Governor's Appointments
- 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:

10 **DE Reg.** 524-527 (09/01/06)

Refers to Volume 10, pages 524-527 of the *Delaware Register* issued on September 1, 2006.

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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.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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.

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 16	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

**Deborah A. Porter**, Interim Supervisor; **Kathleen Morris**, Administrative Specialist I; **Georgia Roman**, Unit Operations Support Specialist; **Jeffrey W. Hague**, Registrar of Regulations; **Steve Engebretsen**, Assistant Registrar; **Victoria Schultes**, Administrative Specialist II; **Lady Johnson**, Administrative Specialist I; **Rochelle Yerkes**, Administrative Specialist II; **Ruth Ann Melson**, Legislative Librarian; **Debbie Puzzo**, Research Analyst; **Judi Abbott**, Administrative Specialist I; **Alice W. Stark**, Senior Legislative Attorney; **Deborah J. Messina**, Print Shop Supervisor; **Don Sellers**, Printer; **Teresa Porter**, Printer.

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**Symbol Key**

Arial 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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**DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY**

Statutory Authority: 25 **Del.C.** §7011(f) and 7013(c)(2)

**NOTICE OF PUBLIC HEARING**

The Delaware Manufactured Home Relocation Authority (the "Authority") will hold a public hearing to discuss proposed amendments to the Authority's regulations relating to the administration of the Delaware Manufactured Home Relocation Trust Fund ("Trust Fund") established pursuant to 25 **Del.C.** §7012. The Authority was established by the Delaware Legislature pursuant to 25 **Del.C.** §7011. The primary purpose of the Authority is to: (a) provide financial assistance to manufactured homeowners who are tenants in a manufactured home community where the community owner changes the use of land or converts the manufactured home community to a condominium or cooperative community; and (b) to provide financial assistance to manufactured home community owners for the removal and/or disposal of non-relocatable or abandoned manufactured homes when there is a change in use or conversion. The Authority set an initial \$3.00 monthly assessment for deposit into the Trust Fund, effective April 1, 2004. Under the statute, one-half of the monthly assessment is the obligation of the Tenant of a rented lot and one-half of the assessment is the obligation of the Landlord. The monthly assessments collected by the Authority are deposited into the Trust Fund, and the Authority is responsible for administering this fund. To carry out its statutory responsibilities, the Authority has established procedures under which applicants for payment from the Authority may be approved and to set maximum benefits that may be payable to applicants under certain circumstances.

Pursuant to its statutory authority, at the Authority's meeting on October 25, 2006, the Authority adopted a resolution proposing for adoption certain revisions to the existing regulations to be used for the administration of the Trust Fund. The proposed regulations approved at the October 25, 2006 meeting of the Authority and published herein will: (a) increase the monthly assessment from \$3.00 per month to \$4.50 per month, effective April 1, 2007 and (b) set the maximum payment available to a tenant for a single section home and a multi-section home whose home has been determined to be non-relocatable at \$10,000.00 and \$18,000.00 respectively.

The public hearing will be on Monday, January 22, 2007, beginning at 6:00 p.m. and ending at 7:30 p.m. in the Auditorium located at the offices of the Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901. In the event of inclement weather that requires the January 22, 2007 public hearing to be postponed, the public hearing will be held on Monday, January 29, 2007 at 6:00 p.m. and ending at 7:30 p.m. at the same location described above.

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

William A. Denman, Esquire  
Parkowski, Guerke & Swayze, P.A.  
116 W. Water Street  
Dover, DE 19904  
(302) 678-3262  
Email: wdenman@pgslegal.com

Anyone wishing to present oral comments at this hearing should contact Mr. William A. Denman at (302) 678-3262 by Friday, January 19, 2007. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony, should submit such comments by January 31, 2007 to:

William A. Denman, Esquire  
Parkowski, Guerke & Swayze, P.A.  
116 W. Water Street  
Dover, DE 19904  
(302) 678-3262  
Email: wdenman@pgslegal.com

The proposed regulations are set forth below:

The Authority is granted authority to establish rules and regulations and establish criteria for the disbursement of benefits available to landlords and tenants under the provisions of 25 **Del.C.** §7011, et. seq. (the "Act"). Pursuant to 25 **Del.C.** Section 7012(f), the Authority is granted authority to set the monthly assessment for deposit into the Trust Fund. The regulations set forth below set the maximum benefit payable to a tenant whose manufactured home is determined to be non-relocatable, and increases the monthly assessment from \$3.00 to \$4.50.

## **201 Delaware Manufactured Home Relocation Trust Fund Regulations**

The Authority is granted authority to establish rules and regulations and establish criteria for the disbursement of benefits available to landlords and tenants under the provisions of 25 **Del.C.** §7011, et. seq. (the "Act"). The regulations set forth below establish criteria for benefits eligibility, pursuant to the statute, application procedures, application review procedures, and payment procedures.

### **1.0 Criteria for Tenant Benefits**

1.1 Only "Tenants", as defined under the Act, are entitled to benefits under the Act. A Tenant is defined to mean an owner of a manufactured home who has tenancy of a lot in a manufactured home community. A manufactured home community refers to a parcel of land where two or more lots are rented or offered for rent for the placement of manufactured homes. Notwithstanding anything stated herein to the contrary, a Tenant shall not be entitled to any of the benefits described herein unless all of the statutory requirements set forth in the Act have been met.

1.2 A Tenant is entitled to relocation benefits under the Act if the Tenant is required to move due to a change in use or conversion of the land in a manufactured home community. A Tenant is not entitled for compensation for relocation if:

1.2.1 the Landlord (at the Landlord's expense) moves the Tenant's manufactured home by mutual consent to another lot in the manufactured home community or to another manufactured home community; or

1.2.2 the Tenant is vacating the manufactured home community and so informed the Landlord before notice of the change in use was given by the Landlord; or

1.2.3 the Tenant abandons the manufactured home; or

1.2.4 the Tenant has failed to pay the Tenant's share of the Relocation Trust Fund assessment during the course of his or her tenancy.

1.3 The maximum relocation payment available to a Tenant is \$4,000.00 for a single section home or \$8,000.00 for a multi-section home.

1.4 If a Tenant is required to move due to a change in use and complies with the statutory requirements of 25 Del.C. §7013, the Tenant is entitled to payment from the Relocation Trust Fund of the lesser of:

1.4.1 the actual relocation expenses of moving the manufactured home and existing appurtenances to a new location within a 25 mile radius of the vacated manufactured home community, or

1.4.2 the maximum benefits available under Section 1.3.

1.5 Moving expenses which are eligible for reimbursement include the cost of taking down, moving and setting up the manufactured home in the new location.

1.6 In certain circumstances, a manufactured home may be considered non-relocatable. If, based upon the criteria described herein, a Tenant's manufactured home is determined by the Authority to be non-relocatable, the Tenant may qualify for compensation to reimburse the Tenant for the value of the non-relocatable home subject to the limitations set forth in the Act.

1.7. Whether or not a home can or cannot be relocated will be determined by the Authority based upon the following criteria:

1.7.1 the availability of a replacement home site within a 25 mile radius of the vacated manufactured home community;

1.7.2 the feasibility of physical relocation, including the ability of taking down, moving and setting up the home in a new location without causing significant structural damage to the manufactured home in the process;

1.7.3 the appraised value of the manufactured home in comparison to the projected cost of relocating the manufactured home to a new location.

1.8 If the Authority determines that the Tenant's manufactured home cannot be relocated, the Tenant shall obtain, at the Tenant's expense, an appraisal prepared by a certified manufactured home appraiser for purposes of determining the fair market value of the home and any existing appurtenances. The appraisal shall exclude the value of the underlying land. The maximum benefits available to the Tenant under such circumstances shall be ~~determined by the Board for a single section home and a multi section home following the completion of an actuarial study to be performed under the direction of the Authority~~ \$10,000.00 for a single-section manufactured home and \$18,000.00 for a multi-section home. Subject to the maximum limits, the amount of compensation that will be paid to the Tenant will be equal to the fair market value of the home based upon the appraisal.

1.9 To be eligible for compensation for a non-relocatable home, in addition to the application provided for in Section 3 hereof, the Tenant must deliver to the Authority a current State of Delaware title to the home, duly endorsed by the owner or owners of record, with valid releases of all liens shown on the title, and a tax release.

1.10 In lieu of the foregoing benefits, a Tenant may elect to abandon the manufactured home in the manufactured home community and collect from the Trust Fund, in lieu of any other benefits available under the Act, the sum of \$1,500 for a single section home or \$2,500 for a multi-section home. To qualify for this payment, the Tenant must deliver to the Authority a current State of Delaware title to the manufactured home duly endorsed by the owner or owners of record, valid releases of all liens shown on the title, and a tax release.

*(Break in Continuity of Sections)*

## **8.0 Monthly Assessments**

8.1 Pursuant to 25 Del.C. §7012(f), effective April 1, 2007, the monthly assessment for deposit into the Trust Fund for each rented lot in a manufactured home community shall be \$4.50.

8.2 One half of the monthly assessment set forth in Section 8.1 hereof is the obligation of the tenant of the rented lot, and one-half of the assessment is the obligation of the landlord.

**\*Please Note: As the rest of the sections were not amended, they are not being published.**

## DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)  
3 DE Admin. Code 501

The Delaware Harness Racing Commission (DHRC), pursuant to 3 Del.C. §10005, proposes to change DHRC Rules 3, 5 and 8. The Commission will hold a public hearing on the proposed rule changes on January 9, 2007. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

The proposed changes are for the purpose of updating the rules to reflect current policies, practices and procedures. For example, Rule 3 updates position titles and outdated practices, Rule 5 adds new language requiring the use of safety vests, and Rule 8 updates drug testing procedures and trainer responsibilities.

### 501 Harness Racing Rules and Regulations

#### *(Break in Continuity of Sections)*

#### 3.0 Officials

##### 3.1 General Provisions

##### 3.1.1 Racing Officials

Officials at a race meeting may include the following, as determined by the Commission:

- ~~3.1.1.1~~ State Steward;
- 3.1.1.21 Board of Judges;
- 3.1.1.32 ~~r~~Racing ~~s~~Secretary;
- 3.1.1.43 ~~p~~Paddock Judge;
- 3.1.1.54 ~~h~~Horse Identifier and / ~~e~~Equipment Checker;
- ~~3.1.1.65~~ ~~clerk of the course~~;
- 3.1.1.75 ~~e~~Official ~~s~~Starter;
- 3.1.1.86 ~~e~~Official ~~e~~Charter/Program Director;
- 3.1.1.97 ~~e~~Official ~~t~~Timer/Photo Finish Technician;
- 3.1.1.108 ~~photo finish technician~~;
- 3.1.1.149 ~~p~~Patrol Judge;
- 3.1.1.1210 ~~program director~~;
- 3.1.1.1311 ~~Commission Chief DHRC~~ ~~v~~Veterinarian;
- 3.1.1.1412 ~~Bleeder Medication~~ ~~v~~Veterinarian;
- 3.1.1.1513 ~~Chief DHRC~~ Investigator; and
- 3.1.1.1614 Administrator of Racing
- 3.1.1.1715 any other person designated by the Commission.

##### 3.1.2 Eligibility

To qualify as a racing official the appointee must be licensed by the Commission after a determination that he/she:

- 3.1.2.1 is of good moral character and reputation;
- 3.1.2.2 is experienced in and/or knowledgeable of harness racing;
- 3.1.2.3 is familiar with the duties to which he/she is appointed and with the Commission's rules and regulations;
- 3.1.2.4 possesses the mental and physical capacity to perform his/her duties; and
- 3.1.2.5 is not under suspension or ejection by the U.S.T.A., the C.T.A. Standardbred Canada or any racing jurisdiction.

##### 3.1.3 Approval and Licensing

The Commission, in its sole discretion, may determine the eligibility of a racing official and, in its sole discretion, may approve or disapprove any such official for licensing.

##### 3.1.4 Prohibited Practices

Racing officials and their assistants shall not engage in any of the following activities while

## PROPOSED REGULATIONS

serving in an official capacity at a race meeting:

- 3.1.4.1 participate in the sale or purchase, or own any horse racing at the meeting;
- 3.1.4.2 sell or solicit horse insurance on any horse racing at the meeting;
- 3.1.4.3 be licensed in any other capacity without permission of the Commission;
- 3.1.4.4 wager on the outcome of any live or simulcast race;
- 3.1.4.5 refuse to take a breath analyzer test or submit to a blood or urine sample when

directed by the Commission or its designee; or

3.1.4.6 perform their official duties on any day ~~in~~ during which any horse is entered or is entered in any live race at the ~~Association grounds that is owned, or trained, in whole or in part, directly or indirectly, or is driven, or groomed, by any parent, child or sibling of such official, or participate in the draw for any such race; provided, however, that a parent, child or sibling of an official acting solely as a groom for such a horse shall not be deemed to pose a conflict of interest for the official; provided further, that should any such conflict described above arise, the official will immediately notify the State Steward; and provided, further, that should the official's spouse, parent, child, or sibling without the permission of the Commission. If repeated such conflicts interfere with the official's performance of his/her normal duties, or with any other official's performance of his/her official duties, then the Commission shall~~ appoint approve another person to replace the official with the familial conflict.

### 3.1.5 Report of Violations

Racing officials and their assistants shall report immediately to the ~~State Steward~~ Presiding Judge or judges every observed violation of these rules and of the laws of this jurisdiction governing racing.

### 3.1.6 Complaints Against Officials

Any formal complaint against a racing official other than a judge shall be made to the ~~State Steward or Presiding Judge~~ in writing and signed by the complainant. All such complaints shall be reported to the Commission by the ~~State Steward or Presiding Judge~~, as appropriate, together with a report of the action taken or the recommendation of the ~~State Steward or Presiding Judge~~. Formal complaints against the ~~State Steward or any judge~~ shall be made in writing to the Commission and signed by the complainant.

### 3.1.7 Appointment

3.1.7.1 ~~A person shall not be appointed to more than one racing official position at a meeting unless specifically approved by the Commission. No person shall be appointed to or hold any such office or official position who holds has any official relation to any person, association, or employed by a corporation or Association engaged in or conducting harness racing within this State. No Commissioner, racing official, steward, or judge whose duty is to insure that the rules and regulations of the Commission are complied with shall bet on the outcome of any race during any live racing program regulated by the Commission nor have any financial or pecuniary interest in the outcome of any race regulated by the Commission. All employees appointed under 3 Del.C. §10007(a-c) shall serve at the pleasure of the Commission and are to be paid a reasonable compensation.~~

3.1.7.2 The Commission shall appoint or approve the ~~State Steward and judges~~ Board of Judges at each harness race meeting. The Commission may appoint such officials on an annual basis. In addition to any minimum qualifications promulgated by the Commission, all applicants for the positions on the Board of Judges of Steward must be certified by a national organization possess a USTA license and be fully accredited by a recognized university approved by the Commission. An applicant for the position of ~~steward or race judge~~ must also have been previously employed as a steward, patrol judge, ~~clerk of scales~~ or other racing official at a harness 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 driver who has also served not less than one year as a licensed racing official at a harness racing meeting or have ten years of experience as a licensed harness racing trainer who has served not less than one year as a licensed racing official at a harness racing meeting.

3.1.7.3 The Commission may appoint such officers, clerks, stenographers, inspectors, racing officials, veterinarians, and such other employees as it deems necessary, consistent with the purposes of 3 **Del.C.** Chapter 100.

### 3.1.8 Appointment of Substitute ~~State Steward/ Presiding Judge~~

Should ~~any State Steward the Presiding Judge~~ or any judge be absent at race time, the ~~State Steward Presiding Judge~~, or, in his/her absence the remaining judge(s) shall appoint a deputy for the ~~State Steward Presiding Judge~~ or judge(s). If a deputy ~~State Steward or judge~~ is appointed, the Commission shall be notified immediately by the ~~State Steward Presiding Judge~~ or remaining judges.

### 3.2 ~~State Steward/ Board of Judges~~

## 3.2.1 General Authority

3.2.2.1 The ~~State Steward and judges~~ Board of Judges for each meeting shall be responsible to the Commission for the conduct of the race meeting in accordance with the laws of this jurisdiction and these rules.

3.2.2.2 The ~~State Steward and judges~~ Board of Judges shall enforce these rules and the racing laws of the State of Delaware.

3.2.2.3 The ~~State Steward~~ Presiding Judge's authority includes supervision of all racing officials, licensed personnel, other persons responsible for the conduct of racing and patrons, as necessary to ensure compliance with these rules.

3.2.2.4 The ~~State Steward and Presiding Judge~~ Board of Judges shall have authority to resolve conflicts or disputes related to racing and to discipline violators in accordance with the provisions of these rules.

3.2.2.5 The ~~State Steward and judges~~ Board of Judges have the authority to interpret the rules and to decide all questions of racing not specifically covered by the rules.

3.2.2.6 The ~~State Steward~~ Presiding Judge shall be a representative of the Commission at all race meetings which the Commission may direct such ~~State Steward~~ Presiding Judge to attend. The ~~State Steward~~ Presiding Judge shall be the senior officer at such meetings and, subject to the control and direction of the Commission, shall have general supervision over the racing officials, medication program and drug-testing officials, and all other employees and appointees of the Commission employed at such race meet or meetings. The ~~State Steward~~ Presiding Judge shall, subject to the general control of the Commission, monitor the conduct of the racing and the pari-mutuel department, and supervise the testing of horses and drivers. The ~~State Steward~~ Presiding Judge at all times shall have access to all parts of the ~~a~~ Association grounds, including the racecourse, physical plant and grounds. Upon instruction from the Commission, the ~~State Steward~~ Presiding Judge shall conduct hearings and investigations, and report his findings to the Commission. The ~~State Steward~~ Presiding Judge shall act for the Commission in all matters requiring its attention, to receive from all persons having knowledge thereof information required by the Commission and to perform all other duties for the compliance of the rules and regulations of the Commission and the laws of the State of Delaware.

## 3.2.2 Period of Authority

The ~~State Steward and judges'~~ Board of Judge's period of authority shall commence five (5) business days prior to the beginning of each race meeting and shall terminate with completion of their official business pertaining to the meeting.

## 3.2.3 Disciplinary Action

3.2.3.1 The ~~State Steward and judges~~ Board of Judges shall take notice of alleged misconduct or rule violations and initiate investigations into the matters.

3.2.3.2 The ~~State Steward and judges~~ Board of Judges shall have authority to charge any licensee for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.

3.2.3.3 The ~~State Steward and judges~~ Board of Judges may compel the attendance of witnesses and the submission of documents or potential evidence related to any investigation or hearing.

3.2.3.4 The ~~State Steward and judges~~ Board of Judges may at any time inspect license documents, registration papers and other documents related to racing.

3.2.3.5 The ~~State Steward and judges~~ Board of Judges have the power to administer oaths and examine witnesses.

3.2.3.6 The ~~State Steward and judges~~ Board of Judges ~~may shall~~ consult with the ~~Commission~~ Chief DHRC Veterinarian and/or the Commission chemist to determine the nature and seriousness of a laboratory finding or an alleged medication violation.

3.2.3.7 The ~~State Steward and judges~~ Board of Judges may impose, but are not limited to, any of the following penalties on a licensee for a violation of these rules:

3.2.3.8 ~~7.1~~ The ~~State Steward and judges~~ Board of Judges may take any appropriate actions against any horse for a violation or attempted violation of these rules.

3.2.3.9 ~~7.2~~ The ~~State Steward and judges~~ Board of Judges may suspend a license; or they may impose a fine in accordance with these Rules for each violation; or they may suspend and fine; or they may order that a person be ineligible for licensing.

3.2.3.10 ~~8~~ A ~~State Steward's or judges'~~ Board of Judge's ruling shall not prevent the

Commission from imposing a more or less severe penalty.

3.2.3.14 ~~9~~ The ~~State Steward or judges~~ Board of Judges may refer any matter to the Commission and may include recommendations for disposition. The absence of a ~~State Steward's or judges' Board of Judge's~~ referral shall not preclude Commission action in any matter.

3.2.3.12 ~~10~~ Purses, prizes, awards, and trophies shall be redistributed if the ~~State Steward or judges~~ Board of Judges or Commission order a change in the official order of finish.

3.2.3.13 ~~11~~ All fines imposed by the ~~State Steward or judges~~ Board of Judges shall be paid to the Commission within ten (10) days after the ruling is issued, unless otherwise ordered.

### 3.2.4 Protests, Objections and Complaints

The ~~State Steward or judges~~ Board of Judges shall investigate promptly and render a decision in every protest made to them. They shall maintain a record of all protests. The ~~State Steward or judges~~ Board of Judges shall file daily with the Commission a copy of each protest, objection or complaint and any related ruling. All protests must be in writing and lodged with the ~~State Steward or judges~~ Board of Judges not later than forty-eight (48) hours after the race in question.

### 3.2.5 Judges' Presence

~~A board of judges shall be present in the judges' stand during the contesting of each race. One judge shall be present in the stand thirty (30) minutes prior to the race to observe and the others shall be present no less than fifteen (15) minutes prior to the race, during the contesting of the race and fifteen (15) minutes after the finish.~~

### 3.2.6 Order of Finish for Pari-Mutuel Wagering

3.2.6.1 Whenever the judges use a photo to determine the order of finish it shall be displayed for public inspection. The judges may call for a picture from the photo finish camera to aid them in arriving at a decision. However, in all cases the camera is merely an aid and the decision of the Judges shall be final. The judges shall determine the official order of finish for each race in accordance with the rules of the race (see Rule 7.0).

3.2.6.2 The decision of the judges as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the contesting of the race, shall be final for purposes of distribution of the pari-mutuel wagering pool.

### 3.2.7 Cancel Wagering

The ~~State Steward or judges~~ Board of Judges ~~have~~ has the authority to cancel wagering and order refunds where applicable on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races, if such action is necessary to protect the integrity of pari-mutuel wagering.

### 3.2.8 Steward's List

3.2.8.1 The judges shall maintain a Steward's List of the horses which are ineligible to be entered in a race.

3.2.8.2 A horse that is unfit to race because it is dangerous, unmanageable or unable to show a performance to qualify for races at the meeting, scratched as a result of a high blood gas test, or otherwise unfit to race at the meeting may be placed on the Steward's List by the Presiding Judge and declarations and/or entries on the horse shall be refused. The owner or trainer shall be notified of such action and the reason shall be clearly stated. When any horse is placed on the Steward's List, the ~~clerk of the course~~ Program Director shall make a note on the electronic eligibility certificate of such horse, showing the date the horse was put on the Steward's List, the reason and the date of removal if the horse has been removed.

3.2.8.3 Following an examination All horses scratched by a veterinarian for either lameness or sickness will be put on the Steward's List and can not race for at least seven (7) days from the date of the scratched race. Entries will be accepted during this seven (7) day period for a race to be contested after the seventh day.

3.2.8.3.1 Following an examination Veterinarians may put a horse on the Steward's List for sickness or lameness for more than seven (7) days if necessary. In that instance, the horse may not race until proscribed number of days has expired. Entries will be accepted during this period for a race to be contested after the proscribed number of days has expired.

3.2.8.4 No Presiding Judge or other official at a fair race meeting shall have the power to remove from the Steward's List and accept as an entry any horse which has been placed on a Steward's List and not subsequently removed ~~therefrom~~ for the reason that ~~he/she~~ it is dangerous or ~~an~~ unmanageable ~~horse~~. Such

meetings may refuse declarations and/or entries on any horse that has been placed on the Steward's List and has not been removed therefrom.

~~3.2.8.5 No horse shall be admitted to any racetrack facilities in this jurisdiction without having had a negative official test for equine infectious anemia within twelve (12) months. No entry or declaration to start shall be accepted by any Association in this jurisdiction without having had a negative official test for equine infectious anemia within twelve (12) months, except for in the case of paid in events. In paid in events, no horse shall be admitted to any racetrack facilities in this jurisdiction without having had a negative official test for equine infectious anemia within twelve (12) months.~~

3.2.8.6 The judges may put any horse on the Steward's List for performance when such horse shows a reversal of form or does not race near its own capabilities. Such horse shall qualify in a time comparable to its known capabilities from one to three times, at the discretion of the judges, before being allowed to start.

3.2.8.7 Any horse put on the Steward's List as unmanageable or dangerous must qualify in a satisfactory manner for the judges at least two times.

3.2.8.8 The judges may put any horse on the Steward's List for being noncompetitive or unfit to race at the meeting.

3.2.8.9 The judges may place a horse on the Steward's List when ~~there exists~~ a question exists as to the exact identification, ownership or management of said horse.

3.2.8.10 A horse which has been placed on the Steward's List because of questions as to the exact identification or ownership of said horse, may be removed from the Steward's List when, in the opinion of the judges, proof of exact identification and/or ownership has been established.

3.2.8.11 A horse may not be released from the Steward's List without the permission of the judges.

### 3.2.9 List of Nerved Horses

The judges shall maintain a list of nerved horses ~~which are on association grounds participating at the race meet~~ and shall ~~make the list available for inspection by other licensees participating in the race meeting post the list in the Race Office.~~

## 3.3 Racing Secretary

### 3.3.1 General Authority

The ~~r~~Racing ~~s~~Secretary is responsible for setting the conditions for each race of the race meeting, regulating the nomination of entries and determining the amounts of purses and to whom they are due. The ~~r~~Racing ~~s~~Secretary shall check and verify the eligibility of all horses entered.

### ~~3.3.2 Eligibility Certificates~~

~~The racing secretary is responsible for receiving and safeguarding the eligibility certificates of all horses competing at the track or stabled on association grounds.~~

### ~~3.3.3-2 Race Information~~

The ~~r~~Racing ~~s~~Secretary shall be familiar with the age, class and competitive ability of all horses racing at the meeting.

### ~~3.3.4-3 Classifications~~

The ~~r~~Racing ~~s~~Secretary shall classify horses in accordance with these rules, ~~and list horses in the categories in which they qualify.~~

### ~~3.3.5 4 Listings of Horses~~

The ~~r~~Racing ~~s~~Secretary Office shall:

3.3.5 ~~4.1~~ examine all entry forms and declarations to verify information as set forth therein; and

3.3.5 ~~4.2~~ select the horses to start and the also eligible horses from the declarations in accordance with these rules.

3.3.5 ~~4.3~~ provide the listing of horses in the daily program.

### ~~3.3.6 5 Nominations and Declarations~~

The ~~r~~Racing ~~s~~Secretary shall examine nominations and declarations and early closing events, late closing events and stakes events to verify the eligibility of all declarations and nominations and compile lists thereof for publication.

### ~~3.3.7 6 Conditions~~

The ~~r~~Racing ~~s~~Secretary shall establish the conditions and eligibility for entering races and

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cause them to be published to owners, trainers and the Commission and be posted in the racing secretary's office.

## 3.3.8 7 Posting of Entries

Upon completion of the draw each day, the ~~r~~Racing ~~s~~Secretary shall post a list of entries in a conspicuous location in his/~~her~~ office and make the list available to the media.

## ~~3.3.9 8 Stakes and Entrance Money Records~~

~~The racing secretary shall be caretaker of the permanent records of all stakes and shall verify that all entrance monies due are paid not later than one hour prior to post time, regardless of whether the horse actually starts.~~

## 3.3.40 9 Winnings

3.3.409.1 For the purpose of establishing conditions, winnings shall be considered to include all monies and prizes won up to the time of the start of a race.

3.3.409.2 Winnings during the year shall be calculated by the ~~r~~Racing ~~s~~Secretary from the preceding January 1.

## 3.3.4410 Cancellation of a Race

In case of unfavorable weather or other unavoidable cause, ~~a~~Associations, upon notifying of the ~~State Steward~~ Presiding Judge may postpone or cancel races.

## 3.4 Paddock Judge

### 3.4.1 General Authority

Under the direction and supervision of the Presiding Judge, the Paddock Judge shall have complete charge of all paddock activities, including but not limited to:

3.4.1.1 Ensuring that all horses entered in a heat or dash are on the racetrack at the time designated by the Presiding Judge to be formed in a parade line; that such horses are attended by their drivers unless specifically excused by the Paddock Judge; that all horses in heat or race parade from the paddock upon the track and before the grandstand not later than five (5) minutes before Post Time; and that drivers not engage in conversation during the post parade. A horse failing to parade without being excused by the Paddock Judge may be scratched from the race or its driver or trainer may be penalized;

3.4.1.2 Supervising the Horse Identifier and Equipment Checker;

3.4.1.3 Supervising the paddock gate operators;

3.4.1.4 Ensuring that all horses are in the paddock at the time prescribed by the Presiding Judge, but in any event not less than one hour but not more than two hours prior to post time of the race in which the horse is to compete. Except for warm-up trips, no horse shall leave the paddock until called to the post;

~~3.4.1.5 Maintaining a proper checkin and checkout of horses and drivers.~~ No driver, ~~trainer, owner-trainer~~ or groom once admitted to the paddock or receiving barn shall leave the same other than to warm up said horse or other race related activity until such race, or races, for which he was admitted is contested; provided, however, that in the event of an emergency, ~~trainers or grooms~~ a licensee may leave the paddock, but only with the permission of the Paddock Judge, in which case the Paddock Judge shall maintain a written record thereof, which shall be delivered to the Presiding Judge. ~~No person except an~~ Only a licensed owner or trainer who has another horse racing in a later race, ~~or an official,~~ shall return to the paddock until all races of that program have been completed;

3.4.1.6 Directing the activities of the paddock blacksmith;

3.4.1.7 Ensuring that only properly authorized persons are permitted in the paddock, to wit:

3.4.1.7.1 Owners of horses competing on the date of the race and whose horses are in the paddock; with the exception of all owners of registered stables;

3.4.1.7.2 Trainers of horses competing on the date of the race and whose horses are in the paddock;

3.4.1.7.3 Drivers of horses competing on the date of the race and whose horses are in the paddock;

3.4.1.7.4 No more than two ~~G~~Grooms of horses competing on the date of the race and whose horses are in the paddock;

3.4.1.7.5 Officials whose duties require their presence in the paddock or receiving barn; and

3.4.1.7.6 Such other persons as are authorized by the Commission; Provided, that no more than two ~~members~~ owners of a registered stable, other than the driver, shall be entitled to

admission to the paddock on any racing day, except by permission of the Presiding or Paddock Judge, or written approval by the Commission;

or shoes before the race;

equipment kept in the paddock;

paddock after having entered the track for the post parade and before the start of the race;

3.4.1.7.10 Supervising and maintaining the cleanliness of the paddock; and

3.4.1.7.11 Supervising the conduct of all persons in the paddock.

3.4.2 Report to the Presiding Judge

The Paddock Judge shall:

3.4.2.1 Immediately notify the Presiding Judge of anything that could in any way change, delay or otherwise affect the racing program; and

3.4.2.2 Report to the Presiding Judge any observed cruelty to a horse; and

3.4.2.3 Any other violations of these rules.

3.5 Horse Identifier and /Equipment Checker

3.5.1 General Authority

The Horse Identifier & /Equipment Checker shall be present for each race. The duties of the Horse Identifier & /Equipment Checker are:

3.5.1.1 Maintain a listing of all equipment worn, including shoes, and the tattoo or freeze brand number for each horse racing at the meeting;

3.5.1.2 Each time a horse races, identify the horse by checking the lip tattoo or freeze brand; and

3.5.1.3 Compare the type and condition of equipment actually being used by each horse for each race with the approved equipment listed; and

3.5.2 Report Violations

The Horse Identifier & /Equipment Checker shall report to the Paddock Judge immediately any discrepancies or faulty equipment discovered by the investigations specified in this Rule, which findings are to be reported immediately to the Presiding Judge. The Presiding Judge's ruling in these matters is final.

~~3.6 Clerk of the Course~~

~~3.6.1 General Authority~~

~~The clerk of the course shall be responsible for keeping and verifying the judges' book and eligibility certificates provided by the U.S.T.A./C.T.A. and recording therein all required information and:~~

~~3.6.1.1 names and addresses of owners;~~

~~3.6.1.2 the standard symbols for medications, where applicable;~~

~~3.6.1.3 notations of placings, disqualifications and claimed horses;~~

~~3.6.1.4 notations of scratched or ruled out horses;~~

~~3.6.1.5 returning the eligibility certificate to the horse's owner or the owner's representative after the race, when requested;~~

~~3.6.1.6 notifying owners and drivers of penalties assessed by the officials;~~

~~3.6.1.7 assisting in drawing post positions, if requested; and~~

~~3.6.1.8 maintaining the Steward's List.~~

3.7 6 Official Starter

3.7 6.1 General Authority

3.7 6.1.1 The sStarter is responsible to provide a fair start for each race.

3.7 6.1.2 The sStarter shall be an employee or contractor of the aAssociation.

3.7 6.1.3 An aAssistant sStarter may be employed or contracted if deemed necessary by the aAssociation.

3.7 6.1.4 The sStarter shall ensure that ~~the starter, the starter's assistant(s) and any Assistant Starters and the~~ driver are cognizant of and capable of performing all required emergency procedures.

3.7 6.2 Report Violations

The ~~official~~ sStarter shall report violations of these rules occurring at the start of a race to the judges.

# PROPOSED REGULATIONS

## 3.7 ~~6~~.3 Disciplinary Action

The ~~official s~~Starter shall have authority to assess fines and to suspend the license of drivers for any violation of these rules from the formation of the parade until the word "Go" is given.

## 3.7 ~~6~~.4 Starter's List

The ~~official s~~Starter or the ~~starter's a~~Assistant Starter shall school horses as may be necessary and shall prepare a list of horses not qualified to start, which shall be delivered to the judges and entered on the Steward's List. The Steward's List shall be posted in the ~~R~~Racing ~~s~~Secretary's office with the list of horses not qualified to start.

## 3.8 ~~7~~ Official Charter/Program Director

### 3.8 ~~7~~.1 General Authority

The ~~official e~~Charter is responsible for providing a complete and accurate chart of each race. An accurate ~~chart~~ Judge's Book shall incorporate a chart of each race which shall include the following:

3.8 ~~7~~.1.1 horse's name; and electronic eligibility certificate number

3.8 ~~7~~.1.2 driver's name; and USTA membership number, and trainer's name and

USTA membership number;

3.8 ~~7~~.1.3 date and place of the race;

3.8 ~~7~~.1.4 ~~track size, if other than a half mile track~~ track code;

3.8 ~~7~~.1.5 track condition and temperature;

3.8 ~~7~~.1.6 type of race (trot or pace);

3.8 ~~7~~.1.7 classification of race;

3.8 ~~7~~.1.8 distances other than a mile;

3.8 ~~7~~.1.9 fractional times of the leading horse, including the race time;

3.8 ~~7~~.1.10 post position, position at the ¼ mile, the ½ mile and the ¾ mile poles and

at the head of the stretch with lengths behind the leader and finish position with lengths behind the winner;

3.8 ~~7~~.1.11 official order of finish;

3.8 ~~7~~.1.12 individual time of each horse;

3.8 ~~7~~.1.13 closing dollar odds (with favorite designated by an asterisk);

3.8 ~~7~~.1.14 the standard symbols for breaks, park outs free legged pacers, and

hobbled trotters where applicable;

3.8 ~~7~~.1.15 the standard symbols for medications, where applicable;

3.8 ~~7~~.1.16 in claiming races, the price for which the horse is entered to be claimed

~~less allowances for age and sex;~~

3.8 ~~7~~.1.17 ~~names of the horses placed first, second and third by the State Steward~~

~~and judges; and mutual data to include the payoff prices for win, place, show, daily double, exacta, trifecta, superfecta, and any other exotic wager;~~

3.8 ~~7~~.1.18 notations of placings, disqualifications and claimed horses;

3.7.1.19 the names and addresses of owners; and

3.7.1.20 notations of scratched or ruled out horses.

## 3.7.2 Other Duties

The Charter/Program Director shall also be responsible for keeping and verifying the Judge's Book and eligibility certificates provided by the U.S.T.A./Standardbred Canada and recording therein all required information.

3.7.3 The Charter/Program Director is also responsible for furnishing the public complete and accurate past performance information.

## 3.9 ~~8~~ Official Timer/Photo Finish Technician

### 3.9 ~~8~~.1 General Authority

The ~~official t~~Timer shall accurately record the time elapsed between the start and finish of each race.

### 3.9 ~~8~~.2 Timing Procedure

The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line.

### 3.9 ~~8~~.3 Timing Races

#### 3.9 ~~8~~.3.1

In every race, the time of each heat shall be accurately recorded by two timers or an approved electrical timing device, in which case, there shall be one timer.

3.9 ~~8~~.3.2 Times of heats shall be recorded in minutes, seconds and fifths of a second.

3.9 ~~8~~.3.3 Immediately following each heat, the elapsed time of the heat shall be publicly announced and/or posted on the ~~totalisator~~ tote board.

3.9 ~~8~~.3.4 No unofficial timing shall be announced, posted or entered into the official record.

3.9 ~~8~~.4 Error in Reported Time

3.9 ~~8~~.4.1 In circumstances involving an error in timing, no time shall be announced, posted or recorded for that heat.

3.9 ~~8~~.4.2 In any case of alleged error regarding a horse's official time, the time in question shall not be changed to favor the horse or its owner, except upon the sworn statement of the judges and official timers who officiated in the race.

~~3.10 Photo Finish Technician~~

3.44 ~~9~~ Patrol Judge

3.44 ~~9~~.1 General Authority

The Patrol Judge(s), when utilized, is/are responsible for observing the race and reporting information concerning the race to the judges. If the track's video replay system is deemed adequate by the Commission, use of patrol judges is optional.

~~3.12 Program Director~~

~~3.12.1 General Authority~~

~~The program director is responsible for furnishing the public complete and accurate past performance information.~~

3.43 ~~10~~ ~~Commission~~ Chief DHRC Veterinarian

3.43 ~~10~~.1 General Authority

The ~~Commission~~ Chief DHRC Veterinarian shall:

3.43 ~~10~~.1.1 be appointed by the Commission;

3.43 ~~10~~.1.2 be a graduate veterinarian and be licensed to practice in the State of Delaware;

3.43 ~~10~~.1.3 recommend to the judges any horse deemed ~~unsafe~~ unfit to be raced, ~~or a horse that it would be inhumane to allow to race~~ following examination;

3.43 ~~10~~.1.4 place horses on the Veterinarian's List, when necessary, and remove horses from the Veterinarian's List;

3.43 ~~10~~.1.5 place horses on the Bleeder List and remove horses from the Bleeder List;

3.43 ~~10~~.1.6 maintain a continuing health and racing soundness record of each horse given a racing soundness inspection;

3.43 ~~10~~.1.7 supervise the taking of all specimens for testing according to procedures approved by the Commission;

3.43 ~~10~~.1.8 provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion or contamination;

3.43 ~~10~~.1.9 report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting and the reasons therefore;

3.43 ~~10~~.1.10 maintain all required records of postmortem examinations performed on horses which have died on ~~a~~ Association grounds;

~~3.13.10.1.11 refrain from directly treating or prescribing for any horse scheduled to participate during his/her term of appointment at any recognized meeting except in cases of emergency, accident or injury;~~

~~3.13.10.1.12 refuse employment or payment, directly or indirectly, from any owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the official veterinarian for the Commission;~~

3.43 ~~10~~.1.11 review and make recommendations regarding Commission license applications of practicing veterinarians;

3.43 ~~10~~.1.12 cooperate with practicing veterinarians and other regulatory agencies to take measures to control communicable and/or reportable equine diseases;

# PROPOSED REGULATIONS

3.43 ~~10.1.13~~ supervise the periodic ~~periodically~~ review of all horse papers under the jurisdiction of the Commission to ensure that all required tests and health certificates are current and properly filed in accordance with these rules; and

3.43 ~~10.1.14~~ be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of the horse to so act.

## 3.43 ~~11.1~~ Racing Responsibilities

With respect to the conduct of each race, and each race meeting authorized by the Commission, the ~~Commission~~ Chief DHRC Veterinarian shall:

3.43 ~~11.1.1~~ be available ~~to the racing secretary and/or State Steward or Presiding Judge prior to scratch time each racing day at a time designated by the State Steward or Presiding Judge,~~ to inspect any horses and report on their condition as may be requested by ~~the State Steward or by the judges;~~

3.43 ~~11.1.2~~ inspect any horse when there is a question as to the physical condition of such horse;

3.43 ~~11.1.3~~ recommend scratching a horse to the judges if, in ~~the his~~ his opinion ~~of the Commission Veterinarian,~~ the horse is physically incapable of exerting its best effort to win following an examination and communication of same to the trainer or his designee.

3.43 ~~11.1.4~~ inspect any horse which appears in physical distress during the race or at the finish of the race; and shall report such horse together with his/~~her~~ opinion as to the cause of the distress to the judges;

3.43 ~~11.1.5~~ refrain from directly treating or prescribing for any horse scheduled to participate during his/~~her~~ term of appointment at any recognized meeting except in cases of emergency, accident or injury;

3.43 ~~11.1.6~~ refuse employment or payment, directly or indirectly, from any owner or trainer of a horse racing or intending to race in the State of Delaware while employed as the ~~Commission~~ Chief DHRC Veterinarian;

3.43 ~~11.1.7~~ conduct soundness inspections on horses participating in races at the meeting;

3.43 ~~11.1.8~~ place horses on or remove them from the ~~Commission~~ Veterinarian's List.

## 3.43 ~~11.2~~ ~~Commission~~-Veterinarian's List

The ~~Commission~~ Chief DHRC Veterinarian shall maintain a list of all horses which he ~~or she~~ has determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

## 3.44 ~~12~~ Bleeder Medication Veterinarian

### 3.44 ~~12.1~~ General Authority

The Bleeder Medication veterinarian shall:

3.44 ~~12.1.1~~ ~~Be subject to the supervision of the Commission Veterinarian~~ Fully cooperate and coordinate his duties, responsibilities, schedules and related functions with the Chief DHRC Veterinarian;

3.44 ~~12.1.2~~ Be a graduate veterinarian and be licensed to practice in the State of Delaware;

3.44 ~~12.1.3~~ Report to the State ~~Lasix~~ Furosemide (Salix) stall at least ~~one half hour before the first Lasix horse is due for Lasix injection (i.e., four and one half hours before post time)~~ treatment area at least 30 minutes prior to the first scheduled Salix treatment;

3.44 ~~12.1.4~~ Record the name of the horse and the time that the ~~Lasix~~ Salix is administered, and denote "IV" or "IM", as appropriate;

3.44 ~~12.1.5~~ Report to the Paddock Judge any horse that fails to show, or is late to the State ~~Lasix~~ Salix stall;

3.44 ~~12.1.6~~ Administer Furosemide (Salix) to each horse on the Bleeder list, and administer Aminocaproic Acid in accordance with Rule 8.3.5. of these Rules;

3.44 ~~12.1.7~~ Collect fees for each injection at the time of administration; credit shall not be given at any time;

3.44 ~~12.1.8~~ Turn in the list of horses and times of administration to the Paddock Judge prior to leaving each race day; and

3.44 ~~12.1.9~~ Report any unusual findings to the Paddock Judge without delay.

## 3.44 12.2 Bleeder List

~~The Bleeder Medication Lasix veterinarian cannot place horses on the Bleeder List; the Commission Veterinarian is the only person authorized to place horses on the Bleeder List. With the approval of the Chief DHRC Veterinarian, the Bleeder Medication Veterinarian may recommend horses to be placed on and off the Bleeder List.~~

## 3.45 13 Chief DHRC Investigator

3.45 13.1 The Commission may appoint a Chief DHRC racing inspector or investigator for each harness racing meet. Such Chief DHRC Investigator racing inspector shall perform all duties prescribed by the Commission consistent with the purposes of this chapter. ~~Such racing inspector~~ The Chief DHRC Investigator shall have full and free access to the books, records, and papers pertaining to the pari-mutuel system of wagering and to the enclosure or space where the pari-mutuel system is conducted at any harness racing meeting to which he shall be assigned for the purpose of ascertaining whether the holder of such permit is operating in compliance with the Commission's rules and regulations. The ~~racing inspector~~ Chief DHRC Investigator shall investigate whether such rules and regulations promulgated by the ~~e~~Commission are being violated at such harness race track or enclosure by any licensee, patron, or other person. Upon discovering any such violation, the ~~racing inspector~~ Chief DHRC Investigator shall immediately report his or her findings in writing and under oath to the Commission or its designee as it may deem fitting and proper. The ~~racing inspector~~ Chief DHRC Investigator shall devote his full time to the duties of his office and shall not hold any other position or employment, ~~except for performance of similar duties for the Thoroughbred Racing Commission.~~

3.45 13.2 Subject to the approval of the Commission, and under the direction of the Administrator of Racing, the Chief DHRC Investigator may be delegated one or more of the following responsibilities:

3.45 13.2.1 Supervising the licensing functions of the Commission, including performing background checks and fingerprinting applicants for licensure, and facilitating the Commission's participation in a uniform, multi-jurisdictional, reciprocal licensing scheme;

3.45 13.2.2 Consulting with track security and with law enforcement agencies both within and outside of Delaware;

3.45 13.2.3 Supervising the human and equine drug-testing programs provided for in these Rules;

3.45 13.2.4 Conducting vehicle and stall searches;

3.45 13.2.5 Intelligence gathering and dissemination;

3.45 13.2.6 Responding to patron complaints regarding the integrity of racing; and

3.45 13.2.7 Where appropriate, presenting complaints to the Commission for disposition, including complaints seeking disciplinary action against licensees of the Commission.

## 3.46 14 Administrator of Racing

The Commission may employ an Administrator of Racing who shall perform all duties prescribed by the Commission consistent with the purposes of this rule. The Administrator of Racing shall devote his full time to the duties of the office. ~~and shall not hold any other office or employment, except that he can perform the same duties as Administrator of Racing for the Thoroughbred Racing Commission.~~ The Administrator of Racing shall be the representative for the Commission at all meetings of the Commission and shall keep a complete record of its proceedings and preserve, at its general office, all books, maps, documents, and papers entrusted to its care. He shall be the executive officer of the Commission and shall be responsible for keeping all Commission records and carrying out the rules and orders of the Commission. The Commission may appoint the Administrator of Racing to act as a hearing officer to hear appeals from administrative decisions of the ~~steward or racing~~ Board of Judges.

## 3.47 15 Any Other Person Designated by the Commission

The Commission may create additional racing official positions, as needed. Persons selected for these positions shall be considered racing officials and shall be subject to the general eligibility requirements outlined in Rule 3.1.1 of this chapter.

**1 DE Reg. 504 (11/01/97))**

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

**2 DE Reg. 1764 (04/01/99)**

**4 DE Reg. 336 (08/01/00)**

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

**7 DE Reg. 1512 (05/01/04)**

*(Break in Continuity of Sections)*

## 5.0 Licensees

### 5.1 General Provisions

#### 5.1.1 Licenses Required

5.1.1.1 A person shall not participate in pari-mutuel racing under the jurisdiction of the Commission without a valid license issued by the Commission. License categories shall include the following and others as may be established by the Commission:

5.1.1.1.1 racing participants and personnel (including owner, authorized agent, trainer, assistant trainer, driver, veterinarian, veterinary assistant, horseshoer and stable employees);

5.1.1.1.2 racing officials (including the State Steward, judges, racing secretary, paddock judge, horse identifier and equipment checker, clerk of the course official starter, official charter, official timer, photo finish technician, patrol judge, program director, State veterinarian and Lasix veterinarian);

5.1.1.1.3 persons employed by the association, or employed by a person or concern contracting with or approved by the association or Commission to provide a service or commodity, which requires their presence in a restricted area; and

5.1.1.1.4 all Commission employees.

5.1.1.2 Persons required to be licensed shall submit a completed application on forms furnished by the Commission and accompanied by the required fee, which shall be determined by the Commission.

5.1.1.3 License applicants may be required to furnish to the Commission a set(s) of fingerprints and a recent photograph and may be required to be re-fingerprinted or re-photographed periodically as determined by the Commission.

#### 5.1.2 Licensing Reciprocity

The Commission may license persons holding valid permanent (not temporary) licenses issued by Association of Racing Commissioners International (RCI) member racing jurisdictions in North America. The licensee must be in good standing; have cleared a Federal Bureau of Investigation (FBI) or Royal Canadian Mounted Police (RCMP) fingerprint check within the previous 36 months, or such other period as is required by the Commission; file an application and/or affidavit as may be required by the Commission; and pay the required fees prior to participating in racing.

5.1.2.1 The Commission may recognize the issuance of racing licenses from RCI member jurisdictions in North America for purposes of issuance of licenses in this jurisdiction.

5.1.2.2 Only permanent licenses in good standing shall be considered. Temporary or probationary licenses shall not be considered.

5.1.2.3 An applicant must be in good standing in each jurisdiction where they hold or have held a racing license.

5.1.2.4 The applicant must have submitted fingerprints within the past 36 months, or such other period as is required by this jurisdiction, for the purpose of a criminal records check by the FBI or RCMP. The applicant shall provide this jurisdiction with proof of licensure from another RCI member jurisdiction to which fingerprints were submitted.

5.1.2.5 The applicant shall submit the license application form and license fee required by this jurisdiction.

5.1.2.6 Provided the above requirements have been met, this jurisdiction may issue either a license and/or a validation sticker. The validation sticker shall be affixed to either a license issued by this jurisdiction or a valid license issued by another RCI member jurisdiction. This Commission shall determine the period of time that such license shall be valid in Delaware.

5.1.2.7 In the event the licensee is absent from this jurisdiction, and upon payment of the applicable fees, a receipt shall be mailed to the licensee's permanent address. The receipt may then be presented at the Commission office by the licensee so that a Commission representative may affix the proper validation sticker to the racing license badge.

#### 5.1.3 Multi-State Licensing Information

In lieu of a license application from this jurisdiction, the Commission shall accept an RCI Multi-State License and Information form.

#### 5.1.4 Age Requirement

Applicants for licensing shall be a minimum of 14 years of age unless otherwise specified

in these rules. An applicant may be required to submit a certified copy of his/her birth certificate. Persons under the age of 18 may be required to show evidence of active participation in a certified educational program or have a high school diploma or equivalent.

5.1.5 Consent to Investigation

The filing of an application for license shall authorize the Commission to investigate criminal and employment records, to engage in interviews to determine applicant's character and qualifications and to verify information provided by the applicant.

5.1.6 Consent to Search and Seizure

By acceptance of a license, a licensee consents to search and inspection by the Commission or its agents and to the seizure of any prohibited medication, drugs, paraphernalia or devices in accordance with state/provincial and federal law. Any drugs, medication or other materials seized may be forwarded by the Commission to the official chemist for analysis.

5.1.7 Licensees' Obligation to Protect Horses

Each person licensed by the Commission shall do all that is reasonable and within his/her power and scope of duty to guard against and prevent the administration of any drug, medication or other substance, including permissible medication in excess of the maximum allowable level, to any horse entered or to be entered in an official workout or race, as prohibited by these rules.

5.1.8 Substance Abuse/Addiction

5.1.8.1 All licensees shall be deemed to be exercising the privileges of their license, and to be subject to the requirements of these rules, when engaged in activities that could affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.

5.1.8.2 It shall be a violation to exercise the privileges granted by a license from this Commission if the licensee:

5.1.8.2.1 Is engaged in the illegal sale or distribution of alcohol or a controlled substance;

5.1.8.2.2 Possesses, without a valid prescription, a controlled substance;

5.1.8.2.3 Is intoxicated or under the influence of alcohol or a controlled substance;

5.1.8.2.4 Is addicted, having been determined to be so by a professional evaluation, to alcohol or other drugs and not engaged in an abstinence-based program of recovery acceptable to the Commission;

5.1.8.2.5 Has in his/her possession within the enclosure any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance;

5.1.8.2.6 Refuses to submit to urine or drug testing, when notified that such testing is based on a random drug testing procedure, is based on reasonable suspicion that the person is using drugs or alcohol or is based on the licensee's acting as if in an impaired condition; or

5.1.8.2.7 Presently has drugs (controlled substances) or alcohol in his or her body. With regard to alcohol, the results of a breathalyzer test showing a reading of more than .05 percent of alcohol in the blood shall be the criterion for a finding of alcohol present in the body; provided, however, that with respect to licensees under the age of 21, the presence of any measurable level of alcohol in the blood shall constitute a violation. With regard to other controlled substances, presence of the drug in any quantity measured by the testing instrument establishes the presence of the drug for purposes of this paragraph.

5.1.8.3 At its discretion, the Commission may conduct random or episodic random drug testing, as well as testing based on reasonable suspicion, in order to ensure safety on the racetrack.

5.1.8.4 When conducted, random drug testing shall apply equally to all licensees who are, at the time of the random testing, exercising the privileges of their license in such ways as may affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.

5.1.8.5 No notice need be given as to onset or cessation of random testing.

5.1.8.6 For licensees who are tested under the provisions in this chapter, and whose urine testing shows the presence of drugs (controlled substances) or alcohol, any field screening test results shall be confirmed by a laboratory acceptable to the Commission which shall include Gas Chromatography/Mass

Spectrometry (GC/MS) procedures.

5.1.8.7 When the sample quantity permits, each test sample may be divided into portions so that one portion may be used for the confirmation procedure and another portion may be utilized to obtain an independent analysis of the urine sample.

5.1.8.8 The Commission shall provide for a secure chain of custody for the sample.

5.1.8.9 Assuming that laboratory procedures confirm the field screening test results, all costs for the transportation and testing of the sample, including the costs of the independent analysis of the divided portion of the sample, shall be the financial responsibility of the licensee.

5.1.8.10 Payment shall be due from the requesting person immediately upon receipt of notice of the costs.

5.1.8.11 A licensee penalized or restricted pursuant to this chapter shall retain rights of due process with respect to any determination of alleged violations which may adversely affect the right to hold a license.

5.1.8.12 If there has been a violation, as specified in 5.1.8.2 above, the following procedures will be followed:

5.1.8.12.1 The Commission or State Steward may, at its or his/her discretion, order the licensee to obtain a professional assessment to determine whether there is a substantial probability that the licensee is dependent on, or abuses, alcohol or other drugs or the Commission or State Steward may act on the information at hand.

5.1.8.12.2 Actions in the case of first violators may include revocation of the license, suspension of the license for up to six months, placing the violator on probation for up to 90 days or ordering formal assessment and treatment.

5.1.8.12.3 Treatment or assessment, if ordered, must meet the conditions set forth below.

5.1.8.12.4 The license of the person may be revoked or suspended for a period of up to one year or a professional assessment of the person may be ordered by the Commission or State Steward.

5.1.8.12.5 If a professional assessment indicates presence of a problem of alcohol or other drug abuse that is not treatable within the reasonably foreseeable future (360 days) the license may be suspended for a period of up to one year.

5.1.8.12.6 If a professional assessment indicates presence of a treatable problem of alcohol or other drug abuse or dependence, the Commission or State Steward may order the licensee to undergo treatment as a condition of continuing licensure. Such treatment will be through a program or by a practitioner, acceptable to the licensee and the Commission or State Steward. Required features of any program or practitioner acceptable to the Commission will be:

5.1.8.12.6.1 Accreditation or licensure by an appropriate government agency, if required by Delaware law;

5.1.8.12.6.2 A minimum of one year follow-up of formal treatment; and

5.1.8.12.6.3 A formal contract indicating the elements of the treatment and follow up program that will be completed by the licensee and, upon completion, certified to the Commission or State Steward as completed. To effect the contract, the licensee will authorize release of information by the treating agency, hospital or individual.

5.1.8.12.7 For third-time violators, the violator's license may be revoked and the violator may be deemed ineligible for licensure for up to five years.

5.1.8.13 Although relapse (failure to maintain abstinence) is not inevitable, it is common for relapse to occur in recovery from alcoholism or other substance dependence. Therefore, a licensee who is engaged in a formal program of recovery, and is compliant with all provisions other than abstinence, will not be regarded automatically as having committed a new violation.

5.1.8.14 When a licensee is determined to have failed in maintaining abstinence, the licensee shall furnish to the Commission or State Steward an assessment by the treating agency, hospital or individual practitioner indicating whether the licensee was compliant with the agreed upon program of recovery, and an opinion as to whether a "new violation" occurred.

5.1.8.15 The Commission or State Steward will determine whether a new violation has occurred in each instance. If a new violation has occurred, the Commission or State Steward will proceed

under 5.1.8.12.1 - 5.1.8.12.3 above or 5.1.8.12.4 - 5.1.8.12.6 above. Otherwise, the licensee shall continue in the agreed upon program of recovery.

5.1.9 Approval or Recommendations by State Steward or Presiding Judge

The Commission may designate categories of licenses which shall require State Steward's or Presiding Judge's prior approval or recommendation.

5.1.10 Employer Responsibility

5.1.10.1 The employment or harboring of any unlicensed person at facilities under the jurisdiction of the Commission is prohibited.

5.1.10.2 With respect to personnel actions based on a violation of any rule of the Commission relating to racing or pari-mutuel wagering, every employer shall report the discharge of any licensed employee in writing to the Commission or its designee, including the person's name, occupation and reason for the discharge.

5.1.11 Employer Endorsement of License Applications

The license application of an employee shall be signed by the employer.

5.1.12 Workers' Compensation

Licensed employers shall carry workers' compensation insurance covering their employees as required by Delaware law.

5.1.13 Financial Responsibility

Applicants for a license may be required to submit evidence of financial responsibility and shall maintain financial responsibility during the period for which the license is issued.

5.1.14 License Refusal

The Commission or its designee may refuse to issue a license and give the applicant the option of withdrawal of an application without prejudice. If an applicant is refused, the applicant may reapply for a license.

5.1.15 License Denial

The Commission may formally deny an application in accordance with these rules. An application denied shall be reported in writing to the applicant stating the reasons for denial, the date when a reapplication may be submitted, and shall be reported to the United States Trotting Association, which shall then advise other racing jurisdictions.

5.1.16 Grounds for Refusal, Denial, Suspension or Revocation of License

5.1.16.1 The Commission or its designee may refuse to issue or may deny a license to an applicant, or may suspend or revoke a license issued, or may order disciplinary measures, if the applicant:

5.1.16.1.1 has been convicted of a felony;  
5.1.16.1.2 has been convicted of violating any law regarding gambling or a controlled dangerous substance;

5.1.16.1.3 has pending criminal charges; or  
5.1.16.1.4 is unqualified to perform the duties required of the applicant;  
5.1.16.1.5 has failed to disclose or states falsely any information required in

the application;  
5.1.16.1.6 has been found in violation of statutes or rules governing racing in this state or other jurisdictions;

5.1.16.1.7 has racing disciplinary charges pending in this state or other jurisdictions;

5.1.16.1.8 has been or is currently excluded from association grounds by a recognized racing jurisdiction;

5.1.16.1.9 has had a license denied, suspended or revoked by any racing jurisdiction;

5.1.16.1.10 is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting;

5.1.16.1.11 demonstrates financial irresponsibility by accumulating unpaid obligations, defaulting in obligations or issuing drafts or checks that are dishonored or payment refused;

5.1.16.1.12 is ineligible for employment pursuant to federal or state law because of age or citizenship; or

5.1.16.1.13 has violated any of the alcohol or substance abuse provisions outlined in these rules.

5.1.16.2 A license suspension or revocation shall be reported in writing to the applicant and the United States Trotting Association whereby other racing jurisdictions shall be advised.

5.1.17 License Restrictions, Limitations and Conditions

The Commission or its designee, for cause, may restrict, limit or place conditions on any license.

5.1.18 Duration of License

5.1.18.1 Licenses are valid for such other period as permitted by the Commission.

5.1.18.2 A license is valid only under the condition that the licensee remains eligible to hold such license.

5.1.19 Changes in Application Information

During the period for which a license has been issued, the licensee shall report to the Commission changes in information provided on the license applications as to current legal name, marital status, permanent address, criminal convictions, license suspensions of 10 days or more or license revocations or fines of \$500 or more in other jurisdictions.

5.1.20 Temporary Licenses

The Commission may establish provisions for temporary licenses or may permit applicants to participate in racing pending action on an application.

5.1.21 More Than One License

More than one license to participate in horse racing may be granted to a person except when prohibited by these rules due to a potential conflict of interest.

5.1.22 Conflict of Interest

5.1.22.1 The Commission or its designee shall refuse, deny, suspend or revoke the license of a person whose spouse holds a license and which the Commission, State Steward or judges find to be a conflict of interest.

5.1.22.2 A commissioner or Commission employee or racing official shall not be an owner of a horse entered to race, and shall not accept breeder awards at, a race meeting where the Commission has jurisdiction.

5.1.22.3 A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official with respect to that race.

5.1.22.4 A person who is licensed as an owner or trainer, or has any financial interest in a horse registered for racing at a race meeting in Delaware shall not be employed or licensed at that race meeting as a racing official; racetrack managing employee; photo finish operator; racing chemist or testing laboratory employee; provided, further, that a racing official who is the parent, child or sibling of such person shall not officiate on any day when the horse owned or trained, or in which the person has any financial interest, is entered to race at association grounds; provided, however, that a parent, child or sibling acting as a groom for such a horse shall not be deemed to pose a conflict of interest for an official.

5.1.23 License Presentation

5.1.23.1 A person shall present an appropriate license to enter a restricted area.

5.1.23.2 The State Steward or Presiding Judge may require visible display of a license in a restricted area.

5.1.23.3 A license may only be used by the person to whom it is issued.

5.1.24 Visitor's Pass

Track security may authorize unlicensed persons temporary access to restricted areas. Such persons shall be identified and their purpose and credentials verified and approved in writing by track security. A copy of the written approval shall be filed with the Commission or its designee within 48 hours. Such authorization or credential may only be used by the person to whom it is issued.

5.1.25 Safety Helmets and Vests

5.1.25.1 Safety Helmets: A protective helmet, meeting the Snell Foundation standards for protective harness racing headwear, securely fastened under the chin, must be worn at all times on association grounds when:

- 5.1.25.1.1 racing, parading or warming up a horse prior to racing; or
- 5.1.25.1.2 jogging, training or exercising a horse at any time.

5.1.25.2 Safety Vests: A safety vest meeting a standard approved by the Delaware Harness Racing Commission must be worn by all person at all times when on the main track whether for jogging, exercising, qualifying or racing.

5.1.25.4-3 A violation of this rule shall result in a suspension or fine and the participant may be referred to the Commission.

## 5.1.26 Knowledge of Rules

5.1.26.1 A licensee shall be knowledgeable of the rules of the Commission; and by acceptance of the license, agrees to abide by the rules.

5.1.26.2 A licensee shall report to track security or to the State Steward or judges any knowledge he/she has that a violation of these rules has occurred or may occur.

## 5.1.27 Standards of Conduct

5.1.27.1 No licensee shall use improper language to any race official, or be guilty of any improper conduct toward such officials or persons serving under their orders, such improper language or conduct having reference to the administration of the course, or of any race.

5.1.27.2 No licensee shall commit an assault, or an assault and battery, upon any driver, trainer, groom, racing official or Commission appointee on the grounds of a racing association, or upon a racing official or Commission appointee who is in the performance of his official duties, nor shall any licensee threaten to do bodily or other injury to any driver, trainer, groom, racing official or Commission appointee, nor shall any licensee address to any such person language which is outrageously insulting.

5.1.27.3 If any licensee shall threaten, or join with others in threatening, not to race, or not to declare in, because of the entry of a certain horse or horses, or of a particular stable, thereby compelling or trying to compel the Racing Secretary to reject certain eligible entries, it shall be reported immediately to the State Steward, and the offending parties may be suspended by the State Steward pending a hearing before the Commission.

5.1.27.4 No owner, agent, trainer or driver who has entered a horse shall thereafter demand of the association a bonus of money or other special award or consideration as a condition for starting the horse.

5.1.27.5 No owner, trainer or driver of a horse shall bet or cause any other person to bet on his behalf on any other horse in any race in which there shall be a horse owned, trained or driven by him, or which he in anywise represents or handles or in which he has an interest; provided, however, that such a person may participate in multiple pool wagering on a race in which his/her horse is included in the wager only in the first (winning) position.

5.1.27.6 If any licensee shall be approached with any offer or promise of a bribe, or a wager or with a request or suggestion for a bribe, or for any improper, corrupt or fraudulent act in relation to racing, or that any race shall be conducted otherwise than fairly and honestly, it shall be the duty of such licensee to report the details thereof immediately to the Presiding Judge or State Steward.

5.1.27.7 Any misconduct on the part of a licensee or patron, fraudulent in its nature or injurious to racing, although not specified in these rules, is forbidden. Any licensee or other person who, individually or in concert with one another, shall fraudulently and corruptly, by any means, affect the outcome of any race or affect a false registration, or commit any other act injurious to racing, shall be guilty of a violation of these rules.

5.1.27.8 If two or more persons combine and confederate together, in any manner, regardless of where the said persons may be located, for the purpose of violating any of the Rules and Regulations of the Commission, and shall commit some act in furtherance of the said purpose or plan, it shall constitute a conspiracy and a violation of these rules.

5.1.27.9 In any case where an oath is administered by the judges, by the State Steward, by the Commission or by a hearing officer thereof, under these rules, or by a Notary Public and any other person legally authorized to administer oaths, if the party knowingly swears falsely or withholds information pertinent to the investigation, he shall be fined, suspended, or both, or expelled.

5.1.27.10 The Commission may impose a fine or suspension on, or may refuse to license, any person subject to the jurisdiction of the Commission if the Commission finds that such person:

5.1.27.10.1 Is associating, consorting or negotiating with bookmakers, touts or other persons of similar pursuits; or

5.1.27.10.2 Is associating, consorting or negotiating with persons who have

been convicted of a crime; or

5.1.27.10.3 Is guilty of fraud or has attempted any fraud or misrepresentation

in connection with racing, breeding or otherwise; or

5.1.27.10.4 Has violated any law, rule or regulation with respect to racing in

any jurisdiction; or

5.1.27.10.5 Has violated any rule, regulation or order of the Commission; or

5.1.27.10.6 Is of such experience, character or general unfitness that the

person's participation in harness racing or related activities would be inconsistent with the public interest, convenience or necessity, or with the best interests of racing generally.

5.1.27.11 The Commission may refuse admission to race meeting grounds, and/or may eject from the enclosure of a race track operated by any association, any person whose presence there is, in the judgment of the Commission, inconsistent with the orderly or proper conduct of a race meeting, or whose presence or conduct is deemed detrimental to the best interests of harness racing.

5.1.27.12 Any person, whether a licensee or a patron, may be expelled from the enclosure of a race track operated by any association for any violation of Rule 5.1.27.

5.1.27.13 All licensees, officials and appointees of the Commission, and all employees of any association, are required to conduct themselves in a forthright and courteous manner at all times while on or near the premises of an association during the operation of a licensed harness race meeting. The Commission at any time may require the removal of any licensee, official, appointee or employee whose conduct does not comport with this requirement.

5.1.27.14 Licensees tampering with eligibility certificates may be fined, or their licenses may be suspended or revoked. Further, any winnings of such licensees in races in which a horse was entered whose eligibility certificate was tampered with by such licensee may be ordered forfeited.

*\* (Break in Continuity within section, Sections 5.2 through 5.5 are not being amended.)*

1 DE Reg. 502 (11/01/97)

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

*(Break in Continuity of Sections)*

## 8.0 Veterinary Practices, Equine Health Medication

*\* (Break in Continuity within section, Sections 8.1 through 8.3 are not being amended.)*

### 8.4 Testing

#### 8.4.1 Reporting to the Test Barn

8.4.1.1 Horses shall be selected for pre- and/or post-racing testing according to the

following protocol:

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

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

8.4.1.2 Random or ~~extra for cause~~ testing, including pre-race testing, may be required by the ~~State Steward or judges, or by the~~ Commission, at any time on any horse ~~on association grounds~~ that has been entered to race at a Commission licensed Association.

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

8.4.1.4 Trainers shall fully comply with the instructions of the Commission, which may include, but not be limited to the following: Trainers shall present their horse(s) for testing at the specified time and place mandated by the Commission. Testing procedures may be performed on the grounds of any Commission licensed Association, at the trainer's training facility, or any other location under Commission jurisdiction. Failure to comply shall result in the horse(s) being scratched, and shall be considered a violation equivalent to a Class 1 positive.

**8.4.2 Sample Collection**

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

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

**8.4.3 Procedure for Taking Specimens**

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

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

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

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

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission Veterinarian.

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

8.4.3.3.1 The owner;

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

8.4.3.3.3 A stable representative designated by such owner or trainer.

**8.4.3.4**

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

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

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

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

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

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

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

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

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

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

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

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission Veterinarian may permit the horse to be returned

to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission Veterinarian.

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

8.4.3.5.9 Two (2) blood samples shall be collected in sample receptacles approved by the Commission, one for the "primary" and one for the "secondary" sample.

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

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

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

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

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

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

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

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

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

**\* (Break in Continuity within section, Sections 8.5 through 8.6 are not being amended.)**

## 8.7 Prohibited Practices

8.7.1 The following conduct shall be prohibited for all licensees:

8.7.1.1 The possession and/or use of a drug, substance, or medication, specified below for which a recognized analytical method has not been developed to detect and confirm the administration of such substance including but not limited to erythropoietin, darbepoietin, and perfluorcarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the driver; or the use of which may adversely affect the integrity of racing.

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

8.7.1.3 The possession and/or use of Blood Doping Agents including but not limited to: EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue is considered a prohibited practice that endangers the health and welfare of a horse and/or the safety and welfare of a driver.

## 8.7.2 Testing

8.7.2.1 Horses may be tested for EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue as follows:

8.7.2.1.1 Once a horse is entered to race

8.7.2.1.2 Any horse that was entered or raced within sixty (60) days of entry and/or race

8.7.2.1.3 Any horse showing the presence of EPO, DPO and/or like antibodies

8.7.2.1.4 Any horse in the care, custody and control of a trainer having a horse that has tested positive for EPO, DPO and like substances through a screening test

8.7.2.1.5 Any horse that expires; consistent with DHRC Rules 8.6.2.1-8.6.2.5.

8.7.2.2 Two blood samples shall be collected in DHRC approved sample receptacles; one is the primary sample; and the other is the secondary sample.

8.7.2.3 In the event that the presence of EPO, DPO and/or any EPO analogues is determined to be present in a primary sample, the primary sample shall be sent to a DHRC approved laboratory for a confirmation test.

8.7.2.4 The trainer and/or owner of any horse that tests positive for the confirmed presence of EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue has the right to request a testing of the secondary sample consistent with DHRC Rule 8.4.3.5.10 through and inclusive of DHRC Rule 8.4.3.5.13.

8.7.2.5 Upon positive notification from the confirmatory laboratory of the primary sample, if uncontested by the trainer; or notification of confirmation in the secondary sample, the trainer shall be summarily suspended and any/all horses entered, by the trainer, to race shall be scratched. Notice of a hearing shall be delivered to the trainer within twenty-four (24) hours

8.7.2.6 The following penalties and disciplinary measures may be imposed for the confirmed presence of EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue:

In the absence of extraordinary circumstances, a minimum penalty of \$10,000 and/or a 10 year suspension, forfeiture of the purse money and assessment for cost of the drug testing. Additionally, the Board of Judges may consider possible violations including, but not limited to: DHRC Rule 5.1.7 and DHRC Rule 5.1.16.1.10.

*\* (Break in Continuity within section, Sections 8.8 through 8.10 are not being amended.)*

- 1 DE Reg. 505 (11/01/97)
- 1 DE Reg. 923 (01/01/98)
- 3 DE Reg. 1520 (05/01/00)
- 4 DE Reg. 6 (07/01/00)
- 4 DE Reg. 336 (08/01/00)
- 5 DE Reg. 832 (10/01/01)
- 5 DE Reg. 1691 (03/01/02)
- 6 DE Reg. 862 (01/01/03)
- 7 DE Reg. 1512 (05/01/04)
- 8 DE Reg. 329 (08/01/04)
- 8 DE Reg. 698 (11/01/04)
- 8 DE Reg. 1108 (02/01/05)
- 9 DE Reg. 1066 (01/01/06)

9 DE Reg. 1367 (03/01/06)

9 DE Reg. 1951 (06/01/06)

\*Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Harness Racing Commission is available at: <http://www.state.de.us/research/AdminCode/title3/500/index.shtml#TopOfPage>

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**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 Del.C. §122(b)(2))  
14 DE Admin. Code 885

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****885 Safe Management and Disposal of Chemicals in the Delaware Public School System****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 14 DE Admin. Code 885 Safe Management and Disposal of Chemicals in the Delaware Public School System in order to change sections 7.0 and 8.0 Disposal of Surplus Transportable Hazardous Chemicals and Disposal of Surplus Non Transportable Hazardous Chemicals , since no hazardous chemicals are transportable and all hazardous chemicals must be removed by a licensed waste hauler. The dates have also been changed when information on the hazardous chemicals must be reported to the Department of Education.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses hazardous chemicals not student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses hazardous chemicals not equitable education issues.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses hazardous chemicals not 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 regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be some additional costs to local school board for complying with this regulation.

## **885 Safe Management and Disposal of Chemicals in the Delaware Public School System**

### **1.0 Mercury and Mercury Compounds**

1.1 Mercury and mercury compounds, both organic and inorganic, shall not be used in the science classrooms in the public schools in Delaware later than January 1, 2005. Instruments which contain mercury such as thermometers, hydrometers, barometers, etc. shall be replaced at all grade levels in order to guard against spillage.

### **2.0 Storage of Chemicals**

2.1 The storage of all chemicals shall conform to the specifications stated in ~~Safety First: Guidelines for Safety in the Science or Science-Related Classrooms~~ Safety First: Guidelines for Safety in the Science or Science Related Classrooms.

### **3.0 Inventory of Chemicals, Hazardous and Non ~~h~~Hazardous**

3.1 All laboratories and science storage in the Delaware public schools shall be inventoried each year during the month of ~~March~~ September. The list of the chemicals shall be kept by the school principal. The inventory of chemicals both hazardous and nonhazardous shall contain the following information:

3.2 Who may handle the chemical and use it;

3.3 The name of the chemical;

3.4 The amount on hand;

3.5 The location where the chemical is stored;

3.6 The date purchased; and

3.7 The date discarded.

### **~~4.0 For Purposes of this Regulation, Surplus Shall Refer to Chemicals Which are No Longer Usable or Needed~~**

#### **~~54.0~~ Inventory of Surplus Chemicals**

~~4.1~~ 4.1 For purposes of this regulation, surplus shall refer to chemicals which are no longer usable or needed.

~~5.4~~ 4.2 Each district and charter school shall prepare a list of surplus chemicals and send a copy to the Education Associate, Science Environmental Education by ~~April~~ October 15 of each year. The Department shall duplicate and disseminate these lists to school districts and charter schools so that they may negotiate, trade or exchange their surplus chemicals.

#### **~~65.0~~ Disposal of Surplus Non ~~h~~Hazardous Chemicals**

~~65.1~~ Disposal of surplus nonhazardous chemicals shall be carried out by the school district and charter school in accordance with procedures outlined in the Flinn Chemical Catalog Reference Manual, using trained staff.

#### **~~7~~ 6.0 Disposal of Surplus Non Transportable Hazardous Chemicals**

~~7.1~~ Each district and charter school shall prepare a list of surplus transportable hazardous chemicals and submit it to the Education Associate for Science and Environmental Education by May 15 of each year. These surplus transportable hazardous chemicals, from all districts and charter schools shall be brought to a central facility by district and charter school personnel. The location of this facility and date of aggregation shall be

# PROPOSED REGULATIONS

~~announced annually by the Education Associate for Science and Environmental Education. The Department shall arrange for a licensed waste hauler to take the chemicals to a proper waste facility for disposal. The cost of disposal shall be prorated among the districts and charter schools based upon the weight of the hazardous materials.~~

~~6.1 Surplus hazardous chemicals such as diethyl ether, picric acid, benzoyl peroxide and other materials that are listed in *Safety First: Guidelines for Safety in the Science or Science Related Classrooms*, must be disposed of through the use of a licensed waste hauler.~~

~~76.1.1 Each district and charter school shall prepare a list of surplus hazardous chemicals and submit it to the Education Associate for Science and Environmental Education by November 15 of each year. The Department shall arrange for a licensed waste hauler to take the chemicals to a proper waste facility for disposal. The cost of disposal shall be prorated among the districts and charter schools based upon the weight of the hazardous materials.~~

## ~~8.0 Disposal of Surplus Nontransportable Hazardous Chemicals~~

~~8.1 Surplus nontransportable hazardous chemicals such as diethyl ether, picric acid, benzoyl peroxide and other materials that are listed in *Safety First: Guidelines for Safety in the Science or Science Related Classrooms*, must be disposed of in a prompt manner through the use of a licensed waste hauler. It is the responsibility of the school districts and charter schools to contact a licensed waste hauler and to pay the cost for removal and disposal.~~

~~8 DE Reg. 346 (8/1/04)~~

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Attendant Services §1915(c) Home and Community-Based Services Waiver Application

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 512, and, in compliance with State Notice procedures as set forth in the Federal Register, September 27, 1994, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) has submitted an Attendant Services §1915(c) Home and Community-Based Services (HCBS) Waiver application to the Centers for Medicare and Medicaid Services (CMS).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this waiver must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by December 31, 2006. The Attendant Services §1915(c) HCBS Waiver application can be viewed at:

[Attendant Service Waiver1006.pdf](#)

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 PROPOSAL

##### Statutory Authority

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements*

*of this Title*

- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*
- 16 **Del.C.** Ch. 94, *Community-Based Attendant Services*

## Background

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in accordance with §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

This waiver supports 16 **Del.C.** Ch. 94 to establish an attendant services program for persons with disabilities to remain in the community.

## Summary of Waiver

On October 31, 2006, the Division of Medicaid and Medical Services (DMMA) submitted a §1915(c) waiver application to the Centers for Medicaid and Medicaid Services (CMS) for approval. The DMMA is announcing a thirty-day comment period for this Waiver application.

With a proposed effective date of July 1, 2007, this new waiver will allow Medicaid beneficiaries to arrange for attendant services which are not covered under State plan services.

Through the provision of services and supports identified through a plan of care, this waiver will allow for participants to promote self reliance and self-sufficiency while utilizing home and community based waiver services not previously offered under other waivers. Among the services planned under this waiver program are: a fiscal agent, support broker and case manager to allow for consumer directed care of attendant services; personal care services; adult day care; respite; emergency response; and, specialized medical equipment and supplies.

The DMMA will be responsible for the day to day operations and administration of this waiver.

The provisions of this waiver are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

**\*Please Note: Due to the size of the Attendant Service Waiver document, it is not being published here. To obtain a copy, contact either the Division of Medicaid and Medical Assistance the Registrar of Regulations or view the PDF version at:**

[Attendant Service Waiver1006.pdf](#)

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

## PUBLIC NOTICE

### Long Term Care Medicaid

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 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and existing rules in the Division of Social Services Manual (DSSM) to comply with the transfer of assets provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171).

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 Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by December 31, 2006.

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 AMENDMENT**

#### **Statutory Authority**

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

#### **Background**

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in Section 1917(c)(1)(B)(i) of Social Security Act affecting Long Term Care services and supports.

#### **Summary of Proposals**

The DRA contains a number of provisions necessitating changes to Delaware rules. This regulatory action incorporates the mandatory provisions as it relates to: 1) *Lengthening the Look-Back Period*; 2) *Change in the Look-Back Penalty Start Date*; and, 3) *Availability of Hardship Waivers*.

Revised and clarified policy and the fiscal impact for both changes are summarized as follows:

1) *Lengthening the Look-Back Period*

Current law requires states to review the assets of Medicaid applicants for a period of thirty-six months prior to application or sixty months if a trust is involved. This period is known as the "look back period", the period of time within which Medicaid reviews financial transactions of the applicant to determine whether any of those actions would result in Medicaid transfer of assets penalty. Applicants are prohibited from transferring resources during the look back period for less than fair market value.

Section 6011(a) of the DRA lengthens the look-back date to five years, or 60 months, for all income and assets disposed of by an individual.

The look back periods of 36 months for income and assets and 60 months for certain trusts would apply for income and assets disposed of prior to the enactment date.

The proposed amendment provides that for any transfer of assets made on or after the date of enactment of the DRA (February 8, 2006), the look-back period is 60 months.

2) *Change in Look-Back Penalty Start Date*

Under current law, the penalty period starts from the date of the transfer. Using the date of the transfer as the start date provides an opportunity for applicants to preserve assets because some or all of the penalty period may occur while the applicant was not paying privately for long term care.

Section 6011(b) of the DRA changes the start date of the ineligibility period for all transfers made on or after the date of enactment to the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for Medicaid and would otherwise be receiving institutional level of care based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any period of ineligibility as a result of an asset transfer policy.

For transfers of assets made on or after the date February 8, 2006, the beginning date of penalty is based on the later of the (1) date of transfer or (2) the eligibility date for Long Term Care services. For transfers before February 8, 2006, the beginning date of penalty is the month that the transfer occurred.

3) *Availability of Hardship Waivers*

To protect beneficiaries from unintended consequences of the asset transfer penalties, current law requires states to establish procedures for not imposing penalties on persons who can show that a penalty would impose an undue hardship.

Section 6011(d) of the DRA adds criteria for the application of the hardship waiver provisions. This section also includes notice requirements as to the possibility for a hardship waiver and the availability of a process by which an applicant for a hardship waiver may appeal an adverse determination of an application. Section 6011(e) also allows the facility in which the institutionalized individual resides to file an

application on behalf of the individual.

For transfers made on or after February 8, 2006, the waiver process must provide for notice to recipients that an undue hardship exception exists; a timely process for determining whether an undue hardship waiver will be granted; and a process under which an adverse determination can be appealed. In addition, long-term care providers may file an undue hardship waiver on behalf of the individual with the consent of the individual or the personal representative of the individual.

The provisions of these amendments are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

## DMMA PROPOSED REGULATION #06-52a

### NEW:

SUPPLEMENT 9b TO ATTACHMENT 2.6-A  
Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: DELAWARE

TRANSFER OF ASSETS

1917 (c) **FOR TRANSFERS OF ASSETS FOR LESS THAN FAIR MARKET VALUE MADE ON OR AFTER FEBRUARY 8, 2006**, the agency provides for the denial of certain Medicaid services.

1. Institutionalized individuals are denied coverage of certain Medicaid services upon disposing of assets for less than fair market value on or after the look-back date.

The agency does not provide medical assistance coverage for institutionalized individuals for the following services:

Nursing facility services;

Nursing facility level of care provided in a medical institution;

Home and community-based services under a 1915(c) or (d) waiver.

2. Non-institutionalized individuals:

The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905(a) of the Social Security Act:

**Home and Community Based Services waivers under 1915(c)**

The agency withholds payment to non-institutionalized individuals for the following services:

Home health services (section 1905(a)(7));

Home and community care for functionally disabled elderly adults (section 1905(a)(22));

PROPOSED REGULATIONS

Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905(a)(24).

\_\_\_ The following other long-term care services for which payment for medical assistance is otherwise made under the agency plan:\_\_\_

SUPPLEMENT 9b TO ATTACHMENT 2.6-A
Page 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: DELAWARE

TRANSFER OF ASSETS

3. Penalty Date--The beginning date of each penalty period imposed for an uncompensated transfer of assets is the later of:

- the first day of a month during or after which assets have been transferred for less than fair market value;

X The State uses the first day of the month in which the assets were transferred

\_\_\_ The State uses the first day of the month after the month in which the assets were transferred
or

- the date on which the individual is eligible for medical assistance under the State plan and is receiving institutional level care services described in paragraphs 1 and 2 that, were it not for the imposition of the penalty period, would be covered by Medicaid;

AND

which does not occur during any other period of ineligibility for services by reason of a transfer of assets penalty.

4. Penalty Period - Institutionalized Individuals--

In determining the penalty for an institutionalized individual, the agency uses:

X the average monthly cost to a private patient of nursing facility services in the State at the time of application;

\_\_\_ the average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized at the time of application.

5. Penalty Period - Non-institutionalized Individuals--

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The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual; including the use of the average monthly cost of nursing facility services;

\_\_\_ imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

SUPPLEMENT 9b TO ATTACHMENT 2.6-A  
Page 3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory:DELAWARE

TRANSFER OF ASSETS

6. Penalty period for amounts of transfer less than cost of nursing facility care-

\_\_\_ Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency imposes a penalty for less than a full month, based on the option selected in item 4.

The state adds together all transfers for less than fair market value made during the look-back period in more than one month and calculates a single period of ineligibility that begins on the earliest date that would otherwise apply if the transfer had been made in a single lump sum.

7. Penalty periods - transfer by a spouse that results in a penalty period for the individual--

(a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.

(b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

8. Treatment of a transfer of income—

When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

\_\_\_ For transfers of individual income payments, the agency will impose partial month penalty periods using the methodology selected in 6. above.

For transfers of the right to an income stream, the agency will base the penalty period on the combined actuarial value of all payments transferred.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: DELAWARE

## TRANSFER OF ASSETS

9. Imposition of a penalty would work an undue hardship--

The agency does not impose a penalty for transferring assets for less than fair market value in any case in which the agency determines that such imposition would work an undue hardship. The agency will use the following criteria in making undue hardship determinations:

Application of a transfer of assets penalty would deprive the individual:

- (a) Of medical care such that the individual's health or life would be endangered; or
- (b) Of food, clothing, shelter, or other necessities of life.

10. Procedures for Undue Hardship Waivers

The agency has established a process under which hardship waivers may be requested that provides for:

- (a) Notice to a recipient subject to a penalty that an undue hardship exception exists;
- (b) A timely process for determining whether an undue hardship waiver will be granted; and
- (c) A process, which is described in the notice, under which an adverse determination can be appealed.

These procedures shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the individual's personal representative.

11. Bed Hold Waivers For Hardship Applicants

The agency provides that while an application for an undue hardship waiver is pending in the case of an individual who is a resident of a nursing facility:

\_\_\_\_ Payments to the nursing facility to hold the bed for the individual will be made for a period not to exceed \_\_\_\_ days (may not be greater than 30).

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## DMMA PROPOSED REGULATION #06-52b REVISIONS:

### 20350.2.1 Look-Back Date

The look-back date is the earliest date on which a penalty for transferring assets for less than fair market value can be assessed. Penalties can be assessed for transfers which take place on or after the look-back date.

Penalties cannot be assessed for transfers which take place prior to the look-back date. ~~The look-back date varies for individuals transferring assets involving trusts.~~ See Section 20350.2.3 Look-back period for transfer of assets involving trusts.

For long term care applications filed on or after ~~10/1/93~~ 2/8/06 and assets transferred on or after ~~8/11/93~~ 2/8/06, the look-back date is ~~36~~ 60 months prior to the baseline date. The baseline date is the first date as of which the individual was:

institutionalized; AND  
has applied for medical assistance under the state plan.

~~For long term care applications filed prior to 10/1/93 or for assets transferred on or before 8/10/93, the look-back date for uncompensated transfers (including trusts) is 30 months.~~

When an individual applies for Medicaid more than once (for example, he or she applies for Medicaid, is denied eligibility because of excess resources, and applies again 6 months later), the look-back date is ~~36~~ 60 months prior to the baseline date. The baseline date is the first date (first time) the individual has applied for long term care Medicaid. Each individual has only one look-back date, regardless of the number of periods of institutionalization, applications for Medicaid, periods of eligibility, or transfers of assets. All transfers of assets after that date fall within the look-back period.

### 20350.2.2 Look-Back Period

The look-back period is the period that begins with the look-back date and ends with the baseline date. ~~This can be 36 or 60 months, depending on what kind of trust was involved. The look-back period~~ It is the period of time prior to the baseline date (see above) during which a previous transfer of assets for less than fair market value can be penalized. It is important to remember that transfers which occur after the baseline date are also subject to penalty if they are made for less than fair market value.

~~The 36 month look back period does not become fully effective until August 11, 1996. Prior to that date, a 36 month look back period would actually begin at some time before the date transfers are covered by these new rules. Since the 36 month look back period is effective for transfers made on or after August 11, 1993, any transfers made before that date are treated under the rules in effect prior to OBRA 93. Thus, the look back period is phased in over the 36 month period ending August 11, 1996. Effective 2/8/06, the date of the DRA enactment, the look-back period was extended from 36 months to 60 months. Any applications received on or after 2/8/06 will be subject to a 60 month look-back period.~~

### 20350.2.3 Look-Back Period for Transfers of Assets Involving Trusts

When an individual establishes a revocable trust and a portion is disbursed to someone else and not for the benefit of the grantor, that portion is treated as a transfer of assets. For a revocable trust, the transfer is considered to take place on the date upon which the payment to someone other than the grantor was made.

When an individual establishes an irrevocable trust in which all or a portion of the trust cannot be disbursed to or on behalf of the individual, that portion (the portion that is unavailable) is treated as a transfer of assets. For an irrevocable trust, the transfer is considered to have been made as of the date the trust was established or, if later,

the date upon which payment to the grantor was foreclosed.

Whenever a portion of a trust is treated as a transfer (as described above), the look-back period is 60 months.

When a trust is irrevocable but some or all of the trust can be disbursed to or for the benefit of the individual (the portion that could be made available to the individual), the look-back period applying to disbursements made from this portion to another person is ~~36~~ 60 months. Effective 2/8/06, the date of the DRA enactment, all trusts will be subject to a 60 month look-back period.

When an individual places assets into an irrevocable trust and can still benefit from those assets, the amount transferred is equal to any of those assets which are paid out for a purpose other than to or for the benefit of the individual. When an individual places assets in an irrevocable trust and can no longer benefit from some or all of those assets, that unavailable portion is considered as a transfer. The value of these assets is not reduced by any payments from the trust which may be made from these unavailable assets as a later date.

*(Break in Continuity of Sections)*

### **20350.3      Penalty Period and Penalty Date**

The penalty period is a period of ineligibility for long-term care Medicaid services that is imposed when an individual makes a transfer of assets for less than fair market value. Under OBRA 93 there is no maximum limit on the penalty period for assets transferred after 8/10/93. The length of the penalty period is based on the value of the assets transferred and the cost of nursing facility care. The penalty period cannot exceed 30 months for assets transferred on or before 8/10/93.

The penalty date is the beginning date of each penalty period that is imposed for an uncompensated transfer. The penalty date for all individuals who transfer assets is the first day of the month in which the asset was transferred, provided that date does not occur during an existing penalty period. When a transfer takes place during an existing penalty period, whether imposed under the pre-OBRA 93 or post-OBRA 93 rules, a new penalty period cannot begin until the existing penalty period has expired.

The penalty period for an institutionalized individual is equal to:

- the total, cumulative uncompensated value of all assets transferred by the individual or spouse on or after the look-back date

divided by

- the average monthly cost to a private patient for nursing facility services at the time of application.

The resulting figure is the number of months the applicant will be ineligible for Medicaid.

In figuring periods of ineligibility, count full months only, regardless of the date in a month a transfer actually occurs. A full month is counted at the beginning of a period of ineligibility. That is, a period of ineligibility begins with the first day of the month in which a transfer has occurred. For example, if an individual has made a transfer on September 28, the period of ineligibility begins on September 1. If a calculation of the penalty period results in a partial month, round the days down to the end of the preceding month. For example, from a September 28 transfer, round down to make August the last month in the period. However, do not round a month up to the end of the month in which the transfer occurred. For example, do not round September 28 up to include the whole month of September.

#### **20350.3.1      Penalty Period for assets transferred on or after 2/8/06**

Section 6011(b) for the Deficit Reduction Act amends section 1917(c)(1)(D) of the Act to change the start date of

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the penalty period, which is the period during which an individual is ineligible for Medicaid payment for long term care services because of a transfer of assets for less than fair market value.

The ineligibility period will begin with the LATER of:

- The month during which assets have been transferred for less than fair market value; or
- The date on which the individual is eligible for medical assistance under the State plan and is receiving institutional level of care services (based on an approved application for such services) that, were it not for the imposition of the penalty period, would be covered by Medicaid.

The penalty period cannot begin until the expiration of any existing period of ineligibility. The penalty period will continue to run for the number of days determined by dividing the total value of assets transferred within the look back period by the State's average daily cost to a private patient of a nursing facility services in the State. Once the penalty period is imposed, it will not be interrupted, but will continue to run even if the individual stops receiving institutional level of care.

For non-institutionalized individuals, the penalty date will not begin until the individual is receiving an institutional level of care.

Upon imposition of a period of ineligibility for long-term care level services because of an asset transfer, applicants/recipients will be notified of the right to request an undue hardship waiver. In addition, long-term care providers may file an undue hardship waiver on behalf of the individual with the consent of the individual or the personal representative of the individual. See DSSM 20400.1.12.1.

~~For example: An individual transferred an asset in May 1993, for which a penalty of 12 months was imposed. The individual transfers another asset in October 1993, to which another 12 month penalty applies. Because the second transfer took place within the first 12 month penalty period, the second penalty period cannot begin until the first period expires, on April 30, 1994. The first penalty period would run from May 1, 1993 through April 30, 1994. The second penalty period would run from May 1, 1994, through April 30, 1995.~~

## *(Break in Continuity of Sections)*

### **20350.9 Treatment of Income as an Asset**

Under OBRA 93, income, in addition to resources, is defined as an asset for transfer (and trust) purposes. Where an individual's income is given or assigned in some manner to another person, this is considered a transfer of assets for less than fair market value.

In determining whether income has been transferred, do not scrutinize an individual's spending habits during the ~~36 or~~ 60 month look-back period. Absent evidence to the contrary, assume that ordinary household income was legitimately spent on the normal costs of daily living.

Attempt to determine whether the individual has transferred lump sum payments actually received in a month. Such payments, while counted as income in the month received for eligibility purposes, are counted as resources in the following month if they are retained. Therefore, disposal of such lump sum payments before they can be counted as resources could constitute an uncompensated transfer of assets.

Also, attempt to determine whether amounts of regularly scheduled income have been transferred. Normally, such a transfer takes the form of a transfer of the right to receive income. For example, a private pension may be diverted to a trust, and no longer be paid to the individual. An exception to the transfer of assets penalty for diverted income is a transfer into a Miller trust.

Explore the possibility of a transfer of income based on information given on the Medicaid application and through active questioning of the individual concerning sources of income, income levels in the past versus present, direct

questions about giving income to others, etc.

When an individual has transferred income, or the right to income, a penalty for that transfer must be imposed. If a single lump sum is transferred (for example, a stock dividend check is given to another person in the month in which it is received by the individual), the penalty period is calculated on the basis of the value of the lump sum payment.

When a stream of income, or the right to a stream of income (such as a pension) is transferred, calculate the penalty period based on a determination of the total amount of income expected to be transferred during the individual's life based on an actuarial projection of the individual's life expectancy. Calculate the penalty period on the basis of the projected total income.

To make this determination, use the life expectancy tables, compiled from information published by the Office of the Actuary of the Social Security Administration.

See 20350.9 Life Expectancy Tables.

***(Break in Continuity of Sections)***

**20350.12      Transfer of Assets Procedures**

If an individual and/or couple alleges selling, giving away or otherwise transferring any non-excluded assets within the ~~30, 36~~ or 60 months preceding the date of application, take the following steps:

1. Ascertain and document the FMV of the asset.
2. Ascertain and document the amount of compensation received by the individual and/or couple for the transfer.
3. Calculate the uncompensated value, if any.

If the asset was transferred at FMV, process the application as usual.

If the asset was transferred at less than FMV, explain to the applicant that an amendment to the Social Security Act requires that the Division of Medicaid and Medical Assistance (DMMA) presume, when assets are sold or given away at less than FMV, that the transaction was made for the purpose of establishing Medicaid eligibility. The difference between the amount received for the transfer and the FMV is counted as being available to meet the needs of the individual for a period after the date of disposal.

Explain that the law requires that DMMA presume the transfer to be for the purpose of establishing Medicaid eligibility unless the individual can demonstrate that:

- 1.) the individual intended to dispose of the assets either at fair market value or for other valuable consideration; or
- 2.) the assets were transferred exclusively for a purpose other than to qualify for Medicaid.

If the applicant does not wish to rebut the presumption, she/he will be ineligible for Medicaid for a specified period.

***(Break In Continuity of Sections)***

**20400.5      Irrevocable Trusts**

An irrevocable trust is a trust that cannot in anyway, be legally revoked by the grantor.

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## 20400.5.1 Treatment of Two Types of Irrevocable Trusts

Irrevocable trusts are treated differently based on whether payment can or cannot be made for the benefit of the individual.

### 20400.5.1.1 Irrevocable Trust States Payment Can Be Made To Or For The Benefit Of The Individual

When the terms of an irrevocable trust state that payment can be made to or for the benefit of the individual from any part or all of the trust, the payments made are considered income. Any part of the trust or payment that could be paid for the benefit of the individual is treated as an available resource.

When the terms of an irrevocable trust state that payment can be made to or for the benefit of the individual from any part or all of the trust, and the payment is not used for the benefit of the individual, the payment is treated as a transfer of assets. In this type of situation, the look-back period is ~~36~~ 60 months.

### 20400.5.1.2 Irrevocable Trust States Payments Cannot Under Any Circumstances Be Made To Or For The Benefit Of The Individual

When all or a portion of the principal or income on the principal of the trust cannot be paid to the individual or for the benefit of the individual, all of these payments are treated as a transfer of assets for less than fair market value. The date of transfer is the date the trust was established or, if later, the date on which payment to the individual was actually barred. When determining the value of the portion of the trust that cannot be paid to the individual, do not subtract from the trust the value of any payments made. If the trustee or the grantor adds funds to the trust after the date of transfer, these added funds are considered to be a new transfer of assets. The transfer date for these additional funds is the date that the new funds were placed in the trust. (Note, when determining the penalty period: if a previous penalty period is still in effect, the new penalty period cannot begin until the previous penalty period has expired.) Under this type of trust the look-back period is **60 months**.

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Long Term Care Medicaid

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 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance.

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 Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 (new fax number) by December 31, 2006.

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

##### Statutory Authority

Section 1917(d)(4)(A) of the Social Security Act, *Liens, adjustments and recoveries; transfer of assets*

## Background

In 1993, Congress created an exception under the amendments to the Omnibus Budget and Reconciliation Act (OBRA '93) which specifically authorized the use of Supplemental Needs Trusts for the benefit of individuals who are under the age of 65 years and disabled according to Social Security standards. The Social Security Operations Manual authorizes the use of Supplemental Needs Trusts to hold non-countable assets. A special needs trust is a revocable or irrevocable trust established with the assets of a client under age 65 who meets the Supplemental Security Income (SSI) program's disability criteria. The trust must be established for the client's benefit by his parent, grandparent, legal guardian, or a court.

## Summary of Proposed Change

The purpose of this amendment is to correct a procedural error in the DSSM policy manual and to provide consistency with the Social Security's Program Operations Manual System (POMS) for the purposes of determining eligibility for Long Term Care Medicaid. Guidance for this regulatory action is based on POMS SI 01120.203.

Current policy states *"The Medical Review Team (See Section 20102.2.2) has determined that the individual is disabled using the State of Delaware's Determination of Disability for Medicaid procedure."* Determining disability is not a function that is performed by the Medical Review Team. The revised policy states that the individual should be disabled according to the SSI standards.

## DMMA PROPOSED REGULATION #06-51

### REVISION:

#### 20400.9 Exceptions to the Trust Eligibility Policy

Two exceptions to the trust eligibility policy are Special Needs Trusts and Pooled Trusts for disabled individuals.

##### 20400.9.1 Special Needs Trusts

A special needs trust contains the assets of an individual under age 65 who is disabled. It is established for the benefit of the individual by a parent, grandparent, legal guardian of the individual or a court. The trust may also contain the assets of other individuals.

##### 20400.9.1.1 Treatment of Special Needs Trusts

For individuals under age 65 the exceptions to the Medicaid eligibility rules continue even after the individual becomes age 65. No additional assets may be added to the trust after the individual reaches age 65. If assets are added they will not be exempted and are subject to penalties. To qualify as a special needs trust, the following conditions must exist:

- The trust must be established solely for the needs of a disabled individual who is under age 65.
- The individual is ~~receiving either Title II or SSI benefits as a disabled individual. (In this case we would accept the disability determination made for these programs~~ disabled as defined by the SSI program in 1614(a)(3) of the Act.
- The trust must be established by the disabled individual's parent(s), grandparent(s), legal guardian(s) or a court.
- ~~The Medical Review Team (See Section 20102.2.2) has determined that the individual is disabled using the State of Delaware's Determination of Disability for Medicaid procedure.~~

In addition to the above criteria, the trust must state that upon the individual's death all remaining assets and funds should be paid to the State agency up to the amount paid in Medicaid benefits on the individual's behalf.

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. 311)

### PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of proposed Department of Insurance **Regulation 704** relating to **Homeowners Premium Consumer Rate Comparisons**. The docket number for this proposed regulation is 321.

The proposed regulation would require homeowner's insurance companies to provide survey data to the Department of Insurance for the purposes of allowing consumers of residential homeowners insurance the opportunity to compare rates from different companies. The survey data would have to be filed with the Department on an annual basis. The regulation would also require the insurers to provide direct email responses to the consumer. The **Delaware Code** authority for the change is 18 **Del.C.** §§311 and 2501 et seq.

The text can also be viewed at the Delaware Insurance Commissioner's website at [www.delawareinsurance.gov](http://www.delawareinsurance.gov) and clicking on the link for "Proposed Regulations."

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m., Wednesday, January 3, 2007, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, sent by fax to 302.739.5566 or emailed to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

### 704 Homeowners Premium Consumer Comparison

#### **1.0 Authority**

1.1 This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311 and 2501 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101.

#### **2.0 Definitions**

"Homeowners market share" shall be determined by data from the National Association of Insurance Commissioners for the prior calendar year for line number 04 ("Homeowners Multiple Peril) for the State of Delaware.

"Insurer" shall mean every insurer licensed to offer and sell non-commercial residential homeowners insurance coverage in the State of Delaware.

"Rate survey" shall mean a request by the Department that insurers calculate estimated annual insurance premiums based on hypothetical consumer profiles. The rate survey shall include estimated premiums for zip codes or other geographic area identified by the Department.

"Rate estimates" shall mean the estimated annual insurance premiums produced for the Department's rate survey.

#### **3.0 Scope**

3.1 Insurers with .01 percent or more of the Delaware homeowners insurance market share shall be required to complete the full rate survey required by this regulation.

3.2 Insurers with less than .01 percent of homeowners insurance market share shall not be required to complete a rate survey pursuant to this regulation.

3.3 The provisions of this regulation shall only apply to policies of insurance covering those properties described in 18 **Del.C.** §4120.

#### **4.0 Insurer Information**

4.1 Each insurer will be provided with an account on the Department's website to provide basic company information and to administer the submission of rate survey data.

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# PROPOSED REGULATIONS

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## **5.0 Survey Completion Deadline**

5.1 The Department of Insurance shall make available the rate survey request format with hypothetical consumer profiles, coverage levels, and other information necessary for calculating rate estimates on the Department's website no later than March 1<sup>st</sup> of each year.

5.2 In 2007, all required rate survey data from insurers must be submitted to the Department on or before April 15, 2007. In all subsequent years, all required rate survey data from insurers must be submitted to the Department on or before April 1 of each year.

5.3 Rate survey data that is incomplete or not reported according to the Department's instructions will be returned to the insurer for correction and must be resubmitted within 10 business days.

## **6.0 Survey Format**

6.1 Insurers shall provide rate estimates based on rates in effect as of March 1 of the year when the rate survey is being completed.

6.2 All rate estimates shall be rounded to the nearest dollar.

6.3 Insurers shall submit rate data utilizing an electronic spreadsheet provided by the Department or by other means specified by the Department. Insurers shall be required to upload the data to the Department via the internet.

## **7.0 Responsibility for Information and Data**

7.1 Insurers shall be responsible for the accuracy of company information and rate data submitted to the Department for publication. As part of the submission process, insurers will be subject to examination to verify the accuracy of the data being submitted.

## **8.0 Consumer Quote Requests**

8.1 Insurers shall provide a single electronic mail address to the Department for the purpose of allowing consumers to request a personalized homeowners insurance premium quote as part of the rate comparison process.

8.2 The insurer shall be required to provide a direct email response to the consumer, confirming receipt of the quote request.

8.3 The insurer shall be required to maintain an electronic log of all email responses to consumer requests for rate quotes for a period of one year after the request. The electronic log shall be capable of being transferred to the Department upon request.

## **9.0 Penalties**

9.1 Insurers that do not comply with this regulation are subject to the provisions of 18 Del.C. § 329.

## **10.0 Severability**

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

## **11.0 Effective Date**

11.1 This Regulation shall become effective February 15, 2007.

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## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)

### **PUBLIC NOTICE**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of proposed Department of Insurance Regulation 1215 relating to RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN

DETERMINING MINIMUM RESERVE LIABILITIES. The docket number for this proposed regulation is 322.

The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with 18 **Del.C.** §§311 and 1113 and Sections 5.1 and 5.2 of Regulation 1212. The proposed regulation adopting new tables more accurately reflect differences in mortality in determining minimum reserve liabilities for certain life products.

The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m., Wednesday, January 3, 2007, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, sent by fax to 302.739.5566 or emailed to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

## **1215 Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities**

### **1.0 Authority**

1.1 This regulation is promulgated by the Commissioner of Insurance pursuant to 18 **Del.C.** §§311 and 1113 and Sections 5.1 and 5.2 of 18 **DE Admin. Code** 1212 (referred to as "Regulation 1212").

### **2.0 Purpose**

2.1 The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with 18 **Del.C.** §§ 311 and 1113 and Sections 5.1 and 5.2 of Regulation 1212.

### **3.0 Definitions**

**"2001 CSO Mortality Table"** means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined below. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

(1) **"2001 CSO Mortality Table (F)"** means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(2) **"2001 CSO Mortality Table (M)"** means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(3) **"Composite mortality tables"** means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(4) **"Smoker and nonsmoker mortality tables"** means mortality tables with separate rates of mortality for smokers and nonsmokers.

**"2001 CSO Preferred Class Structure Mortality Table"** means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC at the September, 2006 national meeting and published in the NAIC Proceedings {3<sup>rd</sup> Quarter 2006}. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

**"Statistical agent"** means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and

data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

#### **4.0 2001 CSO Preferred Class Structure Table**

4.1 At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. No such election shall be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of the NAIC model regulation, "Recognition of the 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits Model Regulation."

#### **5.0 Conditions**

5.1 For each plan of insurance with separate rates for Preferred and Standard Nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the Nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:

5.1.1 The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

5.1.2 The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

5.2 For each plan of insurance with separate rates for Preferred and Standard Smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the Smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:

5.2.1 The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basis table corresponding to the valuation table being used for that class.

5.2.2 The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.

5.3 Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

#### **6.0 Separability**

6.1 If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.

#### **7.0 Effective Date**

7.1 The effective date of this regulation shall be March 1, 2007.

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES**  
Statutory Authority: 24 Delaware Code, Section 1304(b)(3) (24 **Del.C.** §1304(b)(3))  
24 **DE Admin. Code** 1300

**PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with **Del.C.** Title 24 Chapter 13 proposes to adopt Rule 12.0 – Use of Rifle and Shotgun. This adoption will allow the use of rifles and shotguns by trained security/armored car guards to be equipped to handle situations where the risk of terrorist activity is high or under genuine risk to life or to property. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by December 31, 2006, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, January 25, 2006, 10:00 a.m., at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

**1300 Board of Examiners of Private Investigators and Private Security Agencies**  
Statutory Authority: 24 **Del.C.** 1304(b)(3)

*(Break in Continuity of Sections)*

**12.0 Use of Rifle and Shotgun**

12.1 Whereas there exists a need for private security officers in the State of Delaware to be equipped to handle situations where the risk of terrorist activity is high, or at special events where there is a high risk of violent activity or attack, the following rules are established to regulate the use of rifles and shotguns by security services contractors in the State.

12.2 The Governor of the State of Delaware, or designee, or the Superintendent of State Police, or designee, may authorize specified security services contractors to deploy guards with rifles and/or shotguns, as appropriate to the defense of critical infrastructure facilities, or private business facilities and operations reasonably believed to be at risk of violent activity or attack likely to result in injury or significant damage to or loss of property. The situations where such protection would be required would include, but not be limited to:

12.2.1 An increase in the threat level from the Department of Homeland Security to "Orange", or higher;

12.2.2 Special circumstances where additional protection would be deemed appropriate, including but not limited to:

12.2.2.1 Credible threats to local facilities or operations;

12.2.2.2 Response to natural disasters;

12.2.2.3 Response to biological or chemical threats;

12.2.2.4 Civil unrest.

12.2.3 Any situation where additional trained responders are required to assist in the protection of life and property in the State of Delaware;

12.2.4 An armored car company or agency, as defined by 24 **Del.C.** §1302(1), dealing with a credible threat or genuine risk to life or to property.

12.3 Guards who would be deployed and authorized to use such additional weaponry would be required to:

12.3.1 Be trained by certified firearms instructors pursuant to State of Delaware standards;

12.3.2 Be required to re-qualify with the weapons on a three times per year basis;

12.3.3 Maintain a handgun firearms license through the State;

12.3.4 Be listed by name on a roster of authorized individuals; and

12.3.5 Maintain employment in good standing with their security services contractor employer at all times for inclusion on the list.

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12.4 Guards using such firearms would be required to maintain strict compliance with the provisions of 24 Del.C. §1321.

12.5 Rifles deemed appropriate for use in the State would be .30 caliber weapons, .223 caliber weapons, 9mm rifle type weapons, and other weapons approved by the Superintendent, or designee, as need and technology dictate. Shotguns would be of the 12 gauge law enforcement/military style weapons. All firearms would be subject to the approval of the Superintendent or designee.

**\*Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Pharmacy is available at:**

<http://www.state.de.us/research/AdminCode/title24/>

[1300%20Board%20of%20Examiners%20of%20Private%20Investigators%20&%20Private%20Security%20Agencies.shtml#TopOfPage](http://www.state.de.us/research/AdminCode/title24/1300%20Board%20of%20Examiners%20of%20Private%20Investigators%20&%20Private%20Security%20Agencies.shtml#TopOfPage)

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code, Section 2509 (24 Del.C. §2509)  
24 DE Admin. Code 2500

### PUBLIC NOTICE

The Delaware Board of Pharmacy, in accordance with 29 Del.C. Chapter 101 and 24 Del.C. §2509, proposes changes to its **Regulation 8.0** affecting the licensure requirements for wholesale distributors.

A public hearing is scheduled for Wednesday, January 17, 2007 at 9:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Mariah Krass at the above address. The final date to submit written comments will be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Mariah Krass at the above address or by calling (302) 744-4526.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

2500 Board of Pharmacy

*(Break in Continuity of Sections)*

#### 8.0 Requirements for Obtaining a Permit to Distribute Drugs on a Wholesale Basis

~~8.1 Purpose. The purpose of this regulation is to implement the provisions of the prescription Drug Marketing Act of 1987 by defining the minimum standards, terms, and conditions for which a permit may be issued to persons who engage in wholesale distribution of (prescription) drugs within the State of Delaware.~~

~~8.2 Definitions. Words and terms defined in Title 24, Chapter 25 of the Delaware Code are applicable to these regulations. The following additional words and terms, when used within Regulation 8.0, shall have the following meaning unless the context clearly indicates otherwise:~~

~~“Authorized agent” means a pharmacist who is trained and qualified to inspect against the Board’s standards and has been designated by the Board to conduct inspections on its behalf.~~

~~“Blood” means whole blood collected from a single donor and processed either for transfusion or further manufacturing.~~

~~“Blood Component” means that part of blood separated by physical or mechanical means.~~

~~“Drug Sample” means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.~~

“Entity” means corporations, companies, associations, firms, partnerships, societies and joint-stock companies, but does not include individuals.

~~“Manufacturer” means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug.~~

~~“Person” means an individual, partnership, corporation, business firm, or a sole proprietorship.~~

~~“Prescription Drug” means any drug required by Federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.~~

~~“Wholesale Distribution” means distribution of prescription drugs to persons other than a consumer or patient, but does not include:~~

~~“Intracompany Sales”, being defined as any transaction or transfer between any division, subsidiary, parent and/or affiliated or related company under the common ownership and control of a corporate entity:~~

~~The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;~~

~~The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;~~

~~The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control, for purposes of this section, “common control” means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;~~

~~The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this section, “emergency medical reasons” includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five (5) percent of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any 12 consecutive month period;~~

~~The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;~~

~~The distribution of drug samples by manufacturers’ representatives or distributors’ representatives; or~~

~~The sale, purchase, or trade of blood and blood components intended for transfusion.~~

~~“Wholesale distributor” means anyone engaged in wholesale distribution of prescription drugs, including but not limited to, manufacturers, repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers’ and distributors’ warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions.~~

## 8.1.1 Clarification of Statutory Exceptions from the Definition of Wholesale Distribution.

8.1.1.1 “Common control,” as used in 24 Del.C. §2502(t)(3), means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise.

8.1.1.2 “Emergency medical distributions,” as provided for by 24 Del.C. §2502(t)(4), may include, but is not limited to: transfers of a drug between a wholesale distributor and pharmacy to alleviate a temporary shortage of the drug arising from delays in or interruption of distribution schedules arranged in the ordinary course of business; or transfers of drugs by a licensed pharmacy or limited services permit holder to another licensed pharmacy or limited services permit holder. In all cases, transfers conducted pursuant to emergency medical reasons may be reviewed by the Board. Such transfers shall not exceed 5.0% of the total drug sales revenue of either the transferor or transferee pharmacy during any 12 consecutive month period.

8.2 Permit Requirements. Wholesale distributors that operate within this state, whether or not the wholesale distributor is physically located within this state, must first be granted a permit by the Board.

8.2.1 Wholesale distributors shall provide information required by a Board-approved application, including but not limited to:

8.2.1.1 All trade or business names used by the permittee, e.g. “doing business as” or

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"formerly known as." Trade or business names cannot be identical to the name used by another, unrelated wholesale distributor permitted to purchase drugs in the state:

8.2.1.2 Name of the owner or owners and operator or operators of the permittee (if not the same entity), including:

8.2.1.2.1 If an individual: the full name, business address, Social Security number, and date of birth;

8.2.1.2.2 If a partnership: the full name, business address, Social Security number, and date of birth of each partner; the name of the partnership; and the partnership's federal employer identification number;

8.2.1.2.3 If a corporation not publicly traded on a major stock exchange: the full name, business address, Social Security number, date of birth, and title of corporate officers and directors; the corporate name or names; the name of the state of incorporation; the corporation's federal employer identification number; the name of the parent company, if any; and the full name, business address, and Social Security number of each shareholder owning 10% or more of the voting stock of the corporation, including over-the-counter (OTC) stock, unless the stock is traded on a major stock exchange and not OTC;

8.2.1.2.4 If a sole proprietorship: the full name, business address, Social Security number, and date of birth of the sole proprietor; and the name and federal employer identification number of the business entity;

8.2.1.3 Assurance that a copy of the wholesale distributor's written policies and procedures, required by Regulation 8.6, will be available at the distributor's site for review prior to licensure and thereafter for inspection;

8.2.1.4 A list of all state and federal licenses, registrations, or permits, including the license, registration, or permit numbers, authorizing the wholesale distributor to purchase, possess, and distribute drugs;

8.2.1.5 A list of all disciplinary actions by state and federal agencies against the wholesale distributor, as well as any actions against principals, owners, directors, or officers;

8.2.1.6 A plan and full description of each facility and warehouse, including all locations utilized for drug storage, distribution, or both. The description should include the following:

8.2.1.6.1 square footage;

8.2.1.6.2 security and alarm system descriptions;

8.2.1.6.3 terms of lease or ownership;

8.2.1.6.4 quarantined area for damaged, outdated, deteriorated, misbranded, or adulterated drugs; and

8.2.1.6.5 temperature and humidity controls.

8.2.1.7 A copy of the deed or lease for the property on which the wholesale distributor's establishment is located. If leased, the lease must be for an original term of not less than one (1) calendar year.

8.2.2 Changes in any information required by Regulation 8.2.1 shall be submitted to the Board within 30 days after such change.

8.2.3 Wholesale distributors shall submit an application fee to be determined by the Division of Professional Regulation.

8.2.4 Wholesale distribution facilities must undergo an inspection by the Board or its authorized agent prior to initial licensure and periodically thereafter in accordance with a schedule to be determined by the Board.

8.2.5 Wholesale distributors must publicly display or have readily available all permits and the most recent inspection report administered by the Board.

8.2.6 All out-of-state wholesale distributors must comply with all rules, regulations, and laws of the state in which they are physically located and of all states in which they hold permits, including this state.

8.2.7 Information submitted to the Board or its authorized agent that is considered trade secret or proprietary information as defined under Delaware privacy, trade secret, and proprietary information laws shall be maintained accordingly and as required by law and be exempt from public disclosure.

~~8.3 Permit Requirements. Every wholesale distributor located in the State of Delaware who engages in wholesale distribution out of or within this State will be issued a permit by the Delaware Board of Pharmacy in accordance with the laws and regulations of this State before engaging in wholesale distribution of prescription drugs.~~

## 8.4 Wholesale Distributor Permit Requirement

~~8.4.1 The Delaware Board of Pharmacy requires the following from each wholesale drug distributor as part of the initial permit procedure and as part of any renewal of such permit:~~

~~8.4.1.1 The name, full business address, and telephone number of the permittee;~~

~~8.4.1.2 All trade or business names used by the permittee;~~

~~8.4.1.3 Addresses, telephone numbers, and the names of contact persons for the facility used by the permittee for the storage, handling, and distribution of prescription drugs;~~

~~8.4.1.4 The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship); and~~

~~8.4.1.5 The name(s) of the owner and/or operator of the permittee, including:~~

~~8.4.1.5.1 If a person, the name of the person;~~

~~8.4.1.5.2 If a partnership, the name of each partner, and the name of the partnership;~~

~~8.4.1.5.3 If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the State of incorporation, and the name of the parent company, if any;~~

~~8.4.1.5.4 If a sole proprietorship, the full name of the sole proprietor and the name of the business entity.~~

~~8.4.1.6 Submission of a policy and procedures manual pertinent to employee qualifications and training.~~

~~8.4.2 Changes in any information in this section shall be submitted to the Board of Pharmacy within 30 days after such change.~~

~~8.53 Minimum Qualifications. The Delaware Board of Pharmacy will consider the following factors in determining eligibility for granting a permit to persons who engage in the wholesale distribution of prescription drugs:~~

~~8.53.1 Any convictions of the applicant under any findings by the Board that the applicant has violated or been disciplined by a regulatory agency in any state violating Federal, State, or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;~~

~~8.53.2 Any felony criminal convictions of the applicant under Federal, State, or local laws;~~

~~8.3.2.1 The Board shall consider the results of a criminal and financial background check of the applicant to determine if an applicant or others associated with the ownership, management, or operations of the wholesale distributor have committed criminal acts that would constitute grounds for denial of licensure. The background check shall include all key personnel involved in the operations of the wholesale distributor. Key personnel includes, but is not limited to: the most senior individual or individuals responsible for facility operations, purchasing, and inventory control and the individual or individuals he or they report to; if the applicant is a corporation and not publicly traded on a major stock exchange, key personnel also includes: key company officers, key management, principals, and key owners. The background check will be conducted in compliance with any applicable federal, state, or local laws. The background check will be conducted at the applicant's expense and will be sufficient to include all states of residence since the individuals have been adults. Manufacturers shall be exempt from criminal and financial background checks.~~

~~8.53.3 The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;~~

~~8.53.4 The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;~~

~~8.53.5 Suspension, sanction, or revocation by Federal, State, or local government of against any license or permit currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances or any of its owners for violations of any Federal, State, or local laws relating to drugs;~~

~~8.53.6 Compliance with the requirements of this Delaware regulations under previously granted wholesale distribution permits, if any;~~

~~8.53.7 Compliance with the requirements to maintain and/or make available to the State Board authority or to Federal, State, or local law enforcement officials those records required to be maintained by wholesale drug distributors.~~

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# PROPOSED REGULATIONS

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8.3.8 Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

8.64 Personnel. As a condition for receiving and retaining a wholesale drug distributor permit, the permittee shall:

8.4.1 Require each person individual employed in any prescription drug wholesale distribution activity to have any combination of education, training, and experience, or any combination thereof, sufficient for that person individual to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety, and security will at all times be maintained as required by law;

8.4.2 The permittee must maintain records evidencing that each employee has been trained in accordance with the policy and procedure manual required by Regulation 8.6 approved at the time of the issuance of the permit. These records shall be kept for two (2) years from the date of separation of the employee from the company. Records on all current employees shall be available at any time for inspection;

8.4.3 Designate a registered agent in this state for service of process. Any permitted wholesale distributor that does not so designate a registered agent shall be deemed to have designated the Secretary of State of Delaware to be its true and lawful attorney, upon whom may be served all legal processes in any action or proceeding against such permitted wholesale distributor growing out of or arising from its activities in this state. A copy of any such service of process shall be mailed to the wholesale distributor by the Board via certified mail, return receipt requested, postage prepaid, at the address the permitted wholesale distributor has designated on its application for permit in Delaware. If a wholesale distributor is not permitted in Delaware, service on the Secretary of State only shall be sufficient service; and

8.4.4 Ensure that all key personnel have at least an associate's degree from an accredited institution of higher education acceptable to the Board or a minimum of two (2) years of verifiable full-time managerial or supervisory experience acceptable to the Board in a licensed pharmacy or wholesale distributor where the individual's responsibilities included, but were not limited to, recordkeeping, storage, and shipment of drugs. Key personnel includes, but is not limited to: the most senior individual or individuals responsible for facility operations, purchasing, and inventory control and the individual or individuals he or they report to; if the applicant is a corporation and not publicly traded on a major stock exchange, key personnel also includes: key company officers, key management, principals, and key owners.

8.5 Minimum Requirements for the Storage and Handling of Drugs and for Establishment and Maintenance of Drug Records. The following are required for the storage, handling, transport, and shipment of drugs and for the establishment and maintenance of wholesale distribution records by permitted wholesale distributors and their officers, agents, representatives, and employees:

8.5.1 Facilities at which drugs are received, stored, warehoused, handled, held, offered, marketed, displayed, or transported from shall:

8.5.1.1 Be of suitable construction to ensure that all drugs in the facility are maintained in accordance with each drug's product labeling or in compliance with the *United States Pharmacopeia/National Formulary (USP/NF)*;

8.5.1.2 Be of suitable size and construction to allow for cleaning, maintenance, and proper wholesale distribution operations;

8.5.1.3 Have adequate storage areas that provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions. If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in the USP/NF, to help ensure that its identity, strength, quality, and purity are not adversely affected. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of drugs;

8.5.1.4 Have a quarantine area for storage of drugs that are: outdated; damaged; deteriorated; misbranded; adulterated; counterfeit, or suspected of being counterfeit; otherwise unfit for distribution; or are in immediate or sealed secondary containers that have been opened;

8.5.1.5 Be maintained in a clean and orderly condition;

8.5.1.6 Be free from infestation of any kind; and

8.5.1.7 Be a commercial location and not a personal dwelling or residence.

8.5.2 Wholesale distributors shall:

8.5.2.1 Provide for the secure and confidential storage of information with restricted access by developing and adhering to policies and procedures to protect the integrity and confidentiality of the

information:

8.5.2.2 Maintain records of sources of the drugs, the identity and quantity of the drugs received and distributed or disposed of, and the date of receipt and distribution or other disposition of the drugs;

8.5.2.3 Maintain records of all personnel and their training; and

8.5.2.4 Have records available for inspection and photocopying by the authorized federal, state, or local law enforcement agency officials for a period of three (3) years following the disposition of the drugs. Records shall be kept at the inspection site or must be immediately retrievable by computer or other electronic means. Records may be kept at a central location apart from the inspection site and not electronically retrievable. Such records shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

8.5.3 Wholesale distributors involved in the distribution of controlled substances shall be duly registered with Drug Enforcement Administration (DEA) and the appropriate state agency and in compliance with all applicable laws and rules for the storage, handling, transport, shipment, and distribution of controlled substances.

8.6 Written Policies and Procedures. Wholesale distributors shall establish, maintain, and adhere to written policies and procedures for the receipt, security, storage, inventory, transport, shipping, and distribution of drugs. Wholesale distributors shall also establish, maintain, and adhere to written policies and procedures for: identifying, recording, and reporting losses or thefts; for correcting all errors and inaccuracies in inventories; and implementing and maintaining a continuous quality improvement system. Wholesale distributors shall include in their written policies and procedures the following:

8.6.1 A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to:

8.6.1.1 Any action initiated at the request of FDA or any other federal, state, local law enforcement, or other government agency including the Board; or

8.6.1.2 Any volunteer action by the manufacturer to remove defective or potentially defective drugs from the market.

8.6.2 A procedure to ensure that wholesale distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of a strike, fire, flood, other natural disaster, or other situations of local, state, or national emergency.

8.6.3 A procedure to ensure that any outdated drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed in accordance with federal, state, or local laws, including all necessary documentation and the appropriate witnessing. This procedure shall provide for written documentation of the disposition of outdated drugs. This documentation shall be maintained for three (3) years after disposition of the outdated drugs.

8.6.4 A procedure for reporting criminal or suspected criminal activities involving the inventory of a drug or drugs to the Board, FDA, and, if applicable, DEA and the Office of Narcotics and Dangerous Drugs (ONDD) within three (3) business days.

8.7 Facilities. All facilities at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

8.7.1 Be of suitable size and construction to facilitate cleaning, maintenance and proper operations.

8.7.2 Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions.

8.7.3 Have a quarantined area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated.

8.7.4 Be maintained in a cleaned and orderly condition; and be free from infestation of insects, rodents, birds, or vermin of any kind.

Salvaging and Reprocessing. Wholesale distributors shall be subject to the provisions of any applicable federal, state, or local laws or rules that relate to drug product salvaging or reprocessing.

8.8 Storage. All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF). Security and Anti-Counterfeiting. All facilities:

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# PROPOSED REGULATIONS

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~~8.8.1 If no storage requirements are established for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected. Shall be secure from unauthorized entry;~~

~~8.8.1.1 Access from outside the premises shall be kept to a minimum and be well-controlled.~~

~~8.8.1.2 The outside perimeter of the premises shall be well-lighted, and~~

~~8.8.1.3 Entry into areas where drugs are held shall be limited to authorized personnel.~~

~~8.8.2 Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of prescription drugs. Shall be equipped with a security system that will provide suitable protection against theft and diversion. Appropriateness of security systems is subject to approval by the Board or its authorized agent. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records;~~

~~8.8.3 Shall be equipped with inventory management and control systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting;~~

~~8.8.4 Shall be equipped with security systems to protect the integrity and confidentiality of data and documents and make such data and documents readily available to the Board and other federal, state, or local law enforcement officials; and~~

~~8.8.5 May possess and maintain, in good working order, technology and equipment that allows the wholesale distributor to authenticate, track, and trace drugs. The technology and equipment shall satisfy standards set by the Board and shall only be used to conduct tracking, tracing, and authentication of drugs. Wholesale distributors shall employ, train, and document the training of personnel in the proper use of such technology and equipment.~~

~~8.9 Record Keeping Requirements. Wholesale drug distributors shall establish and maintain inventory and records. Records shall include the following information:~~

~~8.9.1 Sources of the drugs, the identity and quantity of the drugs received and distributed or disposed of, and the date of receipt and distribution or other disposition of the drugs.~~

~~8.9.2 Records for all personnel and training.~~

~~8.9.3 All inventories and records shall be made available for inspection and photocopying by authorized Federal, State, or Local law enforcement agency officials for a period of two years following the disposition of the drugs.~~

~~8.9.4 Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within 2 working days of a request by an authorized official of a Federal, State, or local law enforcement agency.~~

~~8.10 Written Policies and Procedures~~

~~8.10.1 There shall be written policies and procedures which shall be followed for the receipt, security, storage, inventory, and distribution of drugs including policies for identifying, recording, and reporting losses or thefts, and for correcting all errors, inaccuracies, and inventories. There shall be:~~

~~8.10.1.1A procedure whereby the oldest approved stock of a drug product is distributed first. Deviation from this requirement is permitted if such deviation is temporary and appropriate.~~

~~8.10.1.2A procedure must be established for the handling of recalls and withdrawals of manufacturer/distributor drugs due to any action initiated at the request of the manufacturer, the FDA or other Federal, State, or local enforcement or government agencies.~~

~~8.10.1.3A procedure whereby drugs that are outdated, damaged, deteriorated, misbranded or adulterated are physically separated until they are destroyed or returned to their supplier.~~

~~8.11 Salvaging and Reprocessing. Compliance with applicable Federal, State, or local law or regulations relating to drug product salvaging is required.~~

~~8.12 Security~~

~~8.12.1 All facilities shall be secured from unauthorized entry.~~

~~8.12.2 The outside of the premises shall be well lighted.~~

~~8.12.3 Entry into areas where drugs are held shall be limited to authorized personnel.~~

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~~8.12.4 All facilities shall be equipped with an alarm system to detect entry after hours subject to approval by the Secretary of the Board.~~

~~8.12.5 There must be a security system that will provide suitable protection against theft and diversions. When appropriate, the system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.~~

**\*Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Pharmacy is available at: <http://www.state.de.us/research/AdminCode/title24/2500%20Board%20of%20Pharmacy.shtml#TopOfPage>**

## Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken through~~ indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed stricken through]**~~ indicates language deleted at the time the final order was issued.

## Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the **Register of Regulations**. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)  
3 DE Admin. Code 501

**ORDER**

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on September 26, 2006, the Commission makes the following findings and conclusions:

**SUMMARY OF THE EVIDENCE**

1. The Commission posted public notice of the proposed amendments in the August 1, 2006 and the September 1, 2006 *Register of Regulations* and for two consecutive weeks in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 2 to reflect current policies, practices and procedures and to remove outdated position titles and policy.

2. The Commission received no written comments during August or September 2006. The Commission held a public hearing on September 26, 2006 and also received no public comment on the changes.

**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 Rules.

4. In light of the lack of public comment on the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedure.

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The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on December 1, 2006.

**IT IS SO ORDERED** this 17th day of October 2006.

Robert Everett, Commissioner  
Mary Ann Lambertson, Commissioner

Beth Steele, Chair  
George P. Staats, Commissioner

## ORDER

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission (DHRC) issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on September 26, 2006, the Commission makes the following findings and conclusions:

### SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments in the August 1, 2006 and the September 1, 2006 *Register of Regulations* and for two consecutive weeks in *The News Journal* and the *Delaware State News*. The Commission proposed to change Rule 8.3.3.5 to enable trainer responsibility to apply where there is a confirmation of the presence of EPO using a post-race test. The Commission further proposed to enact a new Regulation 8.9.14.2.2, to designate that the Commission Veterinarian extract a second blood sample from a horse where a Base Excess testing protocol is used. Finally, the Commission recommended enacting a new Regulation 8.9.14.2.3, to replace Rule 8.9.15, to enable the confirmatory test for a prohibitive Base Excess concentration in the second extraction of blood to be performed at the designated Commission testing area of the racetrack.

2. The Commission received no written comments during August or September 2006. The Commission held a public hearing on September 26, 2006 and received public comments from Salvatore DiMario, Robert Collison, Hugh Gallagher, and Charles Lockhart. Mr. DiMario's comments were as follows: He is concerned that the way that Rule 8.3.3.5 has been rewritten will not actually accomplish what was intended by the change. Mr. DiMario pointed out that this proposed change only deals with post-race testing. He feels that the rule needs to include pre-race testing for EPO (Erythropietin) as well. As to the replacement of Rule 8.9.15 with Rule 8.9.14.2.3, Mr. DiMario received clarification from the Commission that the change is just that the secondary test will no longer be sent out to an outside laboratory for confirmation.

3. Robert Collison, Chief Inspector for DHRC, relayed that currently there is only post-race testing for EPO because the confirmatory test for EPO is not yet available. He stated that he expects that it will be December 2006 or January 2007 before this test will likely be used, which is the reason that it is not provided for in the rule change.

4. Hugh Gallagher, Administrator for DHRC, confirms that Mr. DiMario is correct that Rule 8.3.3.5 does not address pre-race testing. However, Mr. Gallagher advised that future changes to Rule 8.4, once we are ready to test for EPO itself, will address Mr. DiMario's concerns. He also stated that the laboratories are simply not able to test solely for the presence of EPO today, but likely will be in the near future. At that point, the Commission can move forward to change Rule 8.4. Because of this, Mr. Gallagher urged the Commission to go forward on making the Rule change to 8.3.3.5 that is possible today, with the understanding that pre-race testing for EPO will be dealt with in the future.

5. Charles Lockhart, vice-president of Dover Downs, concurred with Mr. DiMario's concerns about the proposed rule change to 8.3.3.5 not mentioning pre-race testing for EPO. In response to Mr. Gallagher's comments about a future rule change to Rule 8.4 taking care of the issue, Mr. Lockhart stated that he felt that Rule 8.4, as currently written, does not really relate to race day itself as the day of testing. Mr. Lockhart further stated that he believes that we need to enact a rule that enables testing any horse upon entering. He felt that even if the testing that the Commission is expecting to happen in the future never comes to fruition, then it would not hurt to have a rule where any horse can be tested at any time upon entering. Mr. Lockhart stated that his main concern is the time factor involved in getting Rule 8.4 changed if this testing is in fact implemented.

### FINDINGS OF FACT AND CONCLUSIONS

6. 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 Rules.

7. The Commission has considered the public comments at the September 26, 2006 hearing. The Commission does not find those comments require further revisions of the proposed rules. The Commission finds that the revised rule 8.3.3.5 addresses the need for trainer responsibility involving positive post-race testing for EPO. The Commission further finds that as there is not a test currently available to confirm the presence of EPO alone, it is inappropriate to incorporate such language in a rule today. The Commission concludes that concerns involving pre-race testing for EPO will be addressed with an anticipated rule change in the future and that at this time, such language would be premature.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on December 1, 2006.

**IT IS SO ORDERED** this 17th day of October 2006.

Robert Everett, Commissioner  
Mary Ann Lambertson, Commissioner

Beth Steele, Chair  
George P. Staats, Commissioner

### 501 Harness Racing Rules and Regulations

\* Please note that no changes were made to the regulation as originally proposed and published in the September 2006 issue of the *Register* at page 393 (10 DE Reg. 393). Therefore, the final regulation is not being republished. Please refer to the September 2006 issue of the *Register* or contact the Harness Racing Commission for more information.

A complete set of the rules and regulations for the Harness Racing Commission is available at: <http://www.state.de.us/research/AdminCode/title3/500/index.shtml#TopOfPage>

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### HARNES RACING COMMISSION

Statutory Authority: 29 Delaware Code, Section 4815(b)(3)b.2.D  
(29 Del.C. §4815(b)(3)b.2.D)  
3 DE Admin. Code 502

### ORDER

#### I. Nature of Proceedings

Pursuant to its authority under 29 Del.C. §4815(b)(3)b.2.D and §10115, the State of Delaware, Department of Agriculture's Standardbred Breeder's Fund (herein "the Fund") proposed to amend its regulations. The Fund's purpose in proposing this amendment was to permit the use of embryo transplantation technology. This amended regulation 2.0 redefines "Bred" so as to permit the use of this fertilization technique.

Notice of a public comment period of thirty (30) days on the Fund's proposed amendment was published in the *Delaware Register of Regulations* for June 1, 2006 as well as in two Delaware newspapers of general circulation in accordance with 29 Del.C. §10115. This is the Fund's Decision and Order adopting the proposed amended regulations.

#### II. Public Comments

The Fund received no public comments in response to its notice of intention to adopt the proposed amended regulation.

#### III. Findings and Conclusions

The public was given the required notice of the Fund's intention to adopt the proposed amended regulation and was given ample opportunity to provide the Fund with comments opposing the Fund's plan. Thus, the Fund

concludes that its consideration of the proposed amended regulation was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt it.

#### IV. Order

**AND NOW this 2nd day of November, 2006**, it is hereby ordered that:

1. The proposed amendment to the Fund's regulations is adopted;
2. The text of the regulation shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 **Del.C.** §10118(e); and
4. The Fund reserves to itself the authority to issue such other and further orders in this matter as may be just and proper.

**IT IS SO ORDERED.**

#### 502 Delaware Standardbred Breeders Fund Regulations

\* Please note that no changes were made to the regulation as originally proposed and published in the June 2006 issue of the *Register* at page 1833 (9 DE Reg. 1833). Therefore, the final regulation is not being republished. Please refer to the June 2006 issue of the *Register* or contact the Harness Racing Commission for more information.

A complete set of the rules and regulations for the Standardbred Breeders Fund is available at: <http://www.state.de.us/research/AdminCode/title3/500/502/index.shtml#TopOfPage>

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 284

#### Regulatory Implementing Order

#### 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to adopt 14 **DE Admin. Code** 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 20, 2006, in the form hereto attached as Exhibit "A". No comments were received.

##### II. Findings of Facts

The Secretary finds that it is appropriate to adopt 14 **DE Admin. Code** 284 in order to certify and license Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs whose work responsibilities are directly related to curriculum and instruction.

##### III. Decision to Adopt the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt 14 **DE Admin. Code** 284. Therefore, pursuant to 14 **Del.C.** §121(c), 14 **DE Admin. Code** 284 attached hereto as Exhibit "B" is hereby

adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 284 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 14 **DE Admin. Code** 284 amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 284 in the Administrative Code of Regulations for the Department of Education.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §121(c) on November 9, 2006. 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 9th day of November 2006.  
Department of Education  
Valerie A. Woodruff, Secretary of Education

\* Please note that no changes were made to the regulation as originally proposed and published in the October 2006 issue of the *Register* at page 600 (10 DE Reg. 600). Therefore, the final regulation is not being republished. Please refer to the October 2006 issue of the *Register* or contact the Board of Education for more information.

A complete set of the rules and regulations for the Board of Education are available at:  
<http://www.state.de.us/research/AdminCode/title14/index.shtml>

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#### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 314 and 320

#### Regulatory Implementing Order

**314 Certification Administrative Principal or Assistant Principal Administrator of Adult and Adult Alternative Education**  
**320 Certification Adult Education Teacher**

#### I. Summary of the Evidence and Information Submitted

The Secretary seeks the consent of the State Board of Education to repeal 14 **DE Admin. Code** 314 Certification Administrative Principal or Assistant Principal, Administrator of Adult and Adult Alternative Education and 14 **DE Admin. Code** 320 Certification Adult Education Teacher because 14 **DE Admin. Code** 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction addresses the issues contained in these regulations.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 20, 2006, 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 14 **DE Admin. Code** 314 and 14 **DE Admin. Code** 320 because 14 **DE Admin. Code** 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related

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to Curriculum and Instruction addresses the issues contained in these regulations.

### **III. Decision to Repeal the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 314 and 14 **DE Admin. Code** 320. Therefore, pursuant to 14 **Del.C.** §122 (B) (18), 14 **DE Admin. Code** 314 and 14 **DE Admin. Code** 320 attached hereto as Exhibit "B" are hereby repealed.

### **IV. Text and Citation**

The text of 14 **DE Admin. Code** 314 and 14 **DE Admin. Code** 320 repealed hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be removed from the Administrative Code of Regulations for 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 (b)(18) on November 16, 2006. 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 16th day of November 2006.

Department of Education  
Valerie A. Woodruff, Secretary of Education  
Approved this 16th day of November 2006

\* Please note that no changes were made to the regulation as originally proposed and published in the October 2006 issue of the *Register* at page 613 (10 DE Reg. 613). Therefore, the final regulation is not being republished. Please refer to the October 2006 issue of the *Register* or contact the Department of Education for more information.

A complete set of the rules and regulations for the Department of Education are available at:  
<http://www.state.de.us/research/AdminCode/title14/index.shtml>

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### **OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 503

### **Regulatory Implementing Order**

#### **503 Instructional Program Requirements**

##### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 503 Instructional Program Requirements in order to comply with House Bill 372 enacted by the 143rd General Assembly as it amends 14 **Del.C.** 122(b)(23). The legislation states that the Department of Education is to require each local school district and charter school to assess the physical fitness of all students at least once in elementary, in middle and in high school.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 20, 2006, in the form hereto attached as Exhibit "A". Comments were received from Governor's

Advisory Council for Exceptional Children and the State Council for Persons with Disabilities.

The Councils expressed concerns that the physical fitness assessment was not required for Groves' students. The legislation specifically states the assessment is to be done at least once at the appropriate elementary, middle and high school level with no reference to Groves' students. In addition, the Department does not believe that the regulation creates an anomaly for Groves' students as the rules of statutory construction require that the regulation be read as a whole and the exclusion of Groves' students in section 5.1 would apply to the provisions of Section 5.5.

The Councils were also concerned that all grades were not assessed in the 2006-2007 school year. The legislation did not provide a time line for initial implementation of the assessment. Starting with the elementary level will give the Department an opportunity to work out any problems before complete implementation of the assessment in the 2007- 2008 school year. The concern expressed about the inconsistency of assessing either ninth or tenth grade students in high school is not a problem because the assessment compares students by age not grade. Further Section 5.5 takes into consideration the fact that physical education is offered in a variety of configurations in Delaware and placing the fitness testing in the required grades that satisfy graduation requirements will provide consistency statewide. Lastly, physical education teachers will modify the assessment to meet the needs of students with disabilities. The design of the assessments allows for this type of modification.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 503 in order to order to comply with House Bill 372 enacted by the 143 General Assembly as it amends 14 **Del.C.** 122(b)(23). The legislation states that the Department of Education is to require each local school district and charter school to assess the physical fitness of all students at least once in elementary, in middle and in high school.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 503. Therefore, pursuant to 14 **Del.C.** §122(b)(23), 14 **DE Admin. Code** 503 attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 503 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 14 **DE Admin. Code** 503 amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 503 in the Administrative Code of Regulations for 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 November 16, 2006. 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 16th day of November 2006.

Department of Education

Valerie A. Woodruff, Secretary of Education

Approved this 16th day of November 2006

### STATE BOARD OF EDUCATION

Jean W. Allen, President

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**503 Instructional Program Requirements****1.0 English Language Arts**

- 1.1 Local school districts and each charter school shall provide instructional programs in English Language Arts for each grade K to 12.
- 1.2 All public school students in each grade K to 8 shall be enrolled in an English language arts program.
- 1.3 All public school students in grades 9 to 12 shall complete the credits in English language arts necessary to graduate from high school.

**2.0 Mathematics**

- 2.1 Local school districts and each charter school shall provide instructional programs in mathematics for each grade K to 12.
- 2.2 All public school students in each grade K to 8 shall be enrolled in a mathematics program.
- 2.3 All public school students in grades 9 to 12 shall complete the credits in mathematics necessary to graduate from high school.

**3.0 Science**

- 3.1 Local school districts and each charter school shall provide instructional programs in science for each grade K to 12.
- 3.2 All public school students in each grade K to 8 shall be enrolled in a science program.
- 3.3 All public school students in grades 9 to 12 shall complete the credits in science necessary to graduate from high school.

**4.0 Social Studies**

- 4.1 Local school districts and each charter school shall provide instructional programs in social studies for each grade K to 12.
- 4.2 All public school students in each grade K to 8 shall be enrolled in a social studies program.
- 4.3 All public school students in grades 9 to 12 shall complete the credits in social studies necessary to graduate from high school.

**5.0 Physical Education**

- 5.1 Local school districts and each charter school shall provide instructional programs in physical education for each grade K to 12 with the exception of the James H. Groves High School program.
- 5.2 All public school students in each grade 1 to 8 shall be enrolled in a physical education program.
- 5.3 All public school students in grades 9 to 12 shall complete the credit in physical education necessary to graduate from high school.

~~5.4~~ 5.3.1 In addition to the one credit required for high school graduation, only one additional elective credit in physical education may be used to fulfill the graduation requirements.

~~5.5~~ 5.4 The physical education requirements may be waived only for students who have an excuse from a qualified physician or objections based on religious beliefs. The local school district or charter school shall have the authority to grant such waivers. The local school district or charter school shall maintain records of the waivers granted and upon request, make them available for review consistent with Federal and state confidentiality laws.

5.5 Local school districts and charter schools shall annually assess the physical fitness of each student in grades 4 and 7, and in grade 9 or 10. Beginning in the 2006-2007 school year and annually thereafter, all students in grade 4 will be assessed. Beginning in the 2007-2008 school year and annually thereafter all students in grade 7 and in grade 9 or 10 will be assessed. The physical fitness assessment tool used by the districts and charter schools shall be one designated by the Delaware Department of Education.

5.5.1 The local school districts and charter schools shall provide the results of the physical fitness assessment to the parent(s) guardian(s) or Relative Caregiver of each student. The districts and charter schools shall also report this information to the Delaware Department of Education in a format determined by the Department.

5.5.1.1 The Delaware Department of Education shall annually report the statewide grade level results of the physical fitness assessment to the public.

**6.0 Visual and Performing Arts**

6.1 Local school districts and each charter school shall provide instructional programs in the visual and performing arts for each grade K to 12 with the exception of the James H. Groves High School program.

6.2 All public school students in each grade 1 to 6 shall be enrolled in a visual and performing arts program.

**7.0 Career Technical Education**

7.1 Local school districts and charter schools, when consistent with the charter school's approved program, shall provide instructional programs in two or more vocational technical education areas in grades 7 and 8.

**5 DE Reg. 865 (10/1/01)**

**8 DE Reg. 1709 (6/1/05)**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 915

**Regulatory Implementing Order**

**915 James H. Groves High School**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 915 James H. Groves High School to bring the regulation in line with 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas concerning the number of credits required for graduation. The amendments also add definitions, address changes in current practice and clarify some of the language.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 20, 2006, in the form hereto attached as *Exhibit "A"*. Comments were received from James H. Groves Leadership Team and from the Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. The Groves Leadership Team recommended some clarifying changes in sections 2.4, 2.4.1.3, 3.1.14 and 4.1. Clarifying changes were made to these sections. The Department declined the recommendation to remove 2.4.1.1, "Be 16 or 17 years of age" because the Department's position is that the waiver should only apply to 16 and 17 year olds.

The Advisory Councils expressed concern that the requirements for the GED Official Practice Test scores should be consistent with the scores for passing the GED Test which are lower. The Department's position is that the GED and Groves are two different program routes to demonstrate high school skills. Groves yields a high school diploma at the completion of the program and the GED Endorsement is issued after passing the GED Test. Processes leading to both may be similar at the beginning stage, but the use of the OPT results are different for Groves and the GED. The scores to pass the GED Official Practice Test (OPT) are uniform to demonstrate eligibility to take the GED Test or to provide evidence of skill to be issued a Certificate of Educational Attainment 3. The score of 2450 on the OPT is a reliable, consistent, and valid score that leads to passing the GED Test and demonstrates skill mastery leading to the high school diploma. (Note: The GED Test is not taken by individuals in the Groves adult high school diploma program.)

The Advisory Councils urged the elimination of the research paper as a part of the Certificate of Educational Attainment process and the passing the GED Test. The Department's position is that the combination of the 2450 score on the OPT and a demonstration of ability to write a research paper in Social Studies or Science according to a specific genre is essential to demonstrate the knowledge and skill of a high school student with respect to the content standards. The GED Testing Service will not permit adult education programs to award credit for passing the GED Test. The CEA3 process does.

The Councils were concerned about disallowing enrollment of minor students who have been expelled

without a waiver. They cited Title 14 **Del.C.** Section 4130(d) as explicitly exempting Groves from the prohibition on enrolling expelled students. The Department's position is that State and program administration has a responsibility for ensuring the safety of students and staff within the Groves educational setting. Individuals seeking to enroll in Groves who pose a security risk are not given a waiver. Depending on the nature of the expulsion if restitution that has been provided and the sentences have been issued and served, individuals may be referred to Diploma-At-A-Distance (DAAD) if the individual and the staff conclude that the individual could be successful in an online environment. For example, sex offenders or minors who brought guns or knives to school or minors who have struck a teacher or another staff member are referred to DAAD. This does not deny access, but it does limit contact in a situation that could lead to safety issues.

Finally the Councils were concerned that students enrolled in Groves must maintain an attendance minimum of 85% of the course hours and that no provision is made for excused absences thus preventing a student from receiving credit regardless of good cause. The Department's position is that Groves has an array of mechanisms to support students facing a variety of life situations. It is accurate that a student who is unable to attend 85% of the classes in a 15-class semester class format or meet the attendance requirement in any other format will not receive course credit. Individuals who have emergencies or who are unable to participate in a seat-based class are able to work through independent study, self-paced classes with flexibility in the amount of time to complete the course, or block schedule within a 9-week span of time, or participate in an online distance education class (which also has a requirement of weekly participation). By building into the program a variety of class formats, The Groves program is able to accommodate individuals with life situations that prevent continued attendance in a class over a 15-week semester. The time requirement is built into each format to assure adequate time to learn the content and skills and to meet the requirement for awarding a Carnegie unit of credit.

## **II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 915 in order to bring the regulation in line with 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas concerning the number of credits required for graduation. The amendments also add definitions, address changes in current practice and clarify some of the language.

## **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 915. Therefore, pursuant to 14 **Del.C.** §122 (b)(18) 14 **DE Admin. Code** 915 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 915 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 14 **DE Admin. Code** 915 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 915 in the Administrative Code of Regulations for 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 (b) (18) on November 16, 2006. 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 16<sup>th</sup> day of November 2006.

**Department of Education**

Valerie A. Woodruff, Secretary of Education

Approved this 16<sup>th</sup> day of November 2006

**State Board of Education**

Jean W. Allen, President  
 Richard M. Farmer, Jr., Vice President  
 Mary B. Graham, Esquire  
 Gregory A. Hastings  
 Barbara B. Rutt  
 Dennis J. Savage  
 Dr. Claiborne D. Smith

**915 James H. Groves High School**

**1.0 Administration Definitions**

**“Certificate of Educational Attainment (CEA3)”** means that the holder of the certificate has passed the Official GED Practice Test with a score of 2450 or better with no less than 470 in each sub test area and has written a Groves approved content area research paper.

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

The **“James H. Groves High School” or “Groves”** is means an adult high school established by the State of Delaware to provide the opportunity for adults and out of school youth to earn and obtain a high school diploma. The James H. Groves High School is a single school with multiple centers established and operated through a proposal application process. The James H. Groves High School is administered by the Delaware Department of Education.

**“Groves Leadership Team”** means an advisory group composed of the Groves Center administrators, the State Director of Adult Education, a representative from the Groves student association and a prison education teacher supervisor. The Associate Secretary, Adult Education and Work Force Development shall be an ex officio member of the leadership team.

**“James H Groves Center” or “Center(s)”** means the specific location in a school district, agency or organization where instruction is provided for the James H. Groves High School program.

**2.0 Admission Criteria.**

The following individuals may enroll in the James H. Groves High School:

2.1 ~~Adults, 18 years of age and older, who reside in the State of Delaware or who have worked in Delaware for a minimum of one year.~~

2.2 ~~Out of school youth, 16 to 21, who have officially withdrawn from a day school and who have not been expelled or have an expulsion pending.~~

2.3 ~~Non residents who otherwise meet the eligibility requirements set forth in 2.1 and 2.2.~~

2.4 ~~High school students who are at least 16 years of age and enrolled for at least one credit in their home school may earn an unrestricted number of credits in the Groves In School Credit Program and still graduate from their home high school.~~

2.4.1 ~~To enroll in this program, students shall have the permission of their home high school, their parent or guardian and the Groves High School principal or designee.~~

2.4.2 ~~All students enrolled in the Groves In School Credit Program shall be included in the September 30th unit count of their home high school.~~

2.4.3 ~~Students who withdraw from their home high school and transfer to the Groves High School shall no longer be considered as a student in the Groves In School Credit Program and will be assessed the materials fee for that semester.~~

2.5 ~~Individuals expelled from a local school district may not be enrolled in Groves High School without a waiver from the Delaware Department of Education for the duration of the expulsion. Individuals who enroll without a waiver will lose credits earned during the expulsion period.~~

2.5.1 ~~An applicant for a waiver must: be at least 17 years of age (except from September 1,~~

~~School, be expelled for a nonviolent reason, not be a security threat, demonstrate interest in learning and state specific ways to be a successful student.~~

~~2.1 An adult 18 years of age and older, who resides in the State of Delaware or is a resident of another state and is currently employed in Delaware and has been so employed for a minimum of six months prior to enrollment.~~

~~2.1.1 The applicant shall:~~

~~2.1.1.1 Submit an application on forms approved by the Department;~~

~~2.1.1.2 Qualify as meeting secondary level skills, as determined by the Department, on a standardized assessment.~~

~~2.2 Out of school youth 16 to 17 years of age, who have officially withdrawn from a day school and who have not been expelled or have an expulsion pending shall enroll under a waiver process.~~

~~2.2.1 To apply for an age waiver, the prospective student must submit a letter of request for admission to the State Director of Adult Education with the rationale for granting a waiver with a letter of recommendation from the high school of record.~~

~~2.2.2 The prospective student seeking the waiver shall also meet the admission process of all other enrollees.~~

~~2.2.3 The decision regarding admission shall be made by the Center administrator.~~

~~2.3 High school students who are at least 16 years of age and enrolled for at least one credit in their high school of record may earn an unrestricted number of credits in the Groves In School Credit Program and still graduate from their high school of record.~~

~~2.3.1 To enroll in this program, students shall have the permission of their high school of record, their parent(s), guardian(s) or Relative Caregiver and the Groves High School principal or designee.~~

~~2.3.2 All students enrolled in the Groves In School Credit Program shall be included in the September 30th unit count of their high school of record.~~

~~2.3.3 Students who withdraw from their high school of record and transfer to the Groves High School shall no longer be considered a student in the Groves In School Credit Program and shall be assessed the materials fee for that semester.~~

~~2.4 Individuals expelled [or pending expulsion] from a local school district or charter school shall not be enrolled in Groves High School during the period of expulsion [or pending expulsion] without a waiver from the Department. Individuals who enroll without a waiver shall lose credits earned during the expulsion period.~~

~~2.4.1 An applicant for a waiver shall:~~

~~2.4.1.1 Be 16 or 17 years of age;~~

~~2.4.1.2 Intend to graduate from the James H Groves High School;~~

~~2.4.1.3 Be expelled [or be pending expulsion] for a nonviolent reason and not be a security threat;~~

~~2.4.1.4 Submit a letter of recommendation signed by the principal of their high school of record; and~~

~~2.4.1.5 Meet the requirements in 2.1.1.~~

### ~~3.0 Acceptable Methods for Earning High School Units of Credit~~

~~The following methods or any combination of the following methods are acceptable:~~

~~3.1 Course Enrollment, courses are offered in a classroom or distance setting.~~

~~3.2 Correspondence Study, approved courses offered through accredited correspondence schools are accepted for high school credit.~~

~~3.3 Summer School, approved courses offered through summer school are accepted for high school credit.~~

~~3.4 Distance Learning, approved courses offered through accredited distance learning programs are accepted for high school credit.~~

~~3.5 Independent Study, courses offered through independent study must be assigned an instructor who will monitor the progress of the student. The content will be the same as required in the course enrollment.~~

~~3.6 Achievement Testing, credits are awarded through achievement testing based on the content demonstrated. Approved tests used to award credit are standardized and specifically designed to determine the level of student competence.~~

~~3.7 Employment or Training Experience, credit for employment or training experience will be~~

~~evaluated to determine the number of credits that will be awarded based on length of employment, level of job responsibility and scope of work.~~

~~3.8 Career Technical Courses, upon satisfactory completion of approved Career Technical, vocational or apprenticeship courses, units of credit will be awarded.~~

~~3.9 Military Experience, veterans may be granted credit based on military training and experience.~~

~~3.10 Higher Education Courses, higher education courses will be awarded credit as designated by other Delaware Department of Education policy.~~

~~3.11 Foreign School Attendance, credit for courses completed in schools in foreign countries will be evaluated in terms of equivalent content to Delaware high school graduation requirements.~~

~~3.12 Prior High School Credits, any high school credit earned by the student may be transferred into Groves and become part of the transcript toward graduation.~~

~~3.13 Community Service, the community service unit of credit is designed to recognize the community life experiences of the student and to encourage the student to assume civic responsibility. The emphasis is upon volunteer service given freely for the betterment of the community and other persons.~~

~~3.14 Internships, internships are designed to provide practical real life experiences for students. Credit may be earned based on the skills and the length of time of the experience.~~

~~3.15 Certificate of Educational Attainment (CEA3), the CEA3 enables a student to demonstrate high school level skills through a written test. By passing the Official GED Practice Test with a score of 2450 or better with no less than 470 in each sub-test area and writing a Groves approved content area research paper, students are awarded 10 units of credit toward graduation.~~

### **3.0 Acceptable Methods for Offering Units of Credit and Granting Units of Credit for the James H. Groves High School Diploma**

3.1 The Groves School is authorized to offer credit for the following methods or any combination of the following methods of accruing credit that were used prior to enrollment as well as while enrolled in the Groves program:

3.1.1 High school classroom courses;

3.1.2 Summer school courses offered through a district or charter school;

3.1.3 Groves classroom courses;

3.1.4 Distance learning courses;

3.1.5 Independent study courses;

3.1.6 Correspondence courses;

3.1.7 Courses completed through schools in foreign countries and evaluated in terms of content equivalent to the State's high school graduation requirements;

3.1.8 Career technical courses and apprenticeship courses;

3.1.9 Higher education courses;

3.1.10 Internships designed to provide practical real life experiences and based on the skills gained and the length of time of the experience;

3.1.11 Military Experience based on military training and experience;

3.1.12 Employment or training experience based on the length of employment, the level of job responsibility and the scope of work;

3.1.13 Community Service that recognizes the community life experiences of the student and encourages the student to assume civic responsibility. The emphasis is upon volunteer service within a non-profit or governmental agency given freely for the betterment of the community and other persons and is based on verification of length of service;

3.1.14 The knowledge assessments created by the Groves [teachers curriculum committees] for students to demonstrate their knowledge of course content; and

3.1.15 The Certificate of Educational Attainment (CEA3) that provides 10 units of credit toward graduation.

### **4.0 Attendance, Grading and Graduation Criteria**

~~4.1 [Students enrolled in James H. Groves High School courses shall develop a graduation plan]~~ A graduation plan shall be developed for each student enrolled in the James H. Groves High School by the Groves Administrator or his or her designee.]

4.1 ~~2~~ Students ~~attending~~ enrolled in James H. Groves High School courses which have an attendance requirement, shall attend a minimum of 85% of the course hours in order to receive a unit of credit. No provision is made for excused absences.

4.2 ~~3~~ The grading system for the James H. Groves High School shall be based on a 100 point numeric scale. An alpha conversion chart to determine level of performance shall be:

4.2.3.1 ~~93 to 100~~ Students receiving a grade of "A" ~~(93 to 100)~~ have demonstrated ~~demonstrate~~ superior understanding of the content and have demonstrated knowledge and competence at the highest level.

4.2.3.2 ~~85 to 92~~ Students receiving a grade of "B" ~~(85 to 92)~~ have a ~~demonstrate~~ better than average understanding of the content and have demonstrated above average knowledge and competence.

4.2.3.3 ~~75 to 84~~ Students receiving a grade of "C" (75 to 84) ~~have a~~ demonstrate satisfactory understanding of the content and have demonstrated knowledge and competence.

4.2.3.4 ~~Less than 75 no credit awarded~~ No credit is awarded for grades less than 75.

4.3 ~~James H. Groves High School graduates shall meet the state graduation requirements with the exception of physical education which is waived in lieu of another credit.~~

4.4 Groves High School students shall be eligible to receive a State of Delaware diploma when they have met the State graduation requirements in effect at the time of their graduation. (See 14 DE Admin. Code 505.2, 3.1 or 5.0). The single exception is physical education which is waived in lieu of another credit.

4.3 ~~4.1~~ All course content ~~shall reflect the state content standards~~ shall be based on the State Content Standards.

## 5.0 Fees

All fees for the James H. Groves High School shall be set by the Delaware Secretary of Education.

## 6.0 Students Rights and Responsibilities

Students enrolled in each center Center shall have such rights and be subject to such responsibilities as set forth in the ~~document the James H. Groves Student Rights and Responsibilities~~ James H. Groves Student Rights and Responsibilities document, and as such may be amended from time to time by the ~~Delaware Department of Education.~~

## 7.0 Establishing a Center

7.1 A school district, agency or organization may seek to establish a James H. Groves Center ~~in their for service delivery area~~ by following the process outlined below. No district, agency or organization shall have more than one Groves Center.

7.1.1 An affiliation ~~must~~ shall be established with an existing Groves Center as a satellite site or obtain approval from the Groves Leadership Team to establish a pilot center Center.

7.1.2 After a two year affiliation as a satellite center Center of an existing Groves Center or two year success as a pilot center Center, ~~a formal request may be made to the Delaware Department of Education for full center status.~~ the Department may grant full Center status to the satellite site or the pilot Center.

7.1.2.1 A formal request for full Center status shall be made to the Department at the end of year one as a satellite or pilot Center. The request shall include:

7.1.3 ~~A formal request for center status may be made after at the end of year one year as satellite or pilot center site and must be made one year prior to the desired start up date. The request must include:~~

~~7.1.3.1~~ 7.1.2.1.1 A needs assessment documenting program need for services in the district's adult community, potential population to be served, impact on existing centers Centers, and rationale for requesting a Groves Center;

~~7.1.3.2~~ 7.1.2.1.2 A description of the district, agency or organization's experience and success in adult program delivery;

~~7.1.3.3~~ 7.1.2.1.3 An explanation of the commitment to the Groves adult education program and assurances;

~~7.1.3.4~~ 7.1.2.1.4 Budget requirements including in kind contributions;

7.1.2.1.5 Submission of an annual performance report; and

7.1.2.1.6 Submission of the State Evaluation Report completed in the tenth

month of the first year.

~~7.1.4~~ 7.1.3 District, ~~Agency or Organization~~ The district agency or organization

representatives ~~will~~ shall meet with the Groves Leadership Team to review the Center request.

~~7.1.5 7.1.4~~ 7.1.4 The Groves Leadership Team ~~will~~ shall make a recommendation for ~~center~~ Center status to the Delaware Department of Education, Education Associate through the Department's Director for Adult Education to the Secretary of Education.

~~7.1.6 7.1.5~~ 7.1.5 Approval or denial ~~will~~ shall be ~~made~~ communicated to the district, agency or organization by the Department within 60 days of ~~the center~~ Center status application.

~~7.1.7 7.1.6~~ 7.1.6 If approved, the ~~Delaware Department of Education~~ will shall apply for ~~center~~ Center funding in the upcoming State budget cycle. If State funding is allocated for the additional Center, full ~~center~~ Center status ~~will~~ shall be given to the program provided the annual performance report and State Evaluation Report are satisfactory.

~~7.1.8 7.1.7~~ 7.1.7 Appeal Process: In the event Center status is denied by the Department of ~~Education~~ a hearing ~~can~~ may be requested by the district, agency or organization. The hearing ~~will~~ shall be conducted by the ~~Department of Education~~ Secretary of Education or his or her designee.

## 8.0 Closing a Center

8.1 Voluntary Closing: A school district, agency or organization ~~may~~ shall close a James H. Groves Center in their service delivery area by following the process outlined below. For a voluntary closing, a school district, agency or organization ~~must~~ shall announce by November its intention to discontinue service at the end of the fiscal year. The following steps ~~will~~ shall be followed:

8.1.1 Within two months of closing, the district, agency or organization ~~must~~ shall:

8.1.1.1 Notify all current students of the Center closing and provide them with information to transfer to another Center. Records of active students ~~must~~ shall be sent to the new Center;

8.1.1.2 Provide all current and past student and administrative records to the ~~Delaware Department of Education~~;

8.1.1.3 Send all equipment purchased for the Center to the ~~Delaware Department of Education~~ or to the designated ~~centers~~ Centers for redistribution; and

8.1.1.4 Return ~~any~~ unspent funds to the ~~Delaware Department of Education~~.

8.1.2 District, agency or organization representatives ~~will~~ shall meet with the Groves Leadership Team at the monthly meetings to implement a smooth closing.

## 9.0 ~~Nonvoluntary~~ Non Voluntary Closing

9.1 A ~~nonvoluntary~~ non voluntary closing ~~will~~ shall be made by the Secretary of Education when:

9.1.1 There is insufficient enrollment or graduates to sustain a Center; or

9.1.2 The Center does not follow the policies, procedures, rules, regulations or instructional program set forth for the James H. Groves High School; or

9.1.3 The ~~Delaware Department of Education~~ Secretary of Education determines the Center is not providing a quality instructional program to the students at that ~~center~~ Center.

~~9.1.3.1 9.2~~ 9.2 The ~~Delaware Department of Education~~ Secretary of Education shall provide notice to the school district, agency or organization of the closing by November giving eight months to close the Center. ~~The following steps will be followed:~~

~~9.1.3.1.1 9.2.1~~ 9.2.1 Within two months of closing, the district, agency or organization ~~must~~ shall:

~~9.1.3.1.1.1 9.2.1.1~~ 9.2.1.1 Notify all current students of the ~~center~~ Center closing and provide them with information to transfer to another ~~center~~ Center. ~~Records of active students must be sent to the new Center;~~

~~9.1.3.1.1.2 9.2.1.2~~ 9.2.1.2 Provide all current and past student and administrative records to the ~~Delaware Department of Education~~;

~~9.1.3.1.1.3 9.2.1.3~~ 9.2.1.3 Send all equipment purchased for the ~~center~~ Center to the ~~Delaware Department of Education~~ or to the designated ~~centers~~ Centers for redistribution; and

~~9.1.3.1.1.4 9.2.1.4~~ 9.2.1.4 Return ~~any~~ unspent funds to the ~~Delaware Department of Education~~.

~~9.1.3.1.2 9.3~~ 9.3 The ~~D~~district, agency or organization representatives ~~will~~ shall meet with the James H. Groves Leadership Team at the monthly meetings to implement a smooth closing.

**2 DE Reg. 378 (9/1/98)**

**5 DE Reg. 1285 (12/1/01)**

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 **Del.C.** §1220(a))  
14 **DE Admin. Code** 1526

### Regulatory Implementing Order

#### 1526 Standard Certificate English to Speakers of Other Languages

##### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1526 Standard Certificate English to Speakers of Other Languages (ESOL) Teachers. Regulation 1526 has been revised in collaboration with the Department of Education Education Associate for ESOL and Bilingual Education, with her advisory committee, and with the University of Delaware, which is the only Delaware institution of higher education which offers a program in ESOL education.

The regulation was published in the July 1, 2006 *Register of Regulations*. A public notice ad was placed in the June 20, 2006 edition of the *Delaware State News* and the *News Journal* soliciting public comment. The public notice ads are attached hereto as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens. Some suggested grammatical substitutions were incorporated into the regulation. The GACEC also noted some recurrent publishing mistakes. These were eventually corrected in the *Delaware Register of Regulations*.

##### II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

##### III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), 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 shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1526 of the *Administrative Code of Regulations* of the Department of Education.

##### V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2<sup>ND</sup> DAY OF NOVEMBER, 2006**

Harold Roberts, Chair  
Sandra Falatek  
Karen Gordon  
Barbara Grogg  
Lori Hudson

Edward Czerwinski  
Mary Furbush  
Richard Gregg  
Leslie Holden  
Carla Lawson

Mary Mirabeau  
Karen Schilling Ross  
Kathleen Thomas

Gretchen Pikus  
Michael Thomas  
Carol Vukelich

**FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:**

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED THIS 16<sup>TH</sup> DAY OF NOVEMBER, 2006**

**STATE BOARD OF EDUCATION**

Jean W. Allen, President  
Mary B. Graham, Esquire  
Barbara Rutt  
Dr. Claibourne D. Smith

Richard M. Farmer, Jr., Vice President  
Gregory A. Hastings  
Dennis J. Savage

**1526 Standard Certificate English to Speakers of Other Languages (ESOL) Teachers**

**1.0 Content**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for English to Speakers of Other Languages Teachers ~~[(required for grades]~~ K to12.

**2.0 Definitions**

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

**“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 person licensed and certified by the State under 14 Del.C. §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board approved by the State Board. The term ‘educator’ does not include substitute teachers.

**“Examination of Content Knowledge”** means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

**“Fifteen (15) Credits or Their Equivalent in Professional Development”** means college credits or an equivalent number of hours, with one (1) credit equating fifteen (15) hours, taken either as part of a degree program or in addition to it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.

**“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.

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

**“Major or Its Equivalent”** means a minimum of thirty (30) semester hours of course work in a particular content area.

**“NASDTEC”** means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

**“NCATE”** means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of

Education.

**“Standard Certificate”** means a credential issued to certify that an educator has the prescribed knowledge, skill, 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.

**“Valid and Current License or 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.

**3.0 Standard Certificate**

In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an English to Speakers of Other Languages Teacher 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 from an regionally accredited college or university and,

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in English to Speakers of Other Languages Teacher (ESOL) or,

3.2.2 A minimum of 24 semester hours to include Human Development, Methods of Teaching Elementary Language Arts, or English, or Foreign Languages; Identifying and Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching, and,

3.3 Specific Teaching Field

3.3.1 Major in English to Speakers of Other Languages (ESOL) or,

3.3.2 Completion of an approved teacher education program in English to Speaks of Other Languages (ESOL), or,

3.3.3 Completion of an approved teacher education program in English, Foreign Language, or Elementary Education, with specific courses in: Second Language Acquisition or Psycholinguistics, 3 semester hours, Methods of Teaching English as a Second Language, or English as a Second Dialect, 3 semester hours, Structure of the English Language, 3 semester hours, Second Language Testing, 3 semester hours, Ethnic Studies or Multicultural Education, 3 semester hours, and

3.3.4 Successful completion of the intermediate level of a foreign language. This requirement may be satisfied by a Department of Education approved proficiency test.

The Department shall issue a Standard Certificate as an English to Speakers of Other Languages Teacher to an educator 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 who has met the following requirements:

3.1 Acquired the prescribed knowledge, skill 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 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in English to Speakers of Other Languages; or

3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after September 11, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3.1.[5 4.1].1 Demonstrating oral and written proficiency in English and satisfactory completion of fifteen (15) graduate or undergraduate credits, as more specifically set forth in 3.1.[5 4.1].1 through 3.1.[5 4.1].5. With approval of a committee comprised of the candidate's principal or other designated school administrator, a higher education representative who teaches one of the approved courses, and a DOE representative, other verifiable professional experience may be substituted for no more than nine (9) of the required credits.

- 3.1.[5 4.1].1 Methods of Teaching English as a Second Language;
- 3.1.[5 4.1].2 Second Language Acquisition;
- 3.1.[5 4.1].3 Teaching Literacy for English Language Learners;
- 3.1.[5 4.1].4 Second Language Testing;
- 3.1.[5 4.1].5 Structure of the English Language; and

3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achiev[inged] a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

3.3 Me[teing] the requirements for licensure and holding a valid and current license or certificate from another state in English to Speakers of Other Languages;

3.3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or

3.4 Me[teing] the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C §1203.

#### **4.0 Effective Date**

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Teacher of English to Speakers of Other Languages after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.~~

#### **4.0 Multiple Certificates**

Educators may hold certificates in more than one area.

#### **5.0 Application Requirements**

An applicant for a Standard Certificate shall submit:

- 5.1 Official transcripts; and
- 5.2 Official scores on the Praxis II examination if applicable and available; or
- 5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or
- 5.4 An official copy of the out of state license or certification, if applicable.
- 5.5 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.

#### **6.0 Application Procedures for License Holders**

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 or education required for the additional Standard Certificate requested is required.

#### **7.0 Effect of Regulation**

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 or the Advanced License. The

Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.

## **8.0 Validity of a Standard Certificate**

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 whose license or certificate is revoked 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.

## **9.0 Secretary of Education Review**

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.

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### **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 Del.C. §1220(a))  
14 DE Admin. Code 1527

#### **Regulatory Implementing Order**

#### **1527 Endorsement English to Speakers of Other Languages (ESOL) Teacher**

##### **I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to repeal 14 DE Admin. Code 1527. In reviewing and revising regulation 1526, it was recommended that regulation 1527 be repealed. No currently employed teachers hold this endorsement, which does not comply with licensure and certification statute.

Notice of the proposed repeal of the regulation was published in the *News Journal* and *Delaware State News* on June 20, 2006, in the form hereto attached as Exhibit "A". The notice invited written comments. No written comment has been received.

##### **II. Findings of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal the regulation as the subject is regulated by 14 DE Admin. Code 1527, which is in compliance with 14 Del.C. §1305.

##### **III. Decision to Repeal the Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude the identified regulation should be repealed. Therefore, pursuant to 14 Del.C. §1203 and §1205(b), the regulation attached hereto as Exhibit "B" is hereby repealed.

## IV. Text and Citation

The text of the **DE Admin. Code** 1527, attached hereto as Exhibit "B" is repealed, and said regulation shall be deleted from the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2<sup>ND</sup> DAY OF NOVEMBER, 2006**

Harold Roberts, Chair	Edward Czerwinski
Sandra Falatek	Mary Furbush
Karen Gordon	Richard Gregg
Barbara Grogg	Leslie Holden
Lori Hudson	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Michael Thomas
Kathleen Thomas	Carol Vukelich

**FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:**

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED THIS 16<sup>TH</sup> DAY OF NOVEMBER, 2006****STATE BOARD OF EDUCATION**

Jean W. Allen, President	Richard M. Farmer, Jr., Vice President
Mary B. Graham, Esquire	Gregory A. Hastings
Barbara Rutt	Dennis J. Savage
Dr. Claibourne D. Smith	

**~~1527 Endorsement English to Speakers of Other Languages (ESOL) Teacher~~**

~~Effective April 11, 2002~~

**4.0 Standard Endorsement**

~~The following shall be required for the Standard Endorsement in grades 9 to 12, in grades 5 to 8 in departmentalized middle level schools, and in adult education for individuals teaching content area courses (mathematics, science, English, social studies, etc.) to classes primarily designed for or primarily composed of students who are speakers of other languages. Optional for all other fully certified teachers.~~

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

~~1.2 A standard Delaware certificate in the content area(s) which the individual is teaching to speakers of other languages and;~~

~~1.3 A minimum of 15 semester hours of course work in teaching English as a second language to include the following: Second Language Acquisition or Psycholinguistics, 3 semester hours, Methods of Teaching English as a Second Language, 3 semester hours, Structure of the English Language, 3 semester hours, Second Language Testing, 3 semester hours, Ethnic Studies or Multicultural Education, 3 semester hours.~~

**2.0 The following shall be required for the Limited Standard Endorsement**

~~2.1 Bachelor's degree from an accredited college and;~~

~~2.2 A standard Delaware certificate in the content area(s) which the individual is teaching to speakers of other languages.~~

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~~3-0 Endorsements issued for this position may include Standard and Limited Standard  
5 DE Reg. 1904 (4/1/02)~~

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

Statutory Authority: 31 Delaware Code, Ch. 5, §512 (31 **Del.C.**, Ch. 5, §512)

**ORDER**

**Assisted Living Medicaid 1915(c) Waiver**

**Nature of the Proceedings**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to submit an application to the Centers for Medicare and Medicaid Services (CMS) for renewal of its Home and Community-Based Services waiver entitled, Assisted Living Medicaid Waiver Program (ALMWP), for an additional five years. 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 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

**Statutory Authority**

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*

**Background**

The Assisted Living Medicaid Waiver Program (ALMWP) provides community based residential services. The Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) administers the ALMWP and is funded by Delaware Medicaid and State general funds. The ALMWP is targeted to older persons and adults with physical disabilities who need assistance with the activities of daily living (ADLs) and meet Medicaid nursing facility admission criteria. The goal of the waiver is to provide services in a manner which responds to each consumer's abilities, assessed needs, and preferences, and which ensures maximum consumer self-sufficiency, independent functioning and safety in a homelike residential setting.

The current demonstration project #0332.91 expires on September 30, 2006. To assure the continuation of the waiver, the Division of Medicaid and Medical Assistance will submit a five-year extension request for the ALMWP to the CMS for the period October 1, 2006 through September 30, 2011.

The provisions of this waiver are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

**Summary of Proposal**

DMMA is announcing a thirty-day comment period on the Waiver Extension request submitted to CMS.

The State of Delaware is in the process of renewing its home and community-based waiver for assisted living. The State intends no changes in benefits or the population served during the renewal period. If during the

renewal application process and during our discussions with CMS a need for any changes is identified, those changes would be published at the earliest possible time for public review and comment.

### Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC) and the State Council for Persons with Disabilities (SCPD) offered the following condensed observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

Consistent with the June 23, 2006 DSAAPD letter, the Division promises to provide enhanced benefits for the ABI population through its Assisted Living (AL) Medicaid Waiver. In pertinent part, the letter recites as follows:

Those within the Assisted Living (AL) Medicaid waiver population diagnosed with an Acquired Brain Injury will have enhanced benefits offered to them through the existing AL Waiver program. This may include such benefits as Adult Day Care and Cognitive Behavioral Health. The Division of Medicaid and Medical Assistance (DMMA) and the Division of Aging and Adults with Physical Disabilities (DSAAPD) will develop and submit a waiver amendment request to CMS.

Subsequent discussion with DSAAPD at the SCPD Brain Injury Committee clarified that the Division will be submitting an amendment to the AL waiver to secure enhanced services for people with ABI after the renewal application is approved by CMS. The Division indicated that it was on a strict timeline to submit the renewal application and that CMS has already informally approved the aforementioned approach.

In contrast, DMMA published information on its renewal application for the same waiver on July 1, 2006. See DMMA Public Notice, 10 **DE Reg.** 56 (July 1, 2006). DMMA confirms its present intention to adopt no changes in benefits or the population served by the waiver during the 5 year renewal period (October 1, 2006 – September 30, 2011):

The State of Delaware is in the process of renewing its home and community-based waiver for assisted living. The State intends no changes in benefits or the population served during the renewal period.

This “disconnect” between the DSAAPD letter and the DMMA public notice is of great concern to us. It appears the DMMA comment is not accurate. We, therefore, are recommending that the Waiver Application include changes that will benefit the ABI population in Delaware and incorporate the enhancements that are noted in the DSAAPD letter to the State Council.

We recommend that the Division include language in the Registry of Regulations consistent with the DSAAPD approach (i.e., once the renewal application is approved by CMS, DMMA will affirmatively contemplate amendments to enhance benefits for the ABI population).

**Agency Response:** The Department fully understands your concern about the appearance of a “disconnect” between the application and the June 23, 2006 Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) letter to Daniese McMullin-Powell, State Council for Persons with Disabilities (SCPD) Brain Injury Committee. We would like to clear up any confusion that may have been created in this regard.

In the letter to Ms. Mc Mullin Powell, DSAAPD stated that: “Those within the Assisted Living (AL) Medicaid Waiver population diagnosed with an Acquired Brain Injury (ABI) will have enhanced benefits offered to them through the existing AL Waiver program. This may include such benefits as Adult Day Care and Cognitive Behavioral Health. The Division of Medicaid and Medical Assistance (DMMA) and the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) will develop and submit a waiver amendment request to CMS.”

We believe that the confusion was generated around the fact that the process will include two steps: first, the *renewal* and then the *amendment* to the Waiver. The *renewal* application does not include the introduction of Acquired Brain Injury services because it was our plan to first complete this application with existing services and then *amend* the waiver to include ABI services.

On July 12, 2006, DSAAPD attended a meeting of the SCPD Brain Injury Committee to respond to the same concern expressed by its membership. During the meeting, we apologized for the misunderstanding, but assured everyone that the Division was and is currently moving forward with plans to amend the Assisted Living

Waiver, as well as the Elderly and Disabled Waiver, to include ABI services.

We assure you that DSAAPD continues to move forward with its plans to amend both waivers and has made a great deal of progress to date. The Division has made every effort to keep advocates and constituents alike updated and involved in the process. As a matter of fact, DSAAPD staff and consultant provided a brief presentation at the Annual Brain Injury Association of Delaware Conference in Dover on Wednesday, October 25, 2006.

As you know, DSAAPD has established an ABI Steering Team composed of representatives from the Division of Medicaid and Medical Assistance, the Division of Developmental Disabilities and the Division of Services for Aging and Adults with Physical Disabilities. This team is charged with the responsibility of developing and supporting the implementation of the Waiver amendments indicated above.

Finally, DSAAPD staff along with our consultant is more than willing to meet with you and others to provide you with updates on the progress of this initiative.

Thank you again for taking the time to share your thoughts and concerns with us on this very important matter.

## Findings of Fact

The Department finds that the proposed changes as set forth in the July 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation regarding the five-year extension of the Assisted Living Medicaid 1915(c) Waiver is adopted and shall be final effective December 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 11/14/06

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## DIVISION OF SOCIAL SERVICES

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

## ORDER

### FOOD STAMP PROGRAM Household Definition

#### Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM) as it relates to the Food Stamp 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 **Del.C.** Section 10115 in the October 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2006 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

##### Statutory Authority

7 CFR 273.12, *Requirements for Change Reporting Households*

##### Summary of Proposed Change

DSSM 9013.1, *Household Definition*: DSS is making the change to allow parents who provide a majority of their children's meals each month to get food stamp benefits when the children have been getting benefits with the other parent. Currently, the parent who provides the majority of the meals cannot get food stamp benefits for the children if they are already opened in the other's parent's case.

### Summary of Comments Received with Agency Response with Explanation of Changes

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

First, there is some language missing from the proposed regulation between "children" and "their".

**Agency Response:** DSS agrees; the word "in" is added.

Second, consistent with the TANF regulation [DSSM 3004.1.1], it would be preferable to clarify that the term "joint custody" also covers "shared custody" situations.

**Agency Response:** Language is added to clarify that "joint custody" also covers "shared custody" situations.

Third, at a minimum, DSS should clarify that the removal of the child from the first parent's case would not be effected if the first parent timely files a request for fair hearing and requests benefit continuation. See attached DSSM §5308. There will be many cases in which the parents could legitimately dispute who provides the majority of meals. At a minimum, the second sentence in the proposed standard could include the following preface: "Subject to DSSM §5308, the children are removed...children."

**Agency Response:** Requesting a fair hearing is already an option open to all recipients. No change to policy will be made because of this comment.

Fourth, in the same context, it is very common for joint or shared custody to be 50/50. The proposed regulation may result in significant increase in disputes over who provides the majority of meals. The TANF regulation addresses this through the following sentence: "If both parties have equal time and decision making for the child each month, then the party that applies first will be able to receive the TANF benefits." DSS may wish to consider an analogous clarification in the Food Stamp regulation.

**Agency Response:** DSS does not anticipate a significant increase in disputes where it is not clear who is providing the majority of meals. The agency will address this issue on a case-by-case basis.

Fifth, the Council promoted adoption of the Maryland regulatory approach to addressing TANG eligibility in the joint custody context. See 9 DE at 1236. DSS may wish to review this approach for the Food Stamp regulation. In effect, this would result in the following approach:

#### Joint Custody

- A. Only one household may include a child in its household for Food Stamp purposes.
- B. With joint or shared custody, the following standards apply:
  1. A parent who provides the majority of meals to a child may include the child in his/her household, if otherwise eligible.
  2. When parents equally provide meals:
    - The parents decide who includes the child in his/her household for purposes of Food Stamps, or, if they cannot agree
    - The parent who applies first claims the child.

This alternative to the proposed regulation may be simpler to understand and administer.

**Agency Response:** DSS appreciates the suggestion. However, DSS chooses to retain the policy as published.

## Findings of Fact

The Department finds that the proposed changes as set forth in the October 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to household definition in the Food Stamp Program is adopted and shall be final effective December 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 11/14/06

## DSS FINAL ORDER REGULATION #06-54

### REVISION:

#### 9013.1 Household Definition

A) General Definition a household is composed of one of the following individuals or groups of individuals, provided they are not residents of an institution (except as otherwise specified in DSSM 9015 ), or are not boarders (as specified in DSSM 9013.3).

1. An individual living alone
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

B) Special Definition the following individuals living with others or groups of individuals living together must be considered as customarily purchasing food and preparing meals together, even if they do not do so\*.

1. Spouses who live together. Spouse refers to either of two individuals:
  - a. Who would be defined as married to each other under applicable State law; or
  - b. Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

\* Same sex couples, for food stamp purposes, are not considered spouses and the presumption of purchasing food and preparing meals together would not apply to them.

2. Children 21 years of age and younger living with their parents. [Parents are defined as natural parent(s), adoptive parent(s), or step-parent(s)]

Children (other than foster care children) who are under 18 and live under the parental control of a non-parent, adult household member cannot be separate households.

Adult children (22 years of age and older) who live with their parents can be separate households if they purchase and prepare food separately.

3. Child(ren) living with a non-parent who has legal custody of the child(ren) will continue to be a member of the household for food stamp purposes even if a natural parent moves into the home. The non-parent must provide proof of legal custody. If the adult who has legal custody of the child chooses to let the child and natural parent purchase and prepare meals together, the child can become a member of the natural parent's food stamp household.

4. Joint custody – Children who live with parents in a joint custody situation can get food stamps with the parent who is the first to apply for food stamps. **[This also covers shared custody situations.]** If both parents are applying for the same child(ren), the parent who provides the majority of the meals (21 meals a week) will include the child as part of his/her food stamp household.

When the parent who provides the majority of the meals applies for food stamps after the other parent is already getting food stamps for children, he/she can include the children [in] their food stamp after they are removed from the other parent's case. The children are removed from the first parent's case and opened in the second parent's case no later than the second month after the month the second parent requests food stamps for the children.

5. When an individual resides a portion of the month with a food stamp household, the household

can choose to include or exclude the individual from the food stamp household. If included, the income of the individual must be included and the individual cannot get benefits in another household or state.

Examples:

- A son works out of state but comes home every weekend. His mom can include or exclude him.
- A child lives in PA with her father. She comes to DE to live with her mom on weekends. Her mother can include her in her food stamp household as long as the child is not getting food stamps in PA.
- A child goes to a residential school and comes home every other weekend and holidays. The parents can include the child in their food stamp household.

6. Although a group of individuals living together and purchasing and preparing meals together constitutes a single household under the provisions of the above general definition, an otherwise eligible member of such a household who is 60 years of age or older and who is unable to purchase and prepare meals because (s)he suffers from a disability considered permanent under the Social Security Act, or suffers from a non-disease-related, severe, permanent disability, may be a separate household from the others based on the provisions of this section provided that the income (all income under DSSM 9055) of the others with whom the individual resides (excluding the income of the spouse of the elderly and disabled individual) does not exceed 165% of the poverty line. Only the spouse of the elderly and disabled individual is required to be included in the same household with the individual.

"Elderly or disabled member" means a member of a household who:

- a. is 60 years of age or older;
- b. receives Supplemental Security Income (SSI) benefits under Title XVI of Social Security Act or disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act;
- c. receives federally or State administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive benefits is based upon the disability or blindness criteria used under Title XVI of the Social Security Act;
- d. receives federally or State administered supplemental benefits under section 212(a) of Public Law 93 66;
- e. receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act;
- f. is a veteran with a service connected or nonservice connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under Title 38 of the United States Code;
- g. is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;
- h. is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self support under Title 38 of the United States Code; or
- i. is a surviving spouse or surviving child of a veteran and is considered by the VA to be entitled to compensation for service connected death or pension benefits for a non service connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act;
- j. received an annuity payment under Section 2(a)(l)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board, or Section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under Title XVI of the Social Security Act.
- k. is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income, disability related medical assistance under Title XIX of the Social Security Act, or disability-based State general assistance benefits provided that the eligibility to receive those benefits is based upon disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act.

"Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them.

Note: Some disabled persons optionally receive Federal Employee Compensation Act (FECA) payments in lieu

of Civil Service Disability payments. Such persons are considered to meet the disability definition under this section. Some persons, however, receive FECA payments on a temporary basis while recovering from an on-the-job injury. Receipt of these temporary payments does not satisfy the disability definition. Therefore, verify which type of FECA payment a client receives.

<b>DISABILITY BASIS</b>	<b>VERIFICATION OF DISABILITY VERIFICATION METHOD</b>
b ,c, d	Household must provide proof of benefit receipt.
f	Household must present a statement from the Veterans Administration which clearly indicates (1) that the disabled individual is receiving VA disability benefits for a service- connected disability, and (2) that the disability is rated as total or paid at the total rate.
g, h	Household must prove that the disabled individual is receiving VA disability benefits.
e, i	Use SSA's most current list of disabilities considered permanent. If it is obvious that one individual has one of the listed disabilities, the item is considered verified. If disability is not obvious, the household must provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the non-obvious disabilities listed.
j	Household must provide proof that individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board <u>and</u> has been determined to qualify for Medicare.
k	Household must provide proof of receipt of interim benefits pending receipt of SSI; or disability-related medical assistance under Title XIX of the SSA. Verify that the eligibility to receive these benefits is based upon disability or blindness criteria that are at least as stringent as those used under title XVI of the Social Security Act.

**9 DE Reg. 1077 (01/01/06)**

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**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Ch. 5, Section 512 (31 **Del.C.** §512)

**ORDER**

**Child Care Subsidy Program**

**Nature of the Proceedings**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program. The Department's proceedings 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 public comment pursuant to 29 **Delaware Code** Section 10115 in the September 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 2, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Statutory Basis**

- The Child Care and Development Block Grant (part of Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996;
- Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act (OBRA) of 1981

- establishes child care under the Social Services Block Grant (part of Categories 31 and 41); and,
- 45 CFR, Part 98, Subpart C, *Eligibility for Services*.

### Summary of Provisions

DSS is proposing to amend several sections in the Division of Social Services Manual (DSSM) to clarify and update existing Child Care Subsidy Program policy. This regulatory action contains new, updated, revised and clarified policy as summarized below:

1) DSSM 2013.1: This change adds the Child Care Subsidy Program to the list of assistance programs that the Income and Eligibility Verification System (IVES) supports. This change is necessary due to the integration of the child care sub-system into the DCIS II system.

2) DSSM 11002.2, 11002.7, 11003, 11003.7.4, 11003.7.5, 11003.7.6, 11003.8: Existing policy includes education and training as an acceptable need for receiving Income Eligible Child Care. This policy was inconsistently applied due to lack of clarity. The need for Income Eligible Child Care for education and training purposes, other than GED preparation, must be part of a DSS Employment and Training program.

3) DSSM 11003.4, 11003.4.1, 11003.4.2, 11003.4.3, 11003.4.4, 11003.4.5, 11003.4.6, 11003.4.7 (all new) and 11004.2.1: The purpose of the new policy is to apply cooperation requirements with Child Support Enforcement (DCSE) consistently across all DSS programs. Currently all Temporary Assistance for Needy Families (TANF) cases and combined TANF, Food Stamp and Child Care cases are required to cooperate with the DCSE when the family has an absent parent. This new policy now requires all Child Care Subsidy cases to cooperate with the DCSE, when there is an absent parent.

4) DSSM 11003.7.8, 11004.3.1, 11004.7: The purpose of this change is to reduce the inconsistency and streamline the application of the parent fee determination system. DSS is reducing the number of allowable situations that automatically waive the assessment of a parent fee. The automatic waiving of parent fees for individuals that are referred by the Division of Services to Children, Youth and Their Families (DSCYF) is inconsistent with current federal regulations. These regulations require the waiving of parent fees to be determined on a case-by-case basis.

These changes provide consistency with DSS programs and underscore the Division's mission of self-sufficiency.

### Summary of Comments Received with Agency Response and Explanation of Changes

Further analysis by Division staff resulted in the following changes in the final order regulation text indicated by **[bracketed bold type]**.

The proposed rule at §11003.4.6 describes hearing rights that individuals may have “if they disagree with any DSS or DCSE decision made in regard to the child support assignment, non-cooperation, or good cause claim issues. DCSE will handle the fair hearing requests on issues of non-cooperation and good cause claim [sic].”

In the context of child support enforcement activities, the term “good faith” was substituted for “good cause” in the final days of the now repealed Aid to Families with Dependent Children Program.

No one determines “good cause” any longer and DCSE is the agency that makes a determination about a parent’s “good faith” effort to establish paternity and secure child support.

The use of the term “good cause” in this rulemaking is, therefore, without support elsewhere and is inadvisable.

In addition, the last sentence of the rule is not as descriptive as it needs to be to qualify as a rule. How will DCSE “handle” fair hearing requests? Will DCSE schedule and conduct non-cooperation hearings and issue hearing decisions? If DCSE will conduct the hearings, the rule needs to say this.

**Agency Response:** Section 11003.4 and various subsections have been revised to clarify that DCSE will be conducting Fair Hearings and by adding a reference to the current Fair Hearing policy section.

The Delaware Developmental Disabilities Council (DDDC); the Governor’s Advisory Council for Exception Citizens (GACEC); the State Council for Physical Disabilities (SCPD); and, the Division of Vocational Rehabilitation (DVR) offered the following concerns, observations and recommendations summarized below. DSS has considered each comment and responds as follows.

## DDC, GACEC, SCPD

First, the current regulations authorize eligibility in the child subsidy program if needed for the parent(s) “to attend school or participate in a training program which leads to employment”. DSS is now limiting this authorization to person participating in “a DSS Employment and Training program”. See Summary of Provisions, Par (2); Section 11002.2B; Section 11003A3 and 4; Section 11003.7.4; and Section 11003.7.5. In this context, we have the following concerns and recommendations:

A. Although the Summary, Par 2, at 10 DE Reg. 448, recites that GED preparation not linked to a DSS Employment and Training Program may justify child subsidy program participation, this concept is absent from the actual regulations.

**Agency Response:** GED preparation is not absent from the regulation. Please see DSSM 11003.7.5, item A.

B. Although Section 11004.7 contemplates “teen parents attending high school or a high school equivalent” participating in the child subsidy program, such attendance would no longer count under the revised standards limiting “countable” school attendance to DSS Employment and Training programs.

**Agency Response:** DSS fully supports teen parents attending high school or a high school equivalent to complete their high school education. The Child Care Subsidy Program is a support program for both the TANF and Food Stamp E & T programs. School can be counted towards TANF participation but not as a core activity.

C. There is some inconsistency in the regulations since some provisions (e.g. Sections 11003.7.4, 11003.7.5, and 11003.8) only “count” two DSS training programs (Food Stamp and TANF-related) while other regulations (Section 11002.2) “count” and DSS employment and training program. It would be preferable to be consistent and adopt the broader standard. Even if the Food Stamp and TANF programs are the primary training programs, there may currently or prospectively be other training programs which should be “counted”.

**Agency Response:** DSS has only two Employment and Training Programs, Food Stamp and TANF. These programs will contain many activities or components that may change over time. Child Care services can be provided for participation in any activity or component under these two programs and only these two programs.

D. In a similar context, it would be highly preferable to also “count” participation in vocational activities consistent with a DVR individual employment plan (“IPE”) or pursuant to an assigned SSA Ticket to Work. These are government programs designed to promote employment of persons with disabilities. Without access to the child subsidy program, participants will face unnecessary barriers to participation in these government-sponsored work incentive programs. We recommend that DSS consult DVR for perspective.

**Agency Response:** DSS supports participation with the Department of Labor (DOL), the Division of Vocational Rehabilitation (DVR) and the Division of Employment and Training (DOL E & T). Currently, all TANF Employment and Training programs are contracted through the DOL E&T Division. If applicable, these contractors will refer TANF clients to DVR for assistance and Child Care services will be available as they currently are to all TANF E&T participants.

Second, Section 11003.4.6 recites that “DCSE will handle the fair hearing requests on issues of non-cooperation and good cause claim”. Although the DCSE is part of DHSS, DSS regulations technically cannot bind the DCSE. If not already secured, it would be preferable to have an MOU or similar explicit commitment from the DCSE to accept this role and responsibility.

**Agency Response:** As previously stated, section 11003.4 and various subsections have been revised to clarify that DCSE will be conducting Fair Hearings and by adding a reference to the current Fair Hearing policy section.

Third, DSS is eliminating the following basis for eligibility in Section 11004.7:

3. Families where the need for services is solely based on the special needs of the child or the caretaker parent.

This could have a major impact on parents with disabilities and children with disabilities. The existing

provision is consistent with other regulations which authorize eligibility for parents with disabilities and children with disabilities. See Section 11003, first sentence, and Pars A and B; Section 11003.4.7, Par, 2b); Section 11003.7.8; and Section 11003.8.

**Agency Response:** Regarding your statement that DSS is eliminating eligibility to families where the need for service is based on special needs and Section 11004.7. is referenced. Please see section 11004.7. This section does not deal with eligibility; it defines the *Determination of the Child Care Parent Fee and Fee Waiving Situations*.

## DVR

DVR has also reviewed the letter sent to you by the State Council for Persons with Physical Disabilities (SCPD) and we would like to share our concerns with the proposed regulation and its impact on individuals with disabilities involved with Vocational Rehabilitation Services.

First, DVR frequently has consumers, both adults and teenagers, involved with GED programs who require child care subsidies so we are concerned that although the Summary, Par 2, at 10 DE Reg. 448 recites, that GED preparation not linked to a DSS Employment and Training Program may justify child care subsidy program participation, this concept is absent from actual regulations and Section 11004.7 contemplates "teen parents attending high school or high school equivalent" participating in the child subsidy program, such attendance would no longer count under the revised standards limiting "countable" school attendance to DSS Employment and Training programs. Plus in a similar context, it would be highly preferable to also "count" participation in vocational activities consistent with a DVR individual employment plan ("IPE") or pursuant to an assigned SSA Ticket to Work. These are government programs designed to promote employment of persons with disabilities. Without access to the child subsidy program, participants will face unnecessary barriers to participation in these government-sponsored work incentive programs.

Second, DSS is eliminating the following basis for eligibility in Section 11004.7:

3. Families where the need for services is solely based on the special needs of the child or the caretaker parent.

This could have a major impact on parents with disabilities and children with disabilities. The existing provision is consistent with other regulations which authorize eligibility for parents with disabilities and children with disabilities. See Section 11003, first sentence, and Pars A and B; Section 11003.4.7, Par 2 b); Section 11003.7.8; and Section 11003.8.

**Agency Response:** DSS appreciates the comments submitted by the Division of Vocational Rehabilitation (DVR). DVR's comments echo the concerns and recommendations previously cited. Please see the agency responses above.

### Findings of Fact

The Department finds that the proposed changes as set forth in the September 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Child Care Subsidy Program is adopted and shall be final effective December 10, 2006.

Nov. 14, 2006  
Date of Signature  
Vincent P. Meconi, Secretary, DHSS

## DSS FINAL ORDER REGULATION #06-49 REVISIONS:

### 2013 Verification

In general all categorical eligibility factors must be verified before assistance can be authorized unless

policy specific to that factor indicates that verification can be delayed.

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.

Close the assistance case of a recipient who fails, without good cause, to complete the redetermination review. Likewise, close the assistance case of a recipient who fails, without good cause, to provide requested information necessary to establish continued eligibility.

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. The penalties for non-cooperation in developing the Contract and/or following through with the required components of the Contract are also detailed.

Refer to DSSM 2001 for specific information regarding timeframes for returning verifications and noticing requirements.

Recipients are required to verify changes in circumstance within ten (10) days of the report of the change.

### **2013.1 Income and Eligibility Verification Systems (IEVS)**

The purpose of the Income and Eligibility Verification Systems is to obtain and verify income information relevant to determining eligibility and benefit amounts in the TANF, FS, Child Care, and Medicaid programs through a series of computer matches and on line interfaces. In IEVS, the Division will obtain:

- Unearned income data from the Internal Revenue Service (IRS).
- RSDI, SSI, pension, self employment earnings, wage data and verification of Social Security Numbers from the Social Security Administration (SSA).
- Wage data and UC data from the Delaware Department of Labor (DOL).
- Licensed motor vehicle ownership data from the Delaware Division of Motor Vehicles (DMV). The address reported to DMV of each person holding a Delaware driver's license is also available through this system.

Information obtained through IEVS will enable the Division to:

- Identify unreported or discrepant income information.
- Discourage new applicants from attempting to receive benefits to which they are not entitled.

Except for IRS information, IEVS data is stored in DCIS and can be viewed by accessing the system (see the DCIS User Guide for instructions). IRS information is not stored in DCIS. It is available in hard copy only and is safeguarded according to IRS regulations.

### ***(Break in Continuity of Sections)***

## **11002 Administration**

This section discusses the following administrative policies:

- A. Purpose of Delaware's Child Care Subsidy Program,
- B. Goals,
- C. Services Provided,
- D. Persons Eligible,
- E. Responsibility for the Administration of Delaware's Child Care Subsidy Program,
- F. Legal Authority,
- G. Other Administrative Policies,
- H. Seamless Services, and
- I. Definitions and Explanation of Terms.

### **11002.1 Purpose Of Delaware's Child Care Subsidy Program**

The purpose of Delaware's Child Care Subsidy Program is to provide support to Delaware families who need care and who need otherwise cannot pay for all or part of the cost of care.

**9 DE Reg. 572 (10/01/05)**

**11002.2 Goals**

The goal of the Child Care Subsidy Program is to supplement the care and protection that children receive from their parents. This supplemental care is necessary when parents/caretakers must be apart from their children during a portion of a 24-hour day because:

- A. the children's parents/caretakers work,
- B. the children's parents/caretakers must participate in a DSS Employment and Training program and attend school or participate in a training program which leads to employment,
- C. the children or parents have a special need requiring either one of them to be out of the home, or
- D. the children need to be protected from neglect and/or abuse.

Child care provided under these circumstances enables families:

- A. to achieve and maintain independence;
- B. to provide care, protection, health, supervision, social experience and learning opportunities which are essential to a child's growth and development; and
- C. to maintain the bonds of family unity.

***(Break in Continuity of Sections)***

**11002.7 Other Administrative Policies**

~~Child Care~~ Case Managers are to view Child Care Policy as an extension of the DSS Policy Manual. It is part of the whole. Therefore, policies on Administration and Fair Hearings contained in DSSM 1000 and DSSM 5000 equally apply to the Child Care Subsidy Program and the Case Managers who administer it.

Specifically, Case Managers ~~in the Child Care Subsidy Program~~ must be familiar with the following corresponding policies on Administration:

- 1002 - Courteous Treatment of Clients
- 1003 and 1003.1 to .4 - Confidentiality
- 1004 - Records to be Kept in Locked Files
- 1005 and 1005.1 - Case Record Maintenance and Retention
- 1006 and 1006.1 to .7 - Civil Rights and Non-Discrimination
- 1007 and 1007.1 to .6 - Complaint Procedures
- 1008 - Availability of Program Manuals
- 1009 - Procedures for Serving Non-English Speaking Hispanic Clients
- 1010 - Procedures for Serving Hearing Impaired Clients

In addition, ~~Child Care~~ Case Managers must be familiar with the entire section of DSSM 5000, Fair Hearing Procedure Manual Practices and Procedures.

***(Break in Continuity of Sections)***

**11003 Eligibility Requirements**

DSS provides child care services to eligible Delaware families with a child(ren) who resides in the home and who is under the age of 13, or children 13 to under 19 who are physically or mentally incapable of caring for themselves or are active with the Division of Family Services.

Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division

is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, asylee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who have worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction.

The Division will provide Child Care services for eligible families where there is at least one U.S. citizen or legal alien in the family. If one member of the family is a U.S. citizen or legal alien and they meet both technical and financial eligibility criteria Child Care Services can be provided. The Division will evaluate non-U.S. citizen cases on an individual basis.

Non-US citizens referred to the Child Care subsidy program through the Division of Family Services, due to a protective need, are eligible to receive services regardless of their citizenship status.

A family needs service when parents/ caretakers are required to be out of the home, or are reasonably unavailable (may be in the home but cannot provide supervision, such as a parent works a third shift, is in the home, but needs to rest), and no one else is available to provide supervision.

- A.
1. accept employment,
  2. keep employment,
  3. participate in a training component, as part of one of the DSS Employment and Training programs, leading to employment,
  4. participate in an education component, as part of one of the DSS Employment and Training programs,
  5. work and the other parent/caretaker or adult household member is chronically ill or incapacitated,
  6. have someone care for the children because of a parent/caretaker special need.
- B. A child(ren) needs service to:
1. provide for a special need (physical or emotional disabilities, behavior problems, or developmental delays, etc.);
  2. provide protective supervision in order to prevent abuse or neglect.

In addition to having an eligible child and a child care need, certain DSS eChild eCare programs require parents/ caretakers to meet income limits. Under certain other eChild eCare programs, DSS guarantees child care. These financial requirements along with other technical requirements help determine the parent/caretaker's child care category. Categories relate to the funding sources used by DSS to pay for eChild eCare services. The following sections discuss the technical requirements for child care services based on category and need.

**9 DE Reg. 572 (10/01/05)**

*(Break in Continuity of Sections)*

**11003.4 Reserved Child Support**

As part of the Child Care eligibility process, all applicants must ~~assign to the State of Delaware their rights cooperate with the Division of Child Support Enforcement~~ to receive spousal support for themselves and child support for the dependent children in their care. As part of this process, applicants and recipients must cooperate, unless ~~good cause a good faith effort~~ is established, in:

1. Identifying and locating absent parents;
2. Establishing paternity for dependent children born out of wedlock; and
3. Establishing support payments and/or other properties for the dependent child.

The Division of Child Support Enforcement (DCSE) is the single State agency that is empowered to:

1. Establish paternity of and secure support for children born out of wedlock;
2. Secure support from parents who have abandoned or deserted their children; and
3. Enter cooperative arrangements with appropriate courts and law enforcement officials in order to

establish support.

Before approving a Child Care case, DSS will refer applicants to the DCSE to begin the process of securing support payments. While assistance is received, any spousal or child support payments made on behalf of a recipient will be paid to DCSE. Once support has been established DCSE will send checks to the Child Care applicant/recipient.

The ~~[assignment of support rights~~ requirement to cooperate with DCSE] covers all Child Care applicants.

The child support payments are considered income for the purpose of determining financial eligibility and parent fees for Child Care cases.

#### **11003.4.1 Cooperation Responsibilities**

Clients must cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility. 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 ~~[good cause this]~~.

In order to identify and locate absent parents, establish paternity, and obtain support payments and/or other property, applicants or recipients of Child Care services are required to participate in the following activities, if relevant:

1. To appear at an office of DSS or the Division of Child Support Enforcement to provide verbal or written information or documentary evidence known to or possessed by the applicant or recipient;
2. To appear as a witness at judicial or other hearings or proceedings;
3. To provide information or to attest to the lack of information under penalty of perjury.

#### **11003.4.2 Penalties for Child Support Non Cooperation**

Failure of a parent/caretaker~~[without good cause,]~~ to cooperate with and provide information to the DCSE will result in a Child Care case closure until compliance. Purchase of Care applicants who do not cooperate with or provide requested information to DCSE, will have their Child Care case closed until they cooperate.

#### **11003.4.3 Curing Child Support Penalties**

To cure the child support sanction, the caretaker will provide sufficient information to permit Delaware to pursue child support collections on behalf of needy children.

#### **11003.4.4 Good ~~[Cause Faith]~~ Determination**

It is the responsibility of the Division of Child Support Enforcement (DCSE) to determine if ~~[good cause there is an acceptable reason]~~ for refusing to cooperate. ~~[exists]~~ When ~~[good cause this]~~ is determined to exist, the applicant may participate in the Child Care program and will not be required to cooperate in support collection activities.

#### **11003.4.5 Enforcement Without the Caretaker's Cooperation**

When ~~[good cause an acceptable reason]~~ for non-cooperation exists, DCSE must decide whether or not child

support enforcement activities can proceed without risk to the child or caretaker if the enforcement activities do not include cooperation. DSS will ask the applicant if he/she believes that enforcement activities can proceed and will relay that information to DCSE.

If a DCSE recommendation is to proceed with enforcement activities, DSS will notify the applicant and give the applicant the opportunity to withdraw the application or close the case before enforcement activities begin.

## **11003.4.6 Fair Hearings**

Applicants and recipients have the right to request a fair hearing if they disagree with any DSS [decision. See DSSM section 5000. ~~or DCSE decision made in regard to the child support assignment, non cooperation, or good cause claim issues.~~] DCSE will [handle the fair hearing requests schedule and conduct fair hearings] on issues of non-cooperation and [good cause claim parents good faith efforts to establish paternity and secure child support].

## **11003.4.7 Child Support Enforcement Procedures**

1. At the eligibility interview, the DSS worker will explain[~~as outlined on Form 200 and Form 204, the automatic assignment of support rights.~~] the client's responsibilities in relation to securing support and the circumstances that [constitute good cause are acceptable] for refusal to cooperate. The applicant and worker will sign [Form 200 and] Form 204. A copy of [each form Form 204] will be given to the applicant.

2. At the time of application, if applicants have at least the minimum information required for child support case initiation [and do not claim good cause], DSS staff should initiate the child support case via the computer. DSS assumes cooperation unless otherwise notified by DCSE.

An interview with the DCSE is waived in the following cases:

- a) Child Care cases where there are no children with absent parents;
- b) Child Care cases where deprivation is based on incapacity;
- c) Child Care cases in which [good cause has been determined to exist. ~~Good cause is determined by DCSE~~ an acceptable reason for non-cooperation has been determined by DCSE];
- d) Child Care reapplications where the caretaker has previously cooperated with the Division, and the absent parents involved in the case are the same individuals that were involved when the case was previously open.

3. When the DCSE indicates that the caretaker has been uncooperative, the Child Care case is closed.

4. [If good cause is claimed, the client is asked to provide evidence to verify the claim. The client is responsible for proving necessary verifications] to DCSE.

9 DE Reg. 572 (10/01/05)

*(Break in Continuity of Sections)*

## **11003.7.4 Income Eligible/Training**

Parent/caretakers who participate in a ~~training program~~ DSS Food Stamp or TANF Employment and Training program can continue receiving child care services for the duration of their participation as long as:

- A. the training was part of a TANF or Food Stamp Employability Development Plan; ~~or~~ and
- B. there is a reasonable expectation that the training course will lead to a job within a foreseeable time frame (6 to 18 months), such as persons participating in apprenticeship programs, on-the-job training programs, or vocational skill programs.

Child care services can continue for up to one month to allow for breaks between training programs or to allow for an employment search upon completion of training.

**11003.7.5 Income Eligible/Education and Post-Secondary Education**

Parents/caretakers who participate in education and post-secondary education can receive income eligible eChild eCare for the duration of their participation as long as:

- A. their participation will lead to completion of high school, a high school equivalent or a GED; or
- B. their participation in post-secondary education was part of a DSS TANF Employment and Training program; or
- C. their participation in post-secondary education began while participating in the DSS Food Stamp Employment and Training (FS E and T) program; and
- D. there is a reasonable expectation that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, medical technology students, secretarial or business students.

DSS will not authorize child care services for parents/caretakers who already have one four year college degree or are in a graduate program.

**9 DE Reg. 572 (10/01/05)**

**11003.7.6 Income Eligible/Protective Child Care**

DSS will provide child care services for children who need to receive or who receive protective services from the Division of Family Services exclusive of other child care needs. DSS will also give service priority to protective children, meaning DSS will provide an exemption to protective children during a waiting list period. However, by agreement with the Division of Family Services, this exemption will only exist for a limited number of protective children. Currently the limitation is 280 children, but is subject to change based on available funding and forecasted need. ~~(An Interagency Agreement exists between the Department of Services For Children, Youth and Their Families, Division of Family Services, and the Department of Health and Social Services, Division of Social Services.)~~

**11003.7.7 Income Waiver**

DSS will waive the 200 percent income eligibility limitation for families when the child is receiving or needs to receive protective services. The need for care in this instance is coordinated with the Division of Family Services and is part of a range of services being provided to and/or required of the parent to help ensure the protection of the child.

**11003.7.8 Special Needs Children**

The designation of special needs impacts both eligibility and parent fees.

See section 11004.7 to determine eligibility for waiving the parent fee.

**Eligibility**

A family can be eligible for Child Care for a child that is between ages 13 and under 19 if the child has a special need that requires child care. This would mean the child is unable to care for himself physically or emotionally, or Division of Family Services (DFS) has referred the child for care due to a protective need.

Families with special needs children or adults must meet the need for services and income eligibility.

**EXAMPLE:** A financially eligible family with two working parents requests child care for their 14 year old child with Downs Syndrome. The 14 year old is incapable of caring for himself due to the Downs Syndrome. They would be eligible for Child Care due to the special needs of the child.

The special need of a child or an adult that directly results in the need for child care can in itself be the need for

care when determining eligibility as long as they meet financial eligibility.

EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their 12 month old child with a developmental delay. In this case if it is verified that the child needs child care services to assist in increasing the development of the child, they would be eligible.

EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their two children ages 2 and 4. The mother was involved in a car accident and is unable to get out of bed. The special need of this mother would be the need for care.

All special needs for both the child and adult must be verified by using the Special Needs form.

~~Parent fees can be waived only in accordance with section 11004.7.~~

Special circumstances within a family may be considered on a case by case basis when determining the need for child care. These cases must be approved by the Child Care Administrator.

EXAMPLE: Two older grandparents have custody of their 4 yr old grandchild. The grandmother is unable to care for the child due to health reasons and the grandfather would like to look for work. There is no need for care since the grandfather is in the home. The circumstances of this four year old could qualify the grandparents for special needs child care. In this case still try to get a special needs form filled out that would address the 4 yr olds need to be in a day care setting with other children to enhance the child's social and emotional development.

Division of Family Services

DFS cases meet the need for service due to the DFS referral. DFS cases do not need to meet financial eligibility. DFS cases that are non citizens and do not meet our citizenship criteria are eligible for services due to the DFS referral. DCIS II Child Care Sub system would place these cases in Category 51.

Parent fees may be waived for DFS cases on a case by case basis, with supervisory approval.

**9 DE Reg. 572 (10/01/05)**

## **11003.8 Necessity of Child Care**

For parent/caretakers to receive child care services, DSS will need to consider whether child care is necessary. Child care will be considered necessary when:

- A. the child is not in school during the hours of the parent/caretaker's employment; or
- B. the child is not in school during the hours of the parent/caretaker's participation in a training or education component of a DSS Food Stamp or TANF Employment and Training program; or
- C. ~~in all cases of two parent households, both parents must have a need for child care in order for DSS to provide child care services, for example~~ both parents in a two parent household have a need for child care.  
For example:

- 1. in two parent households both parents work; or
- 2. one works and the other has another need (such as education or training), is incapacitated (a parent who needs to participate in in-patient rehabilitation is included in the meaning of incapacitated) or is unavailable (such as one parent works the late shift and needs to sleep during the day while the other parent works); or
- D. there is no other ~~legally~~ responsible and capable adult in the household (such as another family member).

DSS will make an exception in the last case if the other adult household member is incapacitated, the child is at risk of abuse, or the age or disposition of the other adult makes it unlikely to expect him/her to provide care (such as grandparents are not required to provide care if they are not inclined to do so on their own).

*(Break in Continuity of Sections)***11004.2.1 Conducting the Interview**

The interview will include:

- A. an evaluation of parents/caretakers need for child care services (see Section 11003);
- B. a determination of financial eligibility as needed;
- C. an assessment of the family's child care needs as well as the needs of the child(ren) to be placed in care;
- ~~D.~~ D. an explanation of the Child Support Cooperation requirement;
- ~~E.~~ E. an explanation of the available types of child care; the choices parents/caretakers have regarding these provider types; the various provider requirements regarding licensure, possible co-pays, health, and safety, including record of immunization; and required child abuse and criminal history checks;
- ~~F.~~ F. an explanation of DSS payment rates and parent fee scale, including a discussion of how fees are assessed, where fees are to be paid, what happens if the fee is not paid, and how parents/caretakers are to keep DSS informed of changes that affect fees;
- ~~G.~~ G. an explanation of parents/ caretakers rights and responsibilities;
- ~~H.~~ H. completion of the Application for Child Care Assistance, and as applicable completion of the Child Care Authorization and the Child Care Payment Agreement form; and
- ~~I.~~ I. verification of appropriate information establishing need and income.

The entire process, from the time when parents/caretakers make an informal request for child care to the time when a decision is finally made, should take no longer than one month.

Parents/caretakers who fail to keep their initial appointment for an interview are given the opportunity to reschedule.

**9 DE Reg. 572 (10/01/05)**

*(Break in Continuity of Sections)***11004.3 Review and Verification of Eligibility Requirements**

As part of the formal application process, use the parents/caretakers interview to review and verify eligibility requirements. This interview will always include an evaluation of the parents/caretakers need for child care and, as appropriate, a determination of financial eligibility. Section 11003, Eligibility Requirements, provides guidance for this review.

When a parent/caretaker makes a contact to inquire about child care, ask the following questions of the parent/caretaker to determine and verify need (these questions follow the eligibility requirements noted in Section 11003 and match DCIS II Child Care Sub system need codes.

- A. Is the parent/caretaker employed or in need of child care to accept employment? (Category 12 for TANF employed or Category 31 if not on TANF) The caretaker must be part of the TANF grant to be a Category 12.
- B. Is the parent a TANF Employment and Training participant and needs care to participate in a TANF Employment and Training activity? (Category 11)
- C. Is the parent/caretaker a Food Stamp Employment & Training (FS E&T) participant? (This is Category 21.)
- D. Is the parent/caretaker a self-initiated participant (TANF, a mandatory or voluntary Food Stamp Employment & Training (FS E&T)? (This is Category 21.)
- E. Is the parent/caretaker in and regularly attending a training program or going to school? (Category 31)
- F. Is a special needs child or parent/caretaker in the household? (Category 31)
- G. Is there a protective referral from Family Services? (Category 31)
- H. If the parent/caretaker meets a Category 13 or 31 need, is the family income equal to or below 200

percent of the federal poverty level?

Use the appropriate documents identified in Section 11004.2 to verify the need for service. However, verification will not delay authorization of service in the event documentation is not immediately available. Authorize service while allowing parents/caretakers ten days to provide the appropriate verification. If the client is applying for services the system will automatically determine eligibility for Presumptive Child Care. The system will generate the appropriate notices, request the information and end date the authorization. If the client does not meet presumptive requirements and fails to provide requested information the system will close the case and give appropriate notice. (For more detail on Presumptive Child Care see section 11004.8)

**9 DE Reg. 572 (10/01/05)**

### **11004.3.1 Service Priorities**

In addition to the eligibility questions in Section 11004.3, determine if the applicant meets a priority for service. If the applicant has a need, but is not a service priority, services may be delayed. Delay services by placing non-service priority applicants on a waiting list while authorizing service for those who are a priority. The following families qualify for priority service:

- A. TANF recipients who are Workfare mandatory and not working (Category 11);
- B. TANF recipients who are working; (Category 12);
- C. Individuals receiving FS who are mandatory E&T participants; (Category 21);
- D. Families in Category 31 with the following need for service:
  - 1. teen parents who attend high school or ABE or GED programs,
  - 2. special needs parent/caretaker or child, and
  - 3. homeless families as defined in Section 11003.7.2;
  - 4. families who meet the ~~75%~~ 40% of FPL criteria in Section 11004.7
- E. protective children as referred by Family Services up to the number agreed

upon between DSS and Family Services.

Parents/caretakers in the above circumstances will continue to receive child care services as long as they meet the service need and they continue to meet program requirements, e.g., they continue in Food Stamp Employment & Training (FS E&T).

**9 DE Reg. 572 (10/01/05)**

### *(Break in Continuity of Sections)*

### **11004.7 Determination Of The Child Care Parent Fee and Fee Waiving Situations**

Under regulations, eligible families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a DSS child care parent fee. DSS, however, provides child care services to certain families at no cost. Part of the process after determining the client's financial eligibility and need for child care would be determining the parent fee and which families should have their parent fee waived.

~~All~~ Child care fees ~~will~~ may be waived if the family meets one of the ~~six (6)~~ five (5) conditions below.

- 1. ~~On a case by case basis, F~~ families active with and referred by the Division of Family Services (DFS) including foster care families. This requires supervisory approval.
- 2. Families in Delaware's TANF Program in Categories 11 and 12, and General Assistance (GA) families.
- 3. ~~Families where the need for service is solely based on the special needs of the child or the caretaker/parent. Families must first be financially eligible for Child Care Services. (See policy section 11003.7)~~

~~EXAMPLE: A family consisting of a working mother and two children applies for Purchase of Care. One child has ADD/HD and mom needs child care because she is working. The parent fee for the child with ADD/HD would not be waived due to special needs. The need for care is based on her employment not the special~~

need.

~~EXAMPLE: A family consisting of a working father, stay at home mother and two children applies for POC. They are income eligible and the mom states she needs childcare because her one child is developmentally delayed and needs increased socialization. If this is verified by a professional on the Special Needs form 611, they may receive child care for that child based on the special need and the parent fee for that child will be waived. (Note, the only need for child care is due to the child's special need, Mom is at home so there would not otherwise be a need for POC.)~~

~~4.3.~~ Caretakers in Category 31 caring for a child/ children who receive TANF or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles, etc.).

~~5.4.~~ When paying the fee creates an excessive financial burden. Excessive financial burden is defined as a situation where the family's disposable income prior to the deductions or after the deductions, result in the family having income below ~~75%~~ 40% of the federal poverty level. Deductions are limited to:

rent, mortgage, lot rent;

any mandatory expenses required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);

actual current monthly utility expenses (e.g., electric, gas, trash, water and sewer). Late fee's and past due amounts are not included.

telephone expenses are capped at the same rate as the FS standard deduction for telephone bills;

un-reimbursed medical costs (Before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or the DHCP. The DHCP premiums are included in the un-reimbursed medical cost deductions. Any un-reimbursed medical costs not covered by Medicaid or the DHCP will be considered as a deduction to determine the family's income for excessive financial burden.)

EXAMPLE:

A family of three has gross monthly income of ~~\$1,417.00~~ \$1,300.00. The parent fee for this family would be ~~23%~~ 16% of the cost of care. The rent payment for this family is ~~\$550~~ \$600/ month. Utility expenses are \$20 for phone and ~~\$65~~ \$165 for electric.

Total income per month equals:	<del>\$1,417.00</del> <u>\$1,300.00</u>
Total expenses are:	<del>\$ 635.00</del> <u>\$785.00</u>
After deductions:	<del>\$ 782.00</del> <u>\$515.00</u>

~~\$782.00~~ \$515.00 is less than ~~\$954.00~~ \$553.00, ~~75%~~ 40% of the federal poverty level for a family of 3, so this family can have the parent fee waived.

EXAMPLE:

A family of four has a gross monthly income of \$2,203.00. The parent fee for this family would be 44% of the cost of care. The rent payment for this family is \$600/ month. Utility expenses are \$20 for phone and \$165 for electric.

Total income per month equals:	\$2,203.00
Total expenses are:	\$785.00
After deductions:	\$1,418.00

\$1,418.00 is more than ~~\$1,150.00~~ \$666.00, ~~75%~~ 40% of the federal poverty level for a family of 4, so this family will not have the parent fee waived.

~~6.5.~~ Teen parents 18 years old or younger attending high school or a high school equivalent. All requests to waive the fee must be documented in the case file and be approved by the unit supervisor.

As is the case with income, a person who acts as a child's caretaker, as defined in Section 11002.9, pays a child care fee based only upon income attributable to the child, unless the family meets one of the waived fee conditions above.

**8 DE Reg. 1310 (3/1/05)**

## DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Council on Apprenticeship and Training

Statutory Authority: 19 Delaware Code, Section 202(a) (19 Del.C. §202(a))

### ORDER

#### Rules and Regulations Relating to Apprenticeship and Training Law

A public hearing was held on October 5, 2006 to receive public comments relating to proposed changes to Regulation 9.0 – Related Instruction Requirement and the substitution of “Industrial Affairs” for “Employment and Training” throughout the entire Rules and Regulations. The members of Council present recommended that the Secretary of Labor adopt the proposal as it was published in the *Register of Regulations*, Vol. 10, Issue 3 (September 1, 2006).

#### Summary of the Evidence and Information Submitted

Exhibits Admitted:

Exhibit 1 – *News Journal* Affidavit of publication of notice of public hearing.

Exhibit 2 – *Delaware State News* Affidavit of publication of notice of public hearing.

Two individuals addressed the Council. First, Joe Potochney, Principal of New Castle County Vo-Tech, Adult Education (“NCC Vo-Tech”), stated that although he was in favor of the reduction in absences he was concerned with the current shortage of construction workers. Mr. Potochney identified that there is no policy in place for excused absences at NCC Vo-Tech. Further, students, on occasion, miss classes because they are required to work overtime or are working at a location far from school. With regard to these concerns, Mr. Potochney requested that the Council consider making the sponsors more accountable for the attendance of the students.

Mr. William E. Feher, Sussex Vo-Tech, Adult Education, next addressed the Council. Mr. Feher echoed the comments of Mr. Potochney in favor of the reduction of the number of absences permitted. Additionally, Mr. Feher supported sponsor accountability. Lastly, Mr. Feher stated that he would not be in favor of any further reduction in the number of absences.

In response to the public comments, the Council discussed the possibility of a letter to sponsors detailing the attendance policy.

#### Recommended Findings of Fact with Respect to the Evidence and Information

The Council is persuaded that these changes are consistent with the current administration of the program.

#### Recommendation

The proposed changes are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 18th day of October, 2006.

#### COUNCIL ON APPRENTICESHIP AND TRAINING

Robert Buccini, Chairman  
Dale Derrickson  
R. Joseph Johnson  
Albert Bradbury

Patricia Creedon  
Andrew S. Nowell  
David G. Kitto

**Decision and Effective Date**

Having reviewed and considered the record and recommendations of members of the Council on Apprenticeship and Training, the proposed changes to (1) Regulations Regulation 9.0 is hereby adopted and made effective August 15, 2007, and (2) to substitute a reference to Industrial Affairs everywhere there was a reference to Employment and Training in the Rules and Regulations is hereby adopted and made effective 10 days following publication of the final regulation in the *Register of Regulations*.

**Text and Citation**

The text appears in the Register of Regulations, Vol. 10, Issue 3 (September 1, 2006).

DEPARTMENT OF LABOR  
Thomas B. Sharp  
Secretary of Labor

**106 Apprenticeship and Training Regulations**

\* Please note that no changes were made to the regulation as originally proposed and published in the September 2006 issue of the *Register* at page 458 (10 DE Reg. 458). Therefore, the final regulation is not being republished. Please refer to the September 2006 issue of the *Register* or contact the Division of Industrial Affairs for more information.

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

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.**, Ch. 60)  
7 **DE Admin. Code** 1146

**Secretary's Order No. 2006-A-0056**

**Approving Electric Generating Unit Multi-Pollutant Proposed Regulation as Final Regulation No. 1146 to Delaware Regulations Governing Control of Air Pollution, and Approving Delaware's Proposed Section 111(d) State Plan for the Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units as a Final Planning Document**

Date of Issuance: November 15, 2006  
Effective Date: December 11, 2006

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 *et seq.*, 29 **Del.C.** §§10111 *et seq.* and 7 **Del.C.** §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in this proceeding. This Order approves an important Department regulation and a required planning document, which together will improve Delaware's air quality. In turn, these regulatory actions will benefit the public health and welfare of thousands of Delaware's residents and visitors.

The regulation approved today will impose lower emissions limits of three of the most harmful pollutants to Delaware's air quality, namely, nitrogen oxides ("NO<sub>x</sub>"), sulfur dioxide ("SO<sub>2</sub>") and mercury. These harmful pollutants will be reduced by the regulation's establishment of limits on Delaware's largest sources of such pollution, namely, the 8 coal and residual oil-fired electric generating units ("EGU") of 25 megawatts or more of generating capacity. EGUs subject to this regulation are Conectiv Delmarva Generating, Inc.'s Edge Moor Generating Station Units 3, 4 and 5, the City of Dover's McKee Run Generating Station Unit 3, and NRG Energy,

Inc/ Indian River Power LLC's the Indian River Generating Station Units 1, 2, 3 and 4. Together, in 2005 these units emitted 10,419 tons of NO<sub>x</sub> and 30,482 tons of SO<sub>2</sub>. This regulation reduces these levels to allowable 2009 emissions of 7,942 tons of NO<sub>x</sub> and 14,295 tons of SO<sub>2</sub>, or reductions of 24% and 53%, respectively. The regulation also imposes limits on mercury, which is a pollutant that prior to this Order was not subject to any regulatory limits or even monitoring.

This Order is based on a vast administrative record, including the public hearing record reviewed in the November 14, 2006, Hearing Officer's Report ("Report"), attached as Appendix C. I find that the proposed regulation and plan s well supported by technical expertise and sound judgment, is consistent with the law, and has a reasonable purpose that is consistent with the Department's statutory purposes. The Report reviews and summarizes the massive administrative record, including the public hearings, which were held in Dover, Kent County, in Georgetown, Sussex County, and in New Castle, New Castle County. Over a hundred persons participated in the public comment process by attending the public hearing or by submitting written comments. The Report recommends approval of the proposed regulation as a final regulation, except for non-substantive modifications recommended by the Department's experts based upon the public comments. In addition, the Report recommends approval of Delaware's Proposed Section 111(d) State Plan for the Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units as a Final Planning Document. I agree with the Report and adopt it as part of this Order along with its reasons.

The regulation approved by this Order will result in significant improvements to Delaware's air quality, which, in turn, will benefit Delaware's public health and welfare. The improved air quality will particularly benefit Delaware's children, the elderly, and those who suffer with an impaired ability to breathe. The improvements will occur in two phases, with Phase I limits beginning May 1, 2009, and Phase II limits beginning January 1, 2012.

The regulation requires that the air emissions of the three most harmful air pollutants be reduced from Delaware's oldest and highest emitting EGUs. These older units operate with minimal air pollution controls, particularly compared to newer units. There is no question that this regulation will result in cleaner air in Delaware. There is no question that one major benefit of cleaner air is its public health benefit, both the short-term benefit in lessening the suffering of those inflicted by impaired respiratory health and the long-term benefit in prevented adverse health damage, particularly in children. The regulation also will improve the environment with the aesthetic benefit of less haze, and provide an economic benefit of reduced morbidity and mortality costs, health care and health insurance costs, lost work time, etc., as well as less harm to Delaware's agriculture products. Should the EGUs install pollution control equipment, then that investment will provide a sizable economic benefit, particularly in the workers needed to install and operate the equipment.

This regulation will become part of Delaware's ozone and fine particulate matter State Implementation Plan ("SIP"), which is used to establish Delaware's compliance with the federal Clean Air Act ("CAA"), as amended. The SIP identifies the regulatory steps and information that the Department has undertaken and relied upon in order that Delaware's air will attain and maintain compliance with the CAA's air quality standards. Delaware must comply with the CAA and the Environmental Protection Agency's ("EPA") regulations that implement the CAA. The Department's experts have determined that this regulation is necessary to improve Delaware's air quality by the CAA's deadlines. The two phases of the regulation were designed to allow Delaware to meet the CAA's deadlines. This regulation, along with other regulatory actions the Department has taken and will continue to take, is part of the Department's overall effort to bring Delaware's air quality into compliance with the CAA's standards.

The Department determined that it was reasonable to address the three pollutants from coal or residual oil-fired EGUs with 25 megawatts or more of generating capacity. The Department's experts also indicate that these 8 units can install known and proven air pollution control equipment and/or make operational changes to comply with the regulation. The EGUs could also switch to cleaner fuels or even shutdown if the owners believe that the installation of the pollution control equipment is not cost justified on these old units. The Department cannot require the installation of pollution control equipment, but the CAA and the need to protect the environment and public health require that this regulation be approved even if the EGUs shutdown. The Department undertook the exercise of its power to regulate only after the EGUs were afforded an opportunity to provide their voluntary reductions to the emissions of these three harmful pollutants. The Department's efforts at voluntary compliance were unsuccessful, as the EGUs have not invested in the necessary pollution control equipment. The reason for the lack of investment to date is the equipment's considerable expense, and the lack of any regulatory mandate due to the EGUs' "grandfathered status" as older units built before the current air permit requirements. Nonetheless, this cost is one that the EGUs must accept as a cost of doing business in Delaware, which no longer

will be a safe haven for the continued operation of largely uncontrolled pollution from the EGUs.

This regulation is approved because the Department, acting on behalf of all Delawareans, is not willing to wait any longer for a business decision to install needed pollution control equipment. The EGUs emit more of the three harmful pollutants than any other sources in Delaware, and consequently harm Delaware's air quality more than any other sources. This harm to Delaware's air quality, in turn, causes numerous adverse health consequences to its residents and visitors.

There is a huge public health benefit from the cleaner air, although the economic valuation (lost work time, health care and insurance costs, and impaired quality of life diminished or cut short by exposure to polluted air, etc) is less readily quantified than a construction estimate for pollution control equipment. Nevertheless, EPA, in its Regulatory Impact Analysis for its federal regulation, determined that for each \$1.00 spent on pollution control equipment would produce a social value benefit of at least \$10 in ongoing annual health savings. Thus, the Department's regulation's cost to the EGUs is appropriate when measured by this far greater social benefit.

The 8 EGUs are older, but the age does not justify the continued release of harmful air emissions, often in or near densely populated residential areas and schools. Indeed, the public at the public hearings presented powerful comments on the adverse health consequences from adults and children's exposure to the EGU's harmful release of the three pollutants. Few of the Department's proposed regulations have received the amount of public support as this regulation received during the public hearing process, although some of the public sought even more stringent limits than the Department proposed.

Also, the CAA Section 111(d) plan, which includes the mercury portion of Regulation No. 1146, is finalized under this Order and will be submitted to the EPA. On May 18, 2005, the EPA finalized the Clean Air Mercury Rule (CAMR) to establish standards of performance for mercury emissions from new and existing coal-fired electric steam generating units, as defined in Section 111 of the federal Clean Air Act (CAA). Under CAMR, each state receives an annual budget for mercury emissions from coal-fired EGUs with a nameplate capacity larger than 25 megawatts. A State can meet its CAMR budget either by joining the EPA managed cap-and-trade program or by demonstrating that the State annual EGU mercury budgets codified in 40 CFR §60.24(h)(3) will not be exceeded in any year. Delaware's plan does not provide for participation in the EPA-managed cap-and-trade program, but instead establishes a program that is designed to achieve emission reductions and cap overall mercury emissions from EGUs within Delaware. Delaware's Regulation No. 1146 establishes both mercury emission rate limitations and mercury emission mass limitations. The mercury mass emissions limitations, expressed in tons per year, are those that will satisfy CAMR requirements. Both the emission rate and emission mass requirements require compliance on a unit-by-unit basis, and do not allow trading or facility-wide emissions averaging. Delaware is not adopting the federal mercury budget trading program under 40 CFR Part 60 Subpart HHHH. This means that both existing and new (i.e., construction after January 30, 2004) coal fired EGUs are subject to this regulation. A new unit set aside has been established to provide for new unit construction – a 5% set aside for Phase I is 0.0036 ton/yr (7.2 lb/yr) and the 3% set aside for Phase II is 0.0008 ton/yr (1.7 lb/yr). Any need beyond this will be addressed by revision to both Regulation No. 1146 and this plan to ensure annual mass emission from coal fired EGUs greater than 25 MW in size in Delaware will not exceed the annual mercury budget established under 40 CFR §60.24(h)(3).

This regulation shows that the Department's experts have struck a fair balance in determining the emission limits. They have relied upon accepted industry information that the pollution control equipment can be installed economically and in time. The EGUs should have planned for the installation of pollution control equipment long ago, but even with the December 11, 2006, effective date of this regulation, the Department has provided the EGUs with sufficient time for the pollution control equipment to be installed. Moreover, the law provides the EGUs with ample recourse. For example, the Administrative Procedure Act allows any person to petition for relief from a regulation, and the Department's statute also provides a relief mechanism in a variance. The Department also will be closely monitoring the EGUs progress, and reserves the right to review the limits and deadlines as may be warranted. The Department may undertake its own interim review of the time deadlines and limits as it deems appropriate, and the regulation's minor modification to Section 8.3 of Regulation 1146 offers another method of possible relief. This Order will formally set up an interim review of this Regulation by directing the Department undertake by January 11, 2010, a complete a review of the state of, and expected changes in, technology, cost effectiveness of available control technologies and control strategies, and emissions rates; as well as a review of the EGUs, and their emissions. This review shall be used to consider whether the standards in Section 4, 5, and 6 of Regulation 1146 should be amended, including new standards adopted, to ensure the continued improvement of the ambient air quality in Delaware.

The Department adopts this regulation to exercise the state's authority to protect the public health and environment. This state action is taken because the federal regulatory scheme under the federal Clean Air Act relies on a market based theory to encourage the investment in pollution control equipment. The Department's experts have shown that Delaware's experience with the federal cap and trade programs has not resulted in significant reductions from Delaware's EGUs. Moreover, the emissions of these three harmful pollutants are predicted by the Department experts to increase in the future under the federal CAIR and CAMR cap and trade programs. This situation is unacceptable for Delaware.

For Delaware, allowing market conditions to dictate if and when Delaware has cleaner air is contrary to this Department's statutory purposes. Without this regulation, the current situation of minimal investment in pollution control equipment will continue, and the failure to install the needed equipment will mean continued adverse health consequences to Delawareans. The owners of similar units have invested in pollution control equipment in other locations outside of Delaware, and the regulation seeks to require that Delaware receive the same pollution control equipment that has been installed at these locations. This regulation is Delaware's reasonable and prudent action to exercise state authority to regulate these 8 units to reduce their emission of harmful pollutants, which is an action consistent with protecting the public health and environment in Delaware.

The Report discusses the proposed regulation and recommends the changes proposed by the Division of Air and Waste Management's Air Quality Management Section in response to public comments. One change extends the compliance period to coincide with the Department's regulation on ozone attainment, and this clearly is a procedural and non-substantive change. The other change is to allow a procedure for a unit's owner to seek relief relative to timing. Again, I find the ability to seek relief from a regulation is an inherent right in the Administrative Procedure Act and that this change is procedural and not substantive in nature. Any appeal, if successful, will mean that Delaware will not have cleaner air sooner, and will not be able to comply with the CAA's deadlines.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts Regulation No. 1146 as set forth in the Appendix A hereto as a final regulation under 29 **Del.C.** §6010 (a);

2. The Department, acting through this Order of the Secretary, adopts the Section 111(d) plan, as proposed and updated as set forth in Appendix B, as Delaware's final planning document for submission to the EPA;

3. The approval of the final regulation and the plan as a final planning document, will protect and improve the air quality in Delaware from the harmful consequences of the emissions of mercury, SO<sub>2</sub> and NO<sub>x</sub> from the EGUs, which emissions are responsible for a large amount of the release of these pollutants in Delaware;

4. The proposed regulation and plan approved by this Order were developed consistent with the applicable law and regulatory standards, and are adequately supported by expert technical analysis, after considering all timely and relevant public comments;

5. The Department provided adequate public notice of the proceeding and the public hearings in a manner required by the law and regulations, held public hearings in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;

6. The Department's approved final regulation reflects recommended non-substantive minor modifications that do not change the limits or any substantive part of the regulation. These minor modifications and the regulation as a whole are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Approval of the final regulation and final plan are consistent with the Department's statutory duty to protect the public health and environment in Delaware. The final regulation and the final plan are approved and shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*; and that

7. The Department shall provide written notice to the persons affected by the Order, as determined by those who participated in these Department proceedings at either the public workshops, at the public hearings, or through participation by the submission of timely and relevant written comments.

John A. Hughes  
Secretary

**1146 Electric Generating Unit (EGU) Multi-Pollutant Regulations***(Break in Continuity of Sections)*

**3.0 Definitions:** The following words and terms, when used in this regulation, shall have the following meanings:

**"Administrator"** means the Administrator of the United States Environmental Protection Agency ~~of~~ or the Administrator's duly authorized representative.

**"Coal"** means any solid fuel classified as anthracite, bituminous, sub-bituminous, or lignite.

**"Coal-fired"** means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of other fuel, during any year.

**"Department"** means the State of Delaware Department of Natural Resources and Environmental Control as defined in Title 29, **Delaware Code**, Chapter 80, as amended.

**"Designated representative"** means the natural person who is authorized by the owners and operators of the source and all units at the source to legally bind each owner and operator in matters pertaining to this regulation. If the source subject to this regulation is also subject to the Federal Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

**"Emissions"** means air pollutants exhausted from a unit or source into the atmosphere.

**"Generator"** means a device that produces electricity.

**"Heat input"** means the product (in MMBTU/time or TBTU/time) of the gross calorific value of the fuel (in MMBTU/lb or TBTU/lb) and the fuel feed rate (in lb of fuel/time) into a combustion device; or as calculated by any other method approved by the Department and the Administrator, and does not include the heat derived from pre-heated combustion air, recirculated flue gasses, or exhaust from other sources.

**"Inlet mercury"** means the average concentration of mercury in the flue gas at the inlet to any pollution control device(s).

**"Nameplate capacity"** means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other de-ratings) as specified by the manufacturer of the generator or, starting from the completion of any physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other de-ratings), such increased maximum amount as specified by the person conducting the physical change.

**"Operator"** means any person who operates, controls, or supervises a unit or source subject to this regulation and shall include, but not be limited to, any holding company, utility system, or plant manager of such unit or source.

**"Ounce"** means 28.4 grams.

**"Owner"** means: A) any holder of any portion of the legal or equitable title in a unit; B) any purchaser of power from a unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from the unit.

**"Residual oil"** means No. 5 or No. 6 fuel oil.

**"Ton"** means 2000 pounds.

**"Unit"** means, for the purposes of this regulation, a stationary, fossil-fuel-fired boiler supplying all or part of its output to an electric generating device.

**4.0 NOX Emissions Limitations**

4.1 From ~~January~~ **May** 1, 2009 through December 31, 2011, no unit subject to this regulation shall emit NOx at a rate exceeding 0.15 lb/MMBTU.

4.1.1 Compliance with the requirements of paragraph 4.1 of this section shall be demonstrated on a rolling 24-hour average basis.

4.1.2 NOx emissions from multiple units subject to this regulation at a common facility may be averaged on a heat input basis to demonstrate compliance with the requirements of paragraph 4.1 of this regulation.

4.2 On and after January 1, 2009, no unit subject to this regulation shall emit annual NOx mass

emissions that exceed the values shown in Table I.

4.2.1 From January 1, 2009 through December 31, 2011, compliance with the requirements of paragraph 4.2 of this regulation may be achieved by demonstrating that the total number of tons of NOX emitted from a common facility does not exceed the sum of the tonnage limitations for all of the units subject to this regulation at that facility.

4.2.2 Compliance with the requirements of paragraph 4.2 of this regulation shall not be achieved by using, tendering, or otherwise acquiring NOx allowances under any state or federal emission trading program.

4.2.3 For the purpose of determining compliance with the requirements of paragraph 4.2. of this regulation, the total tons for a specified period shall be calculated as the sum of all recorded hourly emissions, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any remaining fraction of a ton less than 0.50 ton deemed equal to zero tons.

4.3 On and after January 1, 2012, no unit subject to this regulation shall emit NOx at a rate exceeding 0.125 lb/MMBTU, demonstrated on a rolling 24-hour average basis.

4.4 Compliance with the requirements of paragraphs 4.1 through 4.3 of this section shall be demonstrated with a continuous emissions monitoring system that is installed, calibrated, operated, and certified in accordance with 40 CFR Part 75 (May 18, 2005 amendment) or other method approved by the Department and the Administrator, and meeting the requirements of 40 CFR Part 96, subpart HH (April 28, 2006 amendment).

## **5.0 SO2 Emissions Limitations**

5.1 From ~~January~~ May] 1, 2009 though December 31, 2011, no coal fired unit subject to this regulation shall emit SO2 at a rate exceeding 0.37 lb/MMBTU heat input.

5.1.1 Compliance with the requirements of paragraph 5.1 of this section shall be demonstrated on a 24-hour rolling average basis.

5.1.2 SO2 emissions from multiple units subject to this regulation at a common facility may be averaged on a heat input basis to demonstrate compliance with the requirements of paragraph 5.1 of this regulation.

5.2 On and after January 1, 2012, no coal-fired unit subject to this regulation shall emit SO2 at a rate exceeding 0.26 lb/MMBTU heat input, demonstrated on a rolling 24-hour average basis.

5.3 On and after January 1, 2009, no unit subject to this regulation shall emit annual SO2 mass emissions that exceed the values shown in Table II.

5.3.1 From January 1, 2009 through December 31, 2011, compliance with the requirements of paragraph 5.3 of this regulation may be achieved by demonstrating that the total number of tons of SO2 emitted from a common facility does not exceed the sum of the tonnage limitations for all of the units subject to this regulation at that facility.

5.3.2 Compliance with the requirements of paragraph 5.3 of this regulation shall not be achieved by using, tendering, or otherwise acquiring SO2 allowances under any state or federal emission trading program.

5.3.3 For the purpose of determining compliance with the requirements of paragraph 5.3 of this regulation, the total tons for a specified period shall be calculated as the sum of all recorded hourly emissions, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any remaining fraction of a ton less than 0.50 ton deemed equal to zero tons.

5.4 Compliance with the requirements of paragraphs 5.1 through 5.3 of this regulation shall be demonstrated with a continuous emissions monitoring system that is installed, calibrated, operated and certified in accordance with 40 CFR Part 75 (May 18, 2005 amendment) or other method approved by the Department and the Administrator, and meeting the monitoring and reporting requirements of 40 CFR Part 96, subpart HHH (April 28, 2006 amendment).

5.5 On and after January 1, 2009, no residual oil with a sulfur content in excess of 0.5%, by weight, shall be received for any residual oil-fired unit subject to this regulation.

5.5.1 Compliance with the requirements of paragraph 5.5 shall be demonstrated by fuel oil sampling and analysis. Samples shall be collected:

5.5.1.1 From the transport vessel for each shipment of residual fuel oil received at the facility for combustion in the subject residual oil-fired unit, or

5.5.1.2 From the supply pipeline each day residual oil is delivered to the facility via

pipeline for combustion in a residual oil-fired unit subject to this regulation, after sufficient fuel oil has been drained from the sampling line to remove any fuel oil that may have been standing in the sampling line, or

5.5.1.3 From the supply pipeline at the inlet to the residual oil-fired unit subject to this regulation each day the unit fires any quantity of oil fuel, after sufficient fuel oil has been drained from the sampling line to remove any fuel oil that may have been standing in the sampling line.

5.5.2 Fuel oil samples shall be analyzed in accordance with ASTM D 129-00, ASTM D 1552-03, ASTM D 2622-05, or ASTM D 4294-03.

*(Break in Continuity of Sections)*

## **8.0 Compliance Plan**

8.1 The owner or operator of a unit subject to this regulation shall submit a compliance plan to the Department on or before July 1, 2007.

8.2 The compliance plan shall contain, at a minimum, the following information:

8.2.1 Identification of the subject unit.

8.2.2 A description of any existing NOX, SO<sub>2</sub>, and/or mercury emissions control technologies installed on the unit, including identification of the initial installation date of the control technologies.

8.2.3 Identification of the requirements of this regulation applicable to the unit.

8.2.4 A description of the plan or methodology that will be utilized to demonstrate compliance with this regulation.

8.2.5 Identification of emission control technologies, and/or modifications to existing emission control technologies, that will be utilized to comply with the applicable emissions limitations of this regulation. This shall include:

8.2.5.1 A description of the control technology and its applicability to the subject unit.

8.2.5.2 The design control effectiveness or design emission rate following installation of the emission control technology on the subject unit.

8.2.5.3 Estimated dates for start of construction, start-up of the emissions control technology, and estimated project completion date.

8.2.6 A description of the emissions monitoring methodology to be utilized for demonstrating compliance with the emissions limitations of this regulation, including estimated installation dates, start-up dates, and testing dates.

8.2.7 Identification of any planned changes to administrative or operating procedures or practices intended to achieve compliance with applicable emissions limitations of this regulation.

8.2.8 Any other relevant information requested by the Department.

8.2.9 A statement, "I am authorized to make this submission on behalf of the owners and operators of the affected facility or affected units for which this submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

8.2.10 Signature by the designated representative.

**[8.3 A facility that has submitted a complete compliance plan for its impacted units in accordance with the requirements of Section 8.0 of this regulation may on one occasion for each unit request an extension of up to one year for any deadline set out in Sections 5.1 and 5.3 of this regulation. The facility shall have the burden of demonstrating that good faith efforts have been made to comply with the original deadline; that the facility is unable to comply because of events or circumstances beyond the control of the facility, including any entity controlled by it; that the delay could not have been prevented by the facility's exercise of due diligence; and that the facility has taken all reasonable steps or measures to avoid or minimize the delay. The Secretary shall exercise his discretion to grant a request that satisfies all the criteria.]**

*(Break in Continuity of Sections)*

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\* Please note that no changes were made to the other sections of the regulation as originally proposed and published in the September 2006 issue of the *Register* at page 508 (10 DE Reg. 508). Therefore, the final regulation is not being republished. Please refer to the September 2006 issue of the *Register* or contact the Division of Air and Waste Management for more information.

A complete set of the rules and regulations for the Division of Air and Waste Management is available at: <http://www.state.de.us/research/AdminCode/title7/1000/index.shtml#TopOfPage>

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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 2701(d) (7 **Del.C.** §2701(d)  
7 **DE Admin. Code** 3215

**Secretary's Order No. 2006-F-0047**

**Approving Proposed Regulation 3215, Horseshoe Crab Harvest Moratorium, as a Final Regulation**

Date of Issuance: November 20, 2006  
Effective Date: December 11, 2006

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 et seq., 29 **Del.C.** §§10111 et seq. and 7 **Del.C.** §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in this proceeding. This Order approves proposed regulation 3215 as a final regulation, which will, beginning January 1, 2007, impose a two-year moratorium on the harvesting of horseshoe crabs.

The Department's Division of Fish and Wildlife ("DFW") prepared two regulatory options for the Department's consideration as final regulations. The approval of either of these options would allow Delaware to comply with its federal legal responsibilities established by the multi-state Atlantic States Marine Fisheries Commission ("ASMFC"). Option 1 includes proposed amendments to Department Regulations 3203, 3207, 3210, and 3212, which set forth the current Department regulations on horseshoe crabs under the Department's authority in 7 **Del.C.** 103, 1902, 2701, 2703 and Chapters 15 and 60. These regulations establish the seasons and areas, dredging restrictions, reporting requirements, license renewals, and an annual limit of 150,000 horseshoe crabs. Option 1 would make some reporting and other changes, and would reduce Regulation 3214's limit of 150,000 horseshoe crabs annually to a proposed limit of 100,000 male horseshoe crabs over a two-year period beginning January 1, 2007. Option 2 is a new proposed regulation 3215 that would impose a two-year moratorium on any horseshoe crab harvesting in Delaware. Based upon my review of the record, the Department adopts Option 2 as an appropriate and reasonable regulatory step to protect the environment consistent with the Department's statutory purposes. Unlike Option 1, Option 2 ensures that Delaware has undertaken the maximum regulatory effort to protect the horseshoe crab population and the migratory bird population that depends on horseshoe crabs for food. This action will protect Delaware's environment, including horseshoe crabs and the important and at risk migratory bird population. Thus, the Department approves Option 2's proposed regulation as a final regulation, and withdraws Option 1's proposed amendments.

This Order is based on a vast administrative record, including the public hearing record reviewed in the October 20, 2006, Hearing Officer's Report ("Report"), attached hereto as Appendix A. The proposed regulation approved by this Order was published in the September 1, 2006, *Delaware Register of Regulations*, and the final regulation is set forth in Appendix B hereto. The Report provides a thorough review of the record and the technical and scientific support for both options. These proposed regulations generated considerable public debate and comments. The Report reviews and summarizes the massive administrative record, including the public hearing held September 28, 2006, in Dover, Kent County. Both options were opposed by well-presented comments from those who will be harmed by Option 1's considerable decrease in the harvesting or the even greater harm from Option 2's total temporary ban on harvesting. This harm is an economic one based upon the privilege of conducting a business that is extensively regulated. There is no right to conduct such a business, particularly when it may harm the environment.

The Department adopts the Report's review of the record, but rejects its recommendation that Option 1 be

adopted, as discussed on page 11 of the Report. The Report recognized that both options were well-supported in the record, and that the selection would be determined on how much protection horseshoe crabs should receive. The Department determines that horseshoe crabs should receive the maximum amount of protection as a temporary measure for two years, as opposed to the less protective measure of reducing the limits on the amount that may be harvested to meet the ASMFC minimum requirements to protect horseshoe crabs, which, in turn, will enhance the environment for red knots, a migratory bird that is at risk.

The Department's decision is made based upon a record that establishes the important need to protect the horseshoe crabs, which are one of the world's oldest species. The record shows that the horseshoe crab population in the 1990s was the subject of commercial over-fishing in the Delaware Bay, which is the epicenter for horseshoe crabs. This means that Delaware and New Jersey together need to act to preserve and foster the environment for horseshoe crabs. The regulatory action in Option 1 would result in a significant decrease in the number of horseshoe crabs harvested, but Option 2 will provide the most protection. New Jersey regulators opted for a moratorium, and the Department determines that Delaware should also impose a moratorium to allow consistent protection of the entire Delaware Bay.

The horseshoe crab provides an invaluable source of food for birds, particularly migratory birds. The record focuses on the significant decline in the red knot, which is a bird species that arrives in Delaware annually to feed upon horseshoe crabs. The record shows a reasonable basis to protect the red knots by protecting their food supply in Delaware. Thus, this Order will allow the complete protection of horseshoe crabs in Delaware Bay for two years, which also will enhance the food supply available to the red knot and other migratory birds now and in the future.

The record shows in 2005 that Option 2 will result in a Delaware economic impact of \$111,970 to the 34 horseshoe crab license holders, and indirect impact to the eel and conch pot industries. Option 1 also will have a considerable impact based upon the reduction imposed on the harvesting. The indirect impact is from using horseshoe crabs as bait for eel and conch. The record also includes requests for Department action to provide some economic relief to the persons impacted. The Department supports such a mitigation effort, but the Department unfortunately does not have the authority to grant economic relief. The Department also takes this action based upon recent scientific developments, namely, a possible artificial substitute for horseshoe crabs' primary economic use as bait for eel and conch fishing. Thus, until such a promising scientific development fully is implemented, the Department takes this regulatory action because the record contains expert technical and scientific support that the long-term survival of the horseshoe crabs requires a short-term moratorium on their harvesting.

The Department finds that Option 2 is appropriate to adopt consistent with protecting the horseshoe crab from the threat from excessive fishing, recognizing that it may have occurred years ago when there was no regulation on the fishing. This action is consistent with the Department's duty to protect the environment not only today, but for the future. The Department is concerned that the protection of the horseshoe crab cannot wait, and that the Option 1's reductions may not provide sufficient protection. The environmental impact of continued harvesting will not be known for eight to ten years. Thus, this temporary action is appropriate to preserve the future economic viability of the Delaware fishing industry most impacted by this Order.

The Department finds that the proposed regulation 3215 is well supported by technical expertise and sound judgment, is consistent with the law and regulations, and has a reasonable basis. It is not arbitrary or capricious, but is appropriate as consistent with the Department's statutory purposes. Regulation 3215 will result in protecting an important natural resource from a known harm. The moratorium will allow the horseshoe crab time to recover from fishing prior to the Department's current regulations. The moratorium will protect 300,000 male horseshoe crabs and provide more food for the red knot in the Department's maximum effort to protect this migratory bird from environmental harm from a lack of food supply. The Department chooses to have the horseshoe crab eggs eaten by the migratory birds, as opposed to utilizing spawning horseshoe crabs as bait for eels and conch and this is a valid environmentally sound policy determination, albeit a temporary one. The two-year time period is reasonable and appropriate in order that the horseshoe crab population to increase to support an ongoing, vibrant fishing industry and allow the red knot more food supply and thereby protect this species.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts Regulation No. 3215, as published as a proposed regulation in the September 1, 2006 *Delaware Register of Regulations* and as set forth in the Appendix B hereto, as a final regulation under 29 **Del.C.** §6010 (a) and withdraws the pending amendments;
2. The proposed regulation approved by this Order was developed consistent with the applicable law

and regulatory standards, is supported by expert technical analysis and scientific studies, and has a reasoned basis for regulating the environment from the potential harm;

3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations, held a public hearing in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;

4. Approval of the final regulation is consistent with the Department's statutory duty to protect the environment in Delaware;

5. This Order and the final approved regulation shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*; and that

6. The Department shall provide written notice to the persons affected by the Order, as determined by those who participated in these Department proceedings at the public hearing, or through participation by the submission of timely and relevant written comments.

John A. Hughes  
Secretary

## **3200 Horseshoe Crabs (Option 1: 3203, 3207, 3210, 3211 and 3214; Option 2: 3215)**

### **Option 1**

#### **3203 Seasons and Area Closed to taking Horseshoe Crabs (Formerly S-51 & HC-3)**

(Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person to dredge or attempt to collect by means of a dredge horseshoe crabs or parts thereof from any state or federal land owned in fee simple or the tidal waters of this state during a period beginning at 12:01 am on ~~[May 1~~ January 4] and continuing through midnight, June 30, next ensuing. ~~[After June 30 in any given calendar year, it shall be unlawful to dredge or attempt to collect by means of a dredge female horseshoe crabs.]~~

2.0 It shall be lawful for persons with valid horseshoe crab collecting permits and eel licensees and their alternates to collect adult ~~[male]~~ horseshoe crabs on Tuesday and Thursday from state owned lands to the east of state road No. 89 (Port Mahon Road) from 12:01 a.m. on June 8 and continuing through midnight on June 30.

3.0 It shall be unlawful for any person to collect or attempt to collect, any horseshoe crabs or parts thereof from any land not owned by the state or federal government during the period beginning at 12:01 a.m. on ~~[May 1~~ January 4] and continuing through midnight, June 7, next ensuing. It shall be lawful, during a period beginning at 12:01 a.m. on June 8 and continuing through midnight on June 30, for persons with valid horseshoe crab collecting permits and eel licensees and their alternates to collect ~~[male]~~ horseshoe crab adults on Mondays, Wednesdays and Fridays from such private lands.

4.0 It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from any land not owned by the State or federal government unless said person has on his or her person written permission, signed by the owner of said land with the owner's address and phone number, indicating the individual to whom permission to collect horseshoe crabs is granted.

**[5.0 It shall be unlawful for any person to collect or dredge or to attempt to collect or dredge horseshoe crabs at any time prior to May 1 in any given year after the date the Department determines 35% of the annual quota of horseshoe crabs, approved for Delaware by the Atlantic States Marine Fisheries Commission, is landed.]**

1 DE Reg 1412 (4/1/98)

7 DE Reg. 220 (8/1/03)

#### **3207 Horseshoe Crab Dredging Restrictions (Formerly S-55 & HC-7)**

(Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person to dredge horseshoe crabs in the area in Delaware Bay designated as leased shellfish grounds except on one's own leased shellfish grounds or with permission from the

owner of leased shellfish grounds. The area in Delaware Bay designated as leased shellfish grounds is within the boundaries that delineate leasable shellfish grounds and is described as follows: Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27281.31/42803.48 and then continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line."

2.0 It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have on board or to land more than 1500 horseshoe crabs during any 24 hour period beginning at 12:01 a.m. and continuing through midnight next ensuing.

**1 DE Reg. 354 (10/1/97)**

**3 DE Reg. 1567 (5/1/00)**

3.0 It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have or possess on board said vessel any horseshoe crabs at any time during the period beginning 12:01 a.m. on ~~May 1~~ **January 1** and continuing through midnight, June 30, next ensuing.

**1 DE Reg. 1412 (4/1/98)**

4.0 It shall be unlawful for any person to land horseshoe crabs taken from the Exclusive Economic Zone unless said person has a valid horseshoe crab dredge permit."

**3 DE Reg. 1567 (5/1/00)**

**7 DE Reg. 220 (8/1/03)**

### **3210 Horseshoe Crab Reporting Requirements (Formerly S-57 & HC-10)**

(Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person who has been issued a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit or a commercial eel pot license to not report his/her harvest of horseshoe crabs to the Department on a ~~[weekly daily]~~ basis. Said ~~[weekly daily]~~ reports shall not be required to be submitted to the Department during any month said person indicates previously in writing to the Department that he/she will not be harvesting horseshoe crabs. Any person required to submit a ~~[weekly daily]~~ report on his/her harvest of horseshoe crabs to the Department shall submit said report on or before 4:30PM on the Monday following the week covered by said report. **[If Monday is a legal State holiday, said report shall be submitted on or before 4:30PM on Tuesday, next ensuing. For purposes of this section, a week shall commence at 12:01AM on Monday and conclude at midnight on Sunday, next ensuing. ~~phone in said report within 24 hours of said harvesting.~~** Said report shall include but not be limited to said person's unique identification number assigned by the Department, the dates and location horseshoe crabs were harvested, the number and sex of horseshoe crabs harvested and the method of harvest of horseshoe crabs. Said report shall be submitted to the Department by telephone by calling a phone number, dedicated by the Department for the reporting of harvested horseshoe crabs, and entering the required data by code or voice as indicated.

2.0 Any person who fails to submit a ~~[weekly daily]~~ report on his/her harvest of horseshoe crabs to the Department on time shall have his/her permit to dredge or his/her permit or authority to collect horseshoe crabs suspended until all delinquent reports on harvested horseshoe crabs are received by the Department.

3.0 In addition to the requirement to phone in ~~[weekly daily]~~ catch reports, horseshoe crab collectors and harvesters and commercial eel fishermen are required to compile and file monthly log sheets detailing daily landings of horseshoe crabs on forms supplied by the Department. These forms must be submitted by the 10th day of the month next ensuing. Failure to submit these monthly reports on a timely basis may be cause for horseshoe crab collecting or horseshoe crab dredge permit revocation or non-renewal of said permit the following year; or in the case of a commercial eel licensee, forfeiture of permission to possess or use horseshoe crabs as bait for the remainder of the year.

**1 DE Reg. 1413 (4/1/98)**

**3 DE Reg. 1567 (5/1/00)**

**7 DE Reg. 220 (8/1/03)**

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## 3211 Horseshoe Crab Commercial Collecting Permit Eligibility and Renewal Requirements (Formerly S-59 & HC-11)

(Penalty Section 7 Del.C. §1912)

1.0 The Department may only issue a horseshoe crab commercial collecting permit to a person who makes application for such a permit in calendar year 1998, and who, prior to July 1, 1997, had applied for and secured from the Department at least 2 valid horseshoe crab commercial collecting permits. Any person holding a horseshoe crab commercial collecting permit in 1998 may apply for renewal of their horseshoe crab commercial collecting permit by ~~[April 1 December 31]~~ each year. If any person holding a horseshoe crab commercial collecting permit from the previous year fails to apply for renewal of their horseshoe crab commercial collecting permit by ~~[April 1 December 31 in any given calendar year,]~~ they forfeit their eligibility to obtain a horseshoe crab commercial collecting permit in ~~[the future subsequent years.]~~

1 DE Reg. 1413 (4/1/98)

7 DE Reg. 220 (8/1/03)

## 3214 Horseshoe Crab Annual Harvest Limit (Formerly S-62 & HC-14)

(Penalty Section 7 Del.C. §1912)

1.0 The annual harvest limit for horseshoe crabs taken and/or landed in the State shall be ~~[150,000 100,000 male horseshoe crabs for a period of two years beginning January 1, 2007]~~ or whatever the Atlantic States Marine Fisheries Commission has approved as Delaware's current annual quota, whichever number is less.

2.0 When the Department has determined that the annual horseshoe crab quota has been met, the Department shall order the horseshoe crab fishery closed and no further horseshoe crabs may be taken during the remainder of the calendar year.

7 DE Reg. 220 (8/1/03)

### Option 2

## 3215 Horseshoe Crab Harvest Moratorium

1.0 Under the Department's authority granted in §2701(a) of 7 Del.C. to administer a program for the conservation and management of horseshoe crabs, it shall be unlawful for anyone, except as specified in §2702 and §2704(b) of 7 Del.C., to collect by means of a dredge or to collect or attempt to collect by any means any horseshoe crab or parts thereof from Delaware lands or waters for a period of two consecutive years beginning January 1, 2007. It shall further be unlawful to land from a vessel in Delaware any horseshoe crabs taken from outside of Delaware's jurisdiction for a period of two years beginning January 1, 2007. For the two-year term of this harvest moratorium, all other horseshoe crab regulations are suspended, except for Horseshoe Crab Regulation 3202. Those persons holding horseshoe crab collecting permits in 2006 shall retain their eligibility to apply for a commercial horseshoe crab collecting permit once the fishery is re-opened and must do so by December 31 of each year once the fishery is re-opened, or forfeit their eligibility to obtain a horseshoe crab commercial collecting permit in subsequent years.

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### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 2701(d) (7 Del.C. §2701(d))  
7 DE Admin. Code 3711, 3712 and 3756

**Secretary's Order No. 2006-F-0055**

### Amendments to Delaware Shellfish Regulations for Conch (Whelks) and Lobsters

Date of Issuance: November 15, 2006

Effective Date: December 11, 2006

A public hearing was held on Tuesday, October 17, 2006, at 7:30 p.m. at the DNREC Richardson and Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Shellfish Regulations for Conch (Whelks) and Lobsters. The proposed changes are being made as resource conservation measures for Delaware fisheries, and include the following: Raising the minimum size for knobbed conchs (knobbed whelks) from five inches to six inches in one-quarter increments over a four-year period; allowing no new conch dredge licenses issued for a five-year period in excess of those issued in 2003-2005; and increasing the escape vent size in the parlor of lobster pots to coincide with new regulations in effect in Federal waters offshore of Delaware.

Whelks, also known as conchs, comprise Delaware's largest commercial fishery in terms of weight landed. Landings are dominated by knobbed whelks taken in the directed dredge fishery. Landings from Delaware's dredge fishery during the period of 2001 to 2004 were equivalent to total landings from the remaining Atlantic Coast states. Landings reported for 2005 have declined by 50% relative to the 2004 landings. Fishery samples indicate that knobbed whelk landings are dominated by females at reproductive age. The female knobbed whelks enter the fishery at approximately 9.5 years of age and attain reproductive maturity at ten years of age.

Fishing mortality is currently in excess of the management benchmarks, indicating that the knobbed whelk stock is being overfished. To prevent fishery collapse, the Division of Fish and Wildlife recommends that the number of whelk dredge licenses not be increased from the current 31. Increasing the minimum size of knobbed whelks is also recommended to protect a greater proportion of the spawning stock.

Numerous members of the public attended this hearing on October 17, 2006, voicing their concerns with regard to the Department's proposed changes to these regulations. Comments were received from the public, both at the actual hearing and during the post-hearing phase as well. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing of October 17, 2006, the Hearing Officer prepared her Report dated November 14, 2006, and that Report, including its attachments, is expressly incorporated herein to this Order.

Based on the record, including the public hearing record reviewed in the November 14, 2006 Hearing Officer's Report, the proposed regulation is adequately supported and is not arbitrary or capricious. The Report reviews and summarizes the record developed throughout this regulatory process, and recommends approval of the proposed regulation as a final regulation without modification. I agree with the Report and adopt it, along with its attachments, as part of this Order along with its reasons.

The proposed regulation is based upon sound scientific evidence, is consistent with State and Federal law, and is a reasoned regulation that will result in furthering the purposes of 7 **Del.C.** Ch. 60. In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulation as a final regulation, as set forth in the Attachment "A" to the Hearing Officer's Report;
2. The regulation amendments that are approved by this Order were developed consistent with the applicable law and regulatory standards and are adequately supported by technical analysis;
3. The issuance of the proposed regulation as a final regulation will result in increased conservation of spawning stock biomass for a resource that is showing signs of over-exploitation;
4. More conchs will have reached maturity prior to being subject to harvest with the increase in the minimum size limit. This will likely depress landings until the conchs previously subject to harvest have grown from five inches to the newly proposed legal size of six inches. The Department estimates that it will take 3-4 years for a 5 inch conch to reach 6 inches;
5. The capping of the number of conch dredge licenses that the Department may issue to the number issued during the period of 2003-2005 will be maintained for a five-year period, thus preventing a potential doubling of fishing effort that could occur (based on the number of license applicants) if the number of available licenses were not capped. This will also help to limit increases in mortality caused by fishing which the Department has determined is already excessive for the long-term health of this resource. Those license applicants who have been on the five-year waiting list will be unable to obtain a conch dredge license for a minimum of five additional years under this proposed regulation;
6. With the promulgation of these proposed changes, the rectangular escape vent in the parlor of lobster pots will be increased from the present 1 15/16<sup>th</sup> inches by 5 3/4 inches to 2 inches by 5 3/4 inches. If a circular vent is used, it is proposed that the minimum inside diameter be 2 5/8<sup>th</sup> inches. These vent dimensions would be consistent with federal requirements for lobster pots set in federal waters in Delaware. The overwhelming

majority of Delaware's lobster landings are from federal waters and the proposed increase in vent size is considered to be the appropriate escape vent dimensions with the minimum lobster size limits (3 3/8<sup>th</sup> inch carapace length) now in effect in Delaware and in federal waters offshore of Delaware;

7. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations, held a public hearing in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;

8. The Department's proposed regulation, as published in the September 1, 2006 *Delaware Register of Regulations* and already expressly incorporated herein, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations, and should be approved as a final regulation, to go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

9. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

John A. Hughes  
Secretary

**\* Please note that no changes were made to the regulation as originally proposed and published in the September 2006 issue of the *Register* at page 522 (10 DE Reg. 522). Therefore, the final regulation is not being republished. Please refer to the September 2006 issue of the *Register*.**

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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903 (7 Del.C. §903)  
7 DE Admin. Code 3536

**Secretary's Order No. 2006-F-0049**

**ORDER**

**Summary of Evidence and Information**

Pursuant to due notice published in Volume 10, Issue 4 of the *Delaware Register of Regulations* (10 DE Reg. 629 – 630 (10/1/2006)), The Department of Natural Resources and Environmental Control proposes to amend Tidal Finfish Regulation No. 3536 pertaining to fish pot requirements. Specifically, the proposed regulation would require two escape vents in the parlor of all fish pots utilized in Delaware's tidal waters. In addition, language is included in the proposed regulation that will require a minimum diameter size of 2.5 inches for all circular escape vents on fish pots.

The Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder Board adopted a motion at the August 2005 meeting of the Board specifying that gear changes to fish pots, used for harvesting black sea bass, would need to comply with recommendations formulated at a public workshop that reviewed the latest scientific information regarding the effectiveness of escape vents in reducing bycatch of sub-legal size black sea bass. Findings from the workshop that was held on March 22, 2005 indicated that two escape vents in the parlor portion of a fish pot were more effective at reducing bycatch than a single vent. Furthermore, it was determined that scientific studies had indicated that circular escape vents, that were at least 2.5 inches in diameter, permitted black sea bass less than 11 inches (legal size limit) to escape from the pot and thus reduce discard mortality associated with hauling pots and sorting fish aboard the harvesting vessel.

A public hearing was held on the proposed amendment to Tidal Finfish Regulation No. 3536 on October 24, 2006. There were no attendees at the public hearing and no written testimony was received regarding this proposed amendment.

**Finding of Fact**

- The Atlantic States Marine Fisheries Commission has required that all states in the management unit (Massachusetts through North Carolina) include language in their regulations by January 1, 2007 that require at least two escape vents in the parlor portion on fish pots and that pots with circular escape vents have a minimum of 2.5 inch diameter circle vents in pots.
- If Delaware did not change its current regulations pertaining to fish pots then ASMFC could rule the state out of compliance and subject to a federally imposed moratorium on the landings of black sea bass.
- There was no opposition to the proposed requirements regarding the number of mandatory escape vents in each fish pot or the requirement that circular escape vents have a minimum diameter of 2.5 inches.
- The recommendations regarding two escape vents and the minimum diameter of 2.5 inches for circular escape vents are based on the best scientific information available as determined by a working group established by ASMFC to examine methods to reduce discard mortality of sub-legal size black sea bass in fish pots.

**Conclusions**

I have reached the following conclusions:

- Fish pots that are used in Delaware's territorial waters will be required to have two escape vents in the parlor portion of the pot and those pots that use circular escape vents must have vents with a minimum diameter of 2.5 inches.

**ORDER**

It is hereby ordered this 14th day of November 2006 that amendments of Tidal Finfish Regulation No.3536 and 4 copies of which are attached hereto, are adopted pursuant to 7 **Del.C.** §903 (e)(2)(a) and are supported by the Department's findings of evidence. This order should become effective on December 15, 2006.

John A. Hughes, Secretary  
Department of Natural Resources and Environmental Control

**3536 Fish Pot Requirements (Formerly Tidal Finfish Reg. 24)**

(Penalty Section 7 **Del.C.** §936(b)(2))

1.0 It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot has ~~an~~ two escape vents placed in ~~a lower corner~~ of the parlor portion of said pot which complies with one of the following minimum sizes: 1.375 inches by 5.75 inches; or a circular vent ~~2.375~~ inches in diameter; or a square vent with sides of 2 inches, inside measure. Pots constructed of wooden lathes must have spacing of at least 1.375 inches between one set of lathes.

2.0 It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot contains a panel (ghost panel) measuring at least 3.0 inches by 6.0 inches affixed to said pot with one of the following degradable materials:

2.1 Untreated hemp, jute or cotton string of 3/16 inches diameter or smaller; or

2.2 Magnesium alloy timed float release (pop-up devices) or similar magnesium alloy fasteners; or

2.3 Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.

3.0 It shall be lawful for a person to take and reduce to possession any food fish, except tautog, black seabass or summer flounder, when said food fish is caught in his/her crab pot provided said food fish is not otherwise illegal to possess at that time.

4.0 It shall be lawful for a person to take and reduce to possession any food fish, except tautog, black seabass or summer flounder, when said food fish is caught in his/her blue crab dredge provided said food fish is not otherwise illegal to possess at that time.

**2 DE Reg. 1905 (4/1/99)**

**6 DE Reg. 350 (9/1/02)**

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**DIVISION OF WATER RESOURCES**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)  
**7 DE Admin. Code** 7417, 7421, 7422, 7425 and 7426

**Secretary's Order No. 2006-W-0050**

**Approving Final Regulations for Total Maximum Daily Loads for the Blackbird Creek, Leipsic River, Little Creek, Smyrna River and St. Jones River Watersheds**

Date of Issuance: November 14, 2006

Effective Date: December 11, 2006

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 *et seq.*, 29 **Del.C.** §§10111 *et seq.* and 7 **Del.C.** §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Based on the record, including the public hearing record reviewed in the November 6, 2006, Hearing Officer's Report ("Report"), attached as Appendix A, I find that the proposed regulations are well supported and are not arbitrary or capricious. The Report reviews and summarizes the combined public hearing record, including the August 24, 2006, public hearing. The Report recommends approval of the proposed regulations as final regulations without modification. I agree with the Report and adopt it as part of this Order along with its reasons.

The proposed regulations are based upon sound scientific evidence, are consistent with state and federal law, and are a reasoned exercise of the Department's authority to issue regulations to improve water quality. The improvements will occur through the Total Maximum Daily Loads ("TMDLs"), which will regulate the release of harmful levels of nitrogen, phosphorous and bacteria into the waters within each watershed. The TMDLs will reduce the harmful pollutants to levels that the Department's experts have determined are necessary to improve the quality within these waters to the existing water quality standards. The TMDLs will allow the Department to establish Pollution Control Strategy for the watersheds. Thus, these TMDLs are an important part of a multi-step federal and state regulatory process that will result in the waters within these five watershed from attaining the clean water standards.

The Report notes the public comments, including comments submitted by the Mid-Atlantic Environmental Law Clinic ("MAELC"). The Department welcomes the comments. Some of the comments were instrumental in making some changes to the technical support documents, but not to the final proposed regulations because the changes to the technical support documents did not change the TMDLs set forth in the proposed regulations. The Department encourages MAELC to work with the Department's experts towards assisting in the development of the best possible TMDLs for the common goal of improving Delaware's water quality. The promulgation of the final regulations will satisfy the federal court's consent decree.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulations as final regulations, as set forth in the Appendix A to the Report, under 29 **Del.C.** §6010 (a) and pursuant to the federal Clean Water Act, 33 *U.S.C* §1251 *et seq.* and the United States Environmental Protection Agency's regulations pursuant to the Clean Water Act;

2. The issuance of the proposed regulations as final regulations will protect and improve the water quality of the Blackbird Creek, Leipsic River, Little Creek, Smyrna River and St. Jones River watersheds, as defined by elevation maps, and allow Pollution Control Strategies to be developed for them;

3. The TMDLs that are approved by this Order were developed consistent with the applicable law

and regulatory standards, and are adequately supported by expert technical analysis;

4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations, held a public hearing in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;

5. The Department's proposed regulations, as published in the August 1, 2006, *Delaware Register of Regulations*, and set forth in Appendix A to the Report, are adequately supported, not arbitrary or capricious, are consistent with the applicable laws and regulations, and should be approved as final regulations to go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and that;

6. The Department shall provide written notice to the persons affected by the Order, as determined by those who participated in this rulemaking at either the public workshop or at the public hearing, including participation through the submission of timely and relevant written comments.

John A. Hughes  
Secretary

\* Please note that no changes were made to the regulation as originally proposed and published in the May issue of the Register at page 1720. Therefore, the final regulation is not being republished.

### DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)  
7 DE Admin. Code 7418, 7419 and 7423

Secretary's Order No. 2006-W-0051

#### Approving Final Regulations for Total Maximum Daily Loads for the Broadkill River, Cedar Creek, and Mispillion River Watersheds

Date of Issuance: November 14, 2006

Effective Date: December 11, 2006

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 Del.C. §§8001 *et seq.*, 29 Del.C. §§10111 *et seq.* and 7 Del.C. §6010(a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding to establish Total Maximum Daily Loads ("TMDLs") for the Broadkill River, Cedar Creek, and Mispillion River watersheds.

Based on the record, including the public hearing record reviewed in the November 7, 2006, Hearing Officer's Report ("Report"), attached as Appendix A, I find the proposed regulations are well supported and are not arbitrary or capricious. The Report reviews and summarizes the combined public hearing record, including the August 22, 2006, public hearing. The Report recommends approval of the proposed regulations as final regulations without modification. I agree with the Report and adopt it as part of this Order along with its reasons.

The proposed regulations are based upon sound scientific evidence, are consistent with state and federal law, and are a reasoned exercise of the Department's authority to issue regulations to improve water quality. The TMDLs will limit the release of harmful levels of nitrogen, phosphorous and bacteria into the waters within each watershed. The regulations identify the level of reduction in the harmful pollutants that will enable the waters to improve to meet clean water standards. The TMDLs will allow the Department to establish Pollution Control Strategy for the watersheds, which will enforce compliance with the TMDLs. Thus, these TMDLs are an important part of a multi-step federal and state regulatory process that will result in the waters within these three watershed attaining the Clean Water Act's standards.

The Report notes the public comments, including comments submitted by the Mid-Atlantic Environmental Law Clinic ("MAELC"). The Department welcomes the comments. Some of the comments were instrumental in making some changes to the technical support documents, but did not change the TMDLs set forth in the proposed regulations. The Department encourages MAELC to work with the Department's experts towards assisting in the

development of the best possible TMDLs for the common goal of improving Delaware's water quality. The promulgation of the final regulations will satisfy the federal court's consent decree.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulations as final regulations, as set forth in the Appendix A to the Report, under 29 **Del.C.** §6010(a);
2. The approval of the proposed regulations as final regulations will protect and improve the water quality within three watersheds, as defined by elevation maps. The TMDLs as regulations will allow the Department to develop Pollution Control Strategies to control the releases of nitrogen, dissolved oxygen, and bacteria, which are the pollutants that are impairing the water quality of the waters within the three watersheds;
3. The TMDLs that are approved by this Order were developed consistent with the applicable law and regulatory standards, and are adequately supported by expert technical analysis;
4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations, held a public hearing in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;
5. The Department's proposed regulations, as published in the August 1, 2006, *Delaware Register of Regulations*, and set forth in Appendix A to the Report, are adequately supported, not arbitrary or capricious, are consistent with the applicable laws and regulations, and should be approved as final regulations to go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and that;
6. The Department shall provide written notice to the persons affected by the Order, as determined by those who participated in this rulemaking at either the public workshop or at the public hearing, including participation through the submission of timely and relevant written comments.

John A. Hughes  
Secretary

**\* Please note that no changes were made to the regulation as originally proposed and published in the May issue of the Register at page 1720. Therefore, the final regulation is not being republished.**

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### **DIVISION OF WATER RESOURCES**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)  
7 **DE Admin. Code** 7427 and 7428

**Secretary's Order No. 2006-W-0052**

#### **Approving Regulations Establishing Total Maximum Daily Loads for Bacteria within the Murderkill River and Appoquinimink River Watersheds**

Date of Issuance: November 14, 2006  
Effective Date: December 11, 2006

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 *et seq.*, 29 **Del.C.** §§10111 *et seq.* and 7 **Del.C.** §6010(a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding to amend the regulation that established Total Maximum Daily Loads ("TMDLs") for bacteria in the Murderkill River and Appoquinimink River watersheds. The Department last adopted Murderkill River watershed TMDLs for nutrients and oxygen demanding material in Secretary's Order No. 2005-W-0025, issued May 12, 2005. The United States Environmental protection Agency ("EPA") adopted Appoquinimink River TMDLs for nutrients and oxygen demanding material on December 15, 2003.

Based on the record, including the public hearing record reviewed in the November 9, 2006, Hearing Officer's Report ("Report"), attached as Appendix A, I find the proposed regulations are well supported and are not arbitrary or capricious. The Report reviews and summarizes the combined public hearing record, including the September 20, 2006, public hearing. The Report recommends approval of the proposed regulations as final

regulations without modification. I agree with the Report and adopt it as part of this Order along with its reasons.

The Report discusses the need to establish bacteria TMDLs for these watersheds, and recommends approval of the proposed bacteria TMDLs. The TMDLs are based upon sound scientific evidence, are consistent with state and federal law, and are a reasoned exercise of the Department's authority to issue regulations to improve water quality. The TMDLs will limit the release of harmful levels of bacteria into the waters within each watershed. The regulations identify the level of reduction in bacteria that will enable the waters to improve to meet clean water standards. The TMDLs will allow the Department to establish Pollution Control Strategy for the watersheds, which will enforce compliance with the TMDLs. Thus, these TMDLs are an important part of a multi-step federal and state regulatory process that will improve the waters within these watersheds so that they meet the Clean Water Act's standards.

The Report notes the public comments. The Department welcomes the comments. Some of the comments were instrumental in making some changes to the technical support documents, and minor modification to the proposed TMDLs. The Department published the proposed TMDLs, as revised, to reflect the changes the Department considered appropriate based upon the public comments. The Department and the public share the common goal of improving Delaware's water quality.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulations as final regulations, as set forth in the Appendix A to the Report, under 29 **Del.C.** §6010 (a);
2. The approval of the proposed regulations as final regulations will protect and improve the water quality within three watersheds, as defined by elevation maps. The TMDLs as regulations will allow the Department to develop Pollution Control Strategies to control the release of bacteria, which is a pollutant that is impairing the water quality of the waters within the watersheds;
3. The TMDLs approved by this Order were developed consistent with the applicable law and regulatory standards, and are supported by expert technical analysis;
4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations, held a public hearing in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;
5. The Department's proposed regulations, as published in the September 1, 2006, *Delaware Register of Regulations*, and set forth in Appendix A to the Report, are adequately supported, not arbitrary or capricious, are consistent with the applicable laws and regulations, and should be approved as final regulations to go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and that;
6. The Department shall provide written notice to the persons affected by the Order, as determined by those who participated in this rulemaking at either the public workshop or at the public hearing, including participation through the submission of timely and relevant written comments.

John A. Hughes  
Secretary

**\* Please note that no changes were made to the regulation as originally proposed and published in the June issue of the Register at page 1945. Therefore, the final regulation is not being republished.**

**DIVISION OF WATER RESOURCES**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)  
7 **DE Admin. Code** 7412, 7413, 7414, 7415, 7429, 7430

**Secretary's Order No. 2006-W-0053****Approving Regulations Amending and Establishing Total Maximum Daily Loads for Bacteria within the Inland Bays and Chesapeake Bay Drainage Basins in Delaware**

Date of Issuance: November 14, 2006  
Effective Date: December 11, 2006

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 *et seq.*, 29 **Del.C.** §§10111 *et seq.* and 7 **Del.C.** §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding to amend the regulation that established Total Maximum Daily Loads ("TMDLs") for the Delaware portions of the Inland Bays and Chesapeake Bay watersheds. The Department adopted the Chesapeake Bay watershed TMDLs that are being amended by this Order in Secretary's Order No. 2005-W-0050, issued December 15, 2005.

Based on the record, including the public hearing record reviewed in the November 8, 2006, Hearing Officer's Report ("Report"), attached as Appendix A, I find the proposed regulations are well supported and are not arbitrary or capricious. The Report reviews and summarizes the combined public hearing record, including the September 21, 2006, public hearing. The Report recommends approval of the proposed regulations as final regulations without modification. I agree with the Report and adopt it as part of this Order along with its reasons.

The Report discusses the need to amend Department Regulations 7412 (Chester River), 7413 (Choptank River), 7414 (Marshyhope Creek) and 7415 (Pocomoke River) within the Chesapeake Bay watershed. These changes reflect the elimination of the bacteria TMDLs and reflect a clarification of the interpretation of the Environmental Protection Agency's ("EPA") bacteria water quality standards. EPA administers the federal Clean Water Act, and has delegated to the Department the authority to establish TMDLs in Delaware. The Report also recommends approval of bacteria TMDLs for the Delaware portion of the Inland Bays watershed (Indian River Bay, Rehoboth Bay, and Little Assawoman Bay in Sussex County) and the Delaware portion of the Chesapeake Bay watershed (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, and Broad Creek).

The TMDLs are based upon sound scientific evidence, are consistent with state and federal law, and are a reasoned exercise of the Department's authority to issue regulations to improve water quality. The TMDLs will limit the release of harmful levels of bacteria into the waters within each watershed. The regulations identify the level of reduction in bacteria that will enable the waters to improve to meet clean water standards. The TMDLs will allow the Department to establish Pollution Control Strategy for the watersheds, which will enforce compliance with the TMDLs. Thus, these TMDLs are an important part of a multi-step federal and state regulatory process that will improve the waters within these watersheds so that they meet the Clean Water Act's standards.

The Report notes the public comments. The Department welcomes the comments. Some of the comments were instrumental in making some changes to the technical support documents, and minor modification to the proposed TMDLs. The Department published the proposed TMDLs, as revised to reflect the changes the Department considered appropriate based upon the public comments. The Department and the public share the common goal of improving Delaware's water quality.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulations as final regulations, as set forth in the Appendix A to the Report, under 29 **Del.C.** §6010 (a);
2. The approval of the proposed regulations as final regulations will protect and improve the water quality within three watersheds, as defined by elevation maps. The TMDLs as regulations will allow the Department to develop Pollution Control Strategies to control the releases of bacteria, which is a pollutant that is impairing the water quality of the waters within the watersheds;
3. The TMDLs that are approved by this Order were developed consistent with the applicable law and regulatory standards, and are adequately supported by expert technical analysis;

4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations, held a public hearing in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;

5. The Department's proposed regulations, as published in the September 1, 2006, *Delaware Register of Regulations*, and set forth in Appendix A to the Report, are adequately supported, not arbitrary or capricious, are consistent with the applicable laws and regulations, and should be approved as final regulations to go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and that;

6. The Department shall provide written notice to the persons affected by the Order, as determined by those who participated in this rulemaking at either the public workshop or at the public hearing, including participation through the submission of timely and relevant written comments.

John A. Hughes,  
Secretary

\* Please note that no changes were made to the regulation as originally proposed and published in the June issue of the Register at page 1945. Therefore, the final regulation is not being republished.

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### DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)  
7 DE Admin. Code 7416, 7420 and 7424

### Secretary's Order No. 2006-W-0054

### Total Maximum Daily Load (TMDLs) for the Army Creek, Dragon Run Creek, and Red Lion Creek Watersheds

Date of Issuance: November 14, 2006  
Effective Date of TMDL: December 11, 2006

On Tuesday, August 29, 2006 at 6:00 p.m., a public hearing was held in the DNREC Offices located at 391 Lukens Drive, New Castle, Delaware, to receive public comment on the Department's proposed regulation to amend the Total Maximum Daily Loads ("TMDLs") for the Army Creek, Dragon Run Creek, and Red Lion Creek watersheds, as defined by elevation maps.

Section 303(d) of the Clean Water Act requires States to identify water quality impaired waterways and to develop Total Maximum Daily Loads ("TMDLs") for the pollutants that impair those waterways. DNREC has identified that the water quality of Army Creek (segments DE020-001, DE020-002, DE020-003), Red Lion Creek (segments DE270-001-01 and DE270-001-02), and Dragon Run Creek (segments DE130-001 and DE130-002) was impaired because of elevated bacteria and nutrient levels and low dissolved oxygen concentrations. These segments were placed on the State's 1996, 1998, 2002, 2004, and draft 2006 303(d) lists and were targeted for development of TMDLs.

The Army Creek, Dragon Run Creek, and Red Lion Creek watersheds are situated in the upper portion of the Delaware Bay and Estuary Drainage Basin on the eastern edge of Delaware in New Castle County, north of the Chesapeake and Delaware Canal. The Army Creek watershed lies furthest to the north, with the Christina River watershed bounding the northern edge. The Red Lion Creek watershed lies to the south of the Army Creek Watershed and to the north of the Dragon Run Creek watershed. The Dragon Run Creek watershed lies furthest to the south with the C and D Canal watershed bounding the southern edge. Each stream flows to the east and discharges into the Delaware River. The three watersheds are similar in size.

There are several point source facilities within the Army Creek, Red Lion Creek, and Dragon Run Creek watersheds, however, all treated wastewater is discharged into the Delaware River and not into these three tributaries. Therefore, all pollutants are coming from nonpoint sources. Since New Castle County in its entirety has been issued a Municipal Separate Storm Sewer System (MS4) permit (NPDES Permit #DE 0051071), the nonpoint source TMDL loads will be assigned as Waste Load Allocation (WLA) for the above watersheds.

The development of the Army Creek, Dragon Run Creek, and Red Lion Creek nutrient TMDLs was based on the assessment of Army Creek, Dragon Run Creek, and Red Lion Creek water quality and water flow under two different environmental conditions: (1) annual average condition; and (2) summer critical condition. Draft proposed TMDLs for the Army Creek, Dragon Run Creek, and Red Lion Creek watersheds were reviewed during a public workshop held on May 16, 2006. All comments received at the workshop and during the May 1<sup>st</sup> through May 31<sup>st</sup> comment period were considered by the Department. The Department's technical report, "TMDL Analysis for the Watersheds of Army Creek, Red Lion Creek, and Dragon Run Creek, DE" as prepared by the Watershed Assessment Section, Division of Water Resources, August 2006, was updated to address comments regarding a more detailed discussion of sources of pollution; the process of selecting a Qual2K simulation date; the handling of stormwater outfall loads; and conservative assumptions supporting the implicit margin of safety. In addition, subsequent to the aforementioned workshop in May of 2006, further nutrient modeling analyses have been conducted in the Army Creek watershed to address the unnamed tributary to Army Creek, which was recently listed as impaired for bacteria, nutrients, and dissolved oxygen in the draft 2006 303(d) list. Also subsequent to the workshop, a minor modification was made in the bacteria analyses, resulting in slight changes to the bacteria percent reductions for the Army Creek, Dragon Run Creek, and Red Lion Creek watersheds. These minor changes are all set forth in the Department's aforementioned technical report of August 2006. Proper notice of the hearing was provided as required by law.

Although there were comments submitted from the Mid-Atlantic Environmental Law Center subsequent to the public workshop held in May of 2006, no additional comments were received by the Department either at the public hearing of August 29, 2006, nor during the comment period phase which ended on September 15, 2006. Subsequent to the public hearing of August 29, 2006, the Hearing Officer prepared her Report dated November 13, 2006, and that Report, including its attachments, is expressly incorporated herein to this Order.

Based on the record, including the public hearing record reviewed in the November 13, 2006 Hearing Officer's Report, the proposed regulation is adequately supported and is not arbitrary or capricious. The Report reviews and summarizes the record developed throughout this regulatory process, and recommends approval of the proposed regulation as a final regulation without modification. I agree with the Report and adopt it as part of this Order along with its reasons.

The proposed regulation is based upon sound scientific evidence, is consistent with State and Federal law, and is a reasoned regulation that will result in improved water quality within the Army Creek, Dragon Run Creek, and Red Lion Creek watersheds. In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulation as a final regulation, as set forth in the Attachment "A" to the Hearing Officer's Report, under 29 **Del.C.** §6010(a) and pursuant to the Federal Clean Water Act, 33 *U.S.C.* §1251 *et seq.* and the United States Environmental Protection Agency's regulations pursuant to the Clean Water Act;

2. The issuance of the proposed regulation as a final regulation will protect and improve the water quality of the Army Creek, Dragon Run Creek, and Red Lion Creek watersheds, as defined by elevation maps, and allow the Pollution Strategies to be developed for these watersheds;

3. The TMDLs that are approved by this Order were developed consistent with the applicable law and regulatory standards and are adequately supported by technical analysis;

4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations, held a public hearing in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;

5. The Department's proposed regulation, as published in the August 1, 2006 *Delaware Register of Regulations* and set forth in Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations, and should be approved as a final regulation, to go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

6. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulation* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

John A. Hughes  
Secretary

\* Please note that no changes were made to the regulation as originally proposed and published in the May issue of the Register at page 1720. Therefore, the final regulation is not being republished.

## DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

### DIVISION OF FAMILY SERVICES

#### Office of Child Care Licensing

Statutory Authority: 29 Delaware Code, §9003; 31 Delaware Code, §§341-345  
(29 Del.C. §9003; 31 Del.C. §§341-345)

### ORDER

#### 101 Rules for Early Care and Education and School-Age Centers

#### Summary of the Evidence and Information Submitted

The Office of Child Care Licensing seeks to adopt revisions to the formerly entitled *Delacare: Requirements for Day Care Centers* which was adopted in 1988. In addition to a review of best practices in the field of early care and education and school-age care, conducting a comparison of child care center regulations of contiguous States and States with similar demographics to those of Delaware, the Office of Child Care Licensing received input from several sources to revise these rules. Consensus on the rule changes was reached by a task force and its subcommittees that met periodically from September 2001 to June 2006. The task force consisted primarily of early care and education and school-age center program directors along with licensing specialists and those whose interests would be affected by the revisions. Two periods of public comment were opened, the first in February 2004. Public comments during that period led to the withdrawal of the proposed regulations while a financial impact study was conducted as directed by Governor Minner. The findings of the financial impact survey were set forth in *Delacare: Requirements for Day Care Centers Fiscal Impact Study* released October, 2005. These findings coupled with public comments and further task force consideration and advice were the basis upon which the *Delacare: Rules for Early Care and Education and School-Age Centers* were set forth again in August 2006 for public comment. The period of public comment concluded on September 22, 2006.

#### Comments Received

A public comment period was announced and held beginning August 1, 2006 to September 22, 2006. Public hearings were held in the evening in four locations throughout the State as follows:

- September 11, 2006 - Newark
- September 13, 2006 - Georgetown
- September 19, 2006 - Wilmington
- September 21, 2006 - Dover

A total of 56 people/organizations offered comments. Of those comments, 22 Centers were represented which was equivalent to 5% of the 426 Centers licensed under *Delacare: Requirements for Day Care Centers* in the month of September 2006. 38 out of 56 (68%) persons/organizations offered verbal or written comments which stated their general support for the revisions and only 4 out of 56 (7%) were in general opposition.

Information received during this period was analyzed and additional changes were made to the revisions. These changes fall under the following categories:

- To be aligned to comply with the Americans with Disabilities Act (ADA) to accommodate the needs of individuals with disabilities at Centers as recommended by multiple Delaware advisory counsels whose missions are to advocate on behalf of persons with disabilities.

- To accommodate concerns regarding the fiscal impact of changes to Delacare rules in the areas of staff qualifications, staffing requirements, annual training requirements, communication with parents, outdoor play area, fall zone depths, sleeping arrangements, heating and cooling equipment inspection, pet care, transportation of children, immunization information, and positive behavior management
- To correct or clarify rules to better ensure the ability of Office of Child Care Licensing to regulate child care centers
- To correct grammatical mistakes, and omissions
- To reword rules for clarity and consistency in use of wording while keeping the original intent of the rule

### **Finding of Facts**

The Office of Child Care Licensing is within the Division of Family Services, Department of Services for Children, Youth and their Families. The Secretary of this Department finds that is appropriate to amend 9 **DE Admin. Code** 101 or as it was otherwise known as *Delacare: Requirements for Day Care Centers* and to adopt the revisions to the rules. The new title will become *Delacare: Rules for Early Care and Education and School-Age Centers*. The adoption of the revisions is sought to establish a new baseline of care which more appropriately reflects accepted quality standards that support healthy, safe and enriching early care and education and school-age practices. The 1988 *Delacare: Requirements for Day Care Centers* does not reflect the body of knowledge that has been acquired in the field of early care and education. The existing Requirements no longer offer adequate safeguards or protection for children in care nor do they promote standards and practices that promote optimal development and learning in order for children to be ready for and succeed in school and life. All other States have revised or readopted Center rules since 1988, most in the past 10 years leaving Delaware to have the oldest set of child care center regulations.

### **Decision to Adopt the Rules**

For the foregoing reasons, the Department Secretary concludes that it is appropriate to revise 9 **DE Admin. Code** 101 and adopt the revisions to create a new set of rules titled *Delacare: Rules for Early Care and Education and School-Age Centers*. Therefore, pursuant to 31 **Delaware Code**, Chapter 3, Subchapter III, Subsections 341-345, also known as "The Delaware Child Care Act" and 29 **Delaware Code**, Chapter 90, Subsection 9003(7), 9 **DE Admin. Code** 101 is hereby adopted.

### **Text and Citation**

The text of 9 **DE Admin. Code** 101 adopted hereby shall be available at <http://www.state.de.us/research/AdminCode/title9/index.shtml#TopOfPage> and said rules shall be cited as 9 **DE Admin. Code** 101 in the Administrative Code of Regulations for the Department of Services for Children, Youth and their Families.

### **Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 31 **Delaware Code**, Chapter 3, Subchapter III, Subsections 341-345, also known as "The Delaware Child Care Act" and 29 **Delaware Code**, Chapter 90, Subsection 9003(7) on (date). The effective date of this Order adopting *Delacare: Rules for Early Care and Education and School-Age Care Centers* shall be on January 1, 2007.

**IT IS SO ORDERED** the 26th day of October 2006  
Cari DeSantis, Secretary, Department of Services for Children, Youth and their Families  
Carlyse Giddins, Director, Division of Family Services  
Patricia Quinn, Administrator, Office of Child Care Licensing

Approved for adoption on this 26th day of October 2006

**\*Please Note:** Due to the size of the final regulation, it is not being published here. A PDF version and an HTML version are available by selecting one of the links below:

[PDF Version \(Adobe Acrobat Reader required\)](#)  
[HTML Version](#)

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**DEPARTMENT OF STATE**  
**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b))  
5 **DE Admin. Code** 1101, 1109 and 1113 and 1114

**Order Adopting Amended Regulations 1101, 1109 and 1113 and new Regulation 1114**

IT IS HEREBY ORDERED on this 2<sup>nd</sup> day of November of 2006 that amended Regulations 1101, 1109 and 1113 and new Regulation 1114 are adopted as regulations of the State Bank Commissioner. Copies of amended Regulations 1101, 1109 and 1113 and new Regulation 1114 are attached hereto and incorporated herein by reference. Amended Regulations 1101, 1109 and 1113 supersede previous Regulations 1101, 1109 and 1113. The effective date of amended Regulations 1101, 1109 and 1113 and new Regulation 1114 is December 11, 2006. Each regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the **Delaware Code**.

Amended Regulations 1101, 1109 and 1113 and new Regulation 1114 are adopted pursuant to the requirements of Chapters 11 and 101 of Title 29 of the **Delaware Code**, as follows:

1. Notice of proposed amended Regulations 1101, 1109 and 1113 and new Regulation 1114 and their text were published in the October 1, 2006 issue of the *Delaware Register of Regulations*. The notice was also published in the *News Journal* and the *Delaware State News* on October 1, 2006, and mailed to all persons who had made timely written requests to the Office of the State Bank Commissioner for advanced notice of its regulation making proceedings. The notice, among other things, summarized the proposed amended and new regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before November 2, 2006, and stated that the proposed regulations were available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on November 2, 2006 at 10:00 a.m. at the Office of the State Bank Commissioner in Dover, DE.

2. No comments concerning the proposed amended and new regulations were received on or before November 2, 2006.

3. A public hearing was held on November 2, 2006 at 10:00 a.m. regarding the proposed amended Regulations 1101, 1109 and 1113 and new Regulation 1114. State Bank Commissioner, Robert A. Glen, Deputy Bank Commissioner for Supervisory Affairs, Francis S. Babiarz, Bank Franchise Tax Specialist for the Office of the State Bank Commissioner, Kevin J. Muller, Deputy Attorney General, Frank N. Broujos, and a court reporter attended the hearing, with Mr. Broujos participating by telephone. The State Bank Commissioner and the Deputy Bank Commissioner for Supervisory Affairs summarized the proposed and new regulations for the record. No other comments were made or received at the hearing.

4. After review and consideration, the State Bank Commissioner hereby adopts amended Regulations 1101, 1109 and 1113 and new Regulation 1114 as proposed.

November 2, 2006

Robert A. Glen,  
State Bank Commissioner

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**1101 Election to Be Treated for Tax Purposes as a “Subsidiary Corporation” of a Delaware Chartered Banking Organization or Trust Company, National Bank Having its Principal Office in Delaware, or Out-of-State Bank That Operates a Resulting Branch in Delaware****5 Del.C. §1101(f), §1101A(c)(3)**Formerly Regulation No.: ~~5.1101(f).0001~~Effective Date: ~~September 11, 2004~~ Proposed**1.0 Purpose**

1.1 Pursuant to 5 **Del.C. §1101(f) and §1101A(c)(3)**, certain corporations may elect to be treated as a “subsidiary corporation” of a Delaware chartered banking organization or trust company, a national bank having its principal office in Delaware, or an out-of-state bank that operates a resulting branch in Delaware. If a valid election is made, the electing corporation will be taxable on a consolidated basis with its deemed parent Delaware chartered banking organization or trust company, national bank having its principal office in Delaware, or out-of-state bank that operates a resulting branch in Delaware, and the electing corporation will be exempt from Delaware state corporation income taxes and occupational license taxes (as provided in 5 **Del.C. §1109**).

**2.0 Who May Elect**

2.1 A corporation may make the election only if it meets the following two tests:

2.1.1 Ownership test: Eighty percent (80%) of the total combined voting power of all classes of voting stock of the electing corporation (“Electing Corporation”) is owned by an out-of-state bank that operates a resulting branch in Delaware or, directly or indirectly, by a bank holding company (“Qualifying Entity”) that also, directly or indirectly, owns all of the stock of a Delaware chartered banking organization or trust company, a national bank located in Delaware or an out-of-state bank that operates a resulting branch in Delaware (“Deemed Parent”). For purposes of determining ownership of the voting power of an Electing Corporation, non-voting stock convertible into voting stock shall be treated as having been so converted.

2.1.2 In order to determine if this test is met, Question 5 on the election form must be completed. In Column A of Question 5, list each class of stock or property right which has voting rights or can be converted into stock with voting rights. In Column B, state the percentage of the Electing Corporation’s total voting power of that particular class of stock (assuming full conversion). In Column C, state the percentage of each respective class that the Qualifying Entity owns. If each figure in Column C is at least 80%, then this first test is met and Column D need not be completed. If not, Column D should be calculated by multiplying Column B times Column C. The sum of the figures in Column D must be at least equal to 80%. The ownership test must be met at all times during the taxable year for which the election is made.

2.2 Employment Test: The Electing Corporation, together with its affiliates (defined by 5 **Del.C. §773(1)**), employs by or before the end of the taxable year following the taxable year in which the election was made at least 200 persons in Delaware.

**3.0 Where to File**

3.1 The original of the election form must be filed with the State Bank Commissioner, 555 E. Lookerman Street, Suite 210, Dover, Delaware 19901, and a copy must be filed with the Delaware Division of Revenue, 820 N. French Street, Wilmington, Delaware 19801.

**4.0 When to Make the Election**

4.1 The election must be made and filed before the first day of the fourth month of the Electing Corporation’s taxable year, except that, (1) in the case of a corporation that is newly formed or acquired by the Qualifying Entity, the election may be made and filed within 90 days of such formation or acquisition, and such later election shall not be subject to the payment of any additional tax under 5 **Del.C. §1104(c)** for underpayment of estimated tax or installment for periods before the date of such election, and (2) with the approval of the Commissioner, a later election may be made, subject to the payment of any additional tax for underpayment of estimated tax or installment as provided in 5 **Del.C. §1104(c)** and applicable regulations of the Commissioner.

**5.0 Supplemental Reporting Requirements**

5.1 Once an election has been made under 5 **Del.C. §1101(f) or §1101A(c)(3)** for any Electing

Corporation, and so long as the same remains in effect, each Estimated Franchise Tax Report under Regulation 1104 (~~formerly 5.1101etal.0003~~) or 1111 (~~formerly 5.1101etal.0010~~) or 1114 and each Final Franchise Tax Report under Regulation 1105 (~~formerly 5.1101etal.0004~~) or 1112 (~~formerly 5.1101etal.0011~~) or 1114 filed by the Deemed Parent shall indicate on the first page thereof the name of each Electing Corporation whose income and expenses are consolidated with that of the Deemed Parent. In addition, each such consolidated Report filed by the Deemed Parent shall have attached to it separate Reports completed on an individual non-consolidated basis for each Electing Corporation (complete such attachments only to the extent necessary to calculate estimated or final taxable income).

5.2 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form must be completed each year for each Electing Corporation and attached to the Final Franchise Tax Report of the Deemed Parent.

**5 DE Reg. 647 (09/01/01)**

**6.0 Termination of Election**

6.1 Once an election is made, it remains in effect until terminated (a) by notice of voluntary termination delivered to the State Bank Commissioner, with a copy to the Delaware Division of Revenue, at any time during the Electing Corporation's taxable year (which termination shall be effective as of the first day of such taxable year), or (b) by failure to meet the ownership test and the employment test referenced in section 2.1[.1] and 2.2 hereof. If either test is first failed at any time during the first six months of any taxable year, the termination shall relate back to the first day of such taxable year. If either test is failed at any time during the second six months of any taxable year, the termination shall relate forward to the first day of the succeeding taxable year. However, an Electing Corporation shall have the allowable time period referenced in Section 2.2 initially to meet the employment test.

6.2 If an election is terminated, the Deemed Parent shall file an amended Estimated and/or Final Franchise Tax Report for the year for which the election was originally made, which Estimated and/or Final Franchise Tax Report shall eliminate the income and expenses of the Electing Corporation. Any resulting reduction in bank franchise taxes can be utilized by the Deemed Parent as credit (without interest) against its future bank franchise tax liability.

**7.0 Taxable Year**

7.1 The "taxable year" of an Electing Corporation shall end on the same date as the taxable year of the Deemed Parent (as determined for federal income tax reporting purposes), unless a different taxable year is approved by the State Bank Commissioner.

**Election to be Treated as a Subsidiary Corporation Under 5 Del.C §1101(f) or §1101A(c)(3)**

Initial Election \_\_\_\_\_ or Verification For Tax Year \_\_\_\_\_

1. Name and Principal Place of Business of Electing Corporation:
2. First day of Electing Corporation's taxable year for which election is made:
3. Name and Principal Place of Business of Qualifying Entity (as defined in Section 2.1[.1] of this regulation).
4. Name and Principal Place of Business of Deemed Parent (as defined in Section 2.1[.1] of this regulation):
5. Ownership of Voting Power of Electing Corporation (See Section 2.1[.1] of this regulation):

(A) Class of Voting Stock (including property convertible into voting stock)	(B) Class's Percentage of Corporation's Total Voting Power	(C) Percentage of Class Held by Qualifying Entity	(D) Weighted Voting Power of Class Held by Qualifying Entity
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Total	<u>100%</u>	Total	_____

6. Does the Electing Corporation and its "affiliates" (as defined by 5 Del.C. §773(1)) currently have 200 or more Delaware employees? \_\_\_\_\_

7. If the answer to Question 6 is "No," do you expect the number of Delaware employees of the Electing Corporation and its affiliates to be at least equal to 200 by the end of the taxable year following the year of election? \_\_\_\_\_

8. The undersigned does hereby certify that the undersigned is duly authorized on behalf of the Electing Corporation to make an election to be treated as a "subsidiary corporation" of the above-named Deemed Parent for purposes of 5 Del.C. §1101 or §1101A and that all statements herein are true and correct to the best of the undersigned's knowledge and belief.

_____	_____	_____
Date	Signature	Title
_____	_____	
Print Name	Phone No.	
_____	_____	
_____	_____	
Print Address		

Mail Completed Forms To:

Office of the State Bank Commissioner  
 555 E. Loockerman Street, Suite 210  
 Dover, DE 19901  
**5 DE Reg. 647 (09/01/01)**  
**10 DE Reg. 643 (10/01/06) (Prop.)**

**1109 Instructions for Calculation of Employment Tax Credits (5 Del.C. §1105)**  
 5 Del.C. §1105

Formerly Regulation No.: ~~5.1105.0008~~  
 Effective Date: ~~September 11, 2004~~ Proposed

This regulation provides for the calculation of employment tax credits for the years 1997 through ~~2006~~ 2011 for entities subject to the bank franchise tax. These employment tax credits are provided in Section 1105(d), and subject to requirements in Sections 1105(e) and 1105(f), of Title 5 of the **Delaware Code**.

## 5 DE Reg. 669 (09/01/01)

**1.0 Definitions**

“**Base Year**” means calendar year 1996.

“**Full-time Employment**” means employment of any individual for at least 35 hours per week, not including absences excused by reason of vacations, illness, holidays or similar causes.

“**Health Care Benefits**” means financial protection against the medical care cost arising from disease and accidental bodily injury (for which the employer pays at least 50%) for workers employed by the employer for a continuous period of 6 months or more.

“**New Investment**” includes (1) machinery, (2) equipment and (3) the cost of land and improvements to land, provided that the new investment is placed into service within Delaware after December 1996 and was not used by any person at any time within the one year period ending on the date the taxpayer placed such property in service in the conduct of the taxpayer’s business. If the new investment is leased or subleased by the taxpayer, the amount of the new investment shall be deemed to be eight times the net annual rent paid or incurred by the taxpayer. The net annual rent represents the gross rent paid or incurred by the taxpayer during the taxable year, less any gross rental income received by the taxpayer from sublessees of any portion of the facility during the taxable year.

“**Qualified Employee**” means an employee engaged in regular full-time employment, for whom the taxpayer provides health care benefits, who has been employed in Delaware by the taxpayer for a continuous period of at least 6 months and who was not employed at the same facility in substantially the same capacity by a different employer during all or part of the base year.

**2.0 Employment Tax Credit**

2.1 A tax credit for the current tax year shall be allowed against the tax imposed under subsection 1105(a) and 1101A of Title 5 of the **Delaware Code**. The amount of the credit shall be \$400 for each new qualified employee in excess of 50 qualified employees above the number of employees employed by the taxpayer in full-time employment during the base year.

**3.0 New Investment Required**

3.1 The employment tax credit provided above may not be claimed until the taxpayer has made new investments of at least \$15,000 per qualified employee in excess of the numbers of employees employed by the taxpayer in full-time employment during the base year.

**4.0 Annual Limit On Credit**

4.1 The amount of the employment tax credit allowable for the current tax year (including any credit carried forward as provided below) shall not exceed 50 percent of the amount of tax imposed on the taxpayer under Section 1105(a) and 1101A of Title 5 of the **Delaware Code** for the current tax year.

**5.0 Applicable Years**

5.1 The employment tax credit provided above may be earned and applied only in tax years beginning after December 31, 1996 and ending before January 1, ~~2007~~ 2012, subject to the credit carryover described below.

## 5 DE Reg. 669 (09/01/01)

**6.0 Credit Carryover**

6.1 The amount of the employment tax credit for any taxable year that is not allowable for such taxable year solely as a result of the limitation described above in Section 4.0 shall be a credit carryover to each of the succeeding 9 years in the manner described in Section 2011(f) of Title 30 of the **Delaware Code**.

**7.0 Calculation Worksheet**

7.1 The employment tax credit provided above shall be calculated on the accompanying Employment Tax Credit Calculation Worksheet, which shall be submitted with the taxpayer’s tax report.

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## Employment Tax Credit Calculation Worksheet For Years 1997 - ~~2006~~ 2011

The Following Eligibility Requirements Apply to the Employment Tax Credit:

- The Number Of Qualified Employees Must Have Increased By At Least 50 Since Base Year 1996.
- Your Organization Must Have Made At Least \$750,000 In New Investments Within Delaware After 12/96.

### A. Employment Requirement

1. Total Qualified Employees at Year End \_\_\_\_\_
2. Less Number of Full-time Employees Working During Base Year \_\_\_\_\_
3. Subtotal \_\_\_\_\_
4. Less Minimum New Qualified Employee Threshold \_\_\_\_\_ (50)
5. Maximum Qualified Employees \_\_\_\_\_

### B. Required Investment

6. New Investment from 1/1/97 to Current Tax Year \_\_\_\_\_
7. Less Minimum New Investment for First 50 Employees \_\_\_\_\_ (\$750,000)
8. Subtotal \_\_\_\_\_
9. Divided by \$15,000 (Rounded down to the next Lowest Whole Number) \_\_\_\_\_
10. Eligible Qualified Employees (Use the Lesser of Line 5 or 9) \_\_\_\_\_

### C. Credit Calculation

11. Employment Tax Credit for Current Tax Year (\$400 X Line 10) \_\_\_\_\_
12. Prior Years' Tax Credit Carryover (If Applicable) \_\_\_\_\_
13. Total Tax Credit Available \_\_\_\_\_

### D. Credit Allowed

14. Current Year Franchise Tax Liability Pursuant to Chapter 11 of Title 5 \_\_\_\_\_
15. Maximum Tax Credit Allowed (50% of Line 14) \_\_\_\_\_

### E. Total Tax Credit Taken

16. (Lesser of Line 13 or Line 15) \_\_\_\_\_

### F. Tax Credit Carryforward

17. (Line 13 less Line 16) \_\_\_\_\_

## 1113 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30

Effective Date: ~~September 11, 2004~~ Proposed

### 1.0 Qualifications for Election

Pursuant to 5 Del.C. §1101(e) and §1101A(c)(2), a subsidiary corporation of a banking organization or trust company may elect to be taxed in accordance with Chapter 19 of Title 30 if the subsidiary is not itself a banking organization or trust company, if the subsidiary is not described in §1902(b)(8) of Title 30, and if the subsidiary is not engaged in the sale, distribution, underwriting of, or dealing in, securities.

### 2.0 Effect

If a valid election is made, the electing subsidiary shall not be considered a subsidiary corporation of its parent banking organization or trust company for the purposes of Chapter 11 of Title 5, and the income of the electing subsidiary shall be excluded from the taxable income of its parent banking organization or trust company for the tax year involved.

**3.0 Filing**

An electing subsidiary shall make this election by filing the original of Form A under this regulation with the State Bank Commissioner; 555 E. Loockerman Street; Suite 210; Dover, DE, 19901 and a copy with the Delaware Division of Revenue; 820 N. French Street; Wilmington, DE 19801.

**4.0 Reporting Requirements**

Every year, an electing subsidiary shall file with the State Bank Commissioner on or before the date that its Delaware State Income Tax Return is due (1) Form B under this regulation, and (2) a copy of its Delaware State Income Return as filed with the Delaware Division of Revenue.

**5.0 Termination of Election**

An election under this regulation remains in effect until terminated. An electing subsidiary may terminate its election by filing a notice to that effect with the State Bank Commissioner and the Delaware Division of Revenue.

**FORM A**  
**Election of a Subsidiary Corporation to be Taxed in Accordance**  
**with Chapter 19 of Title 30**

The subsidiary corporation identified below hereby elects to be taxed in accordance with Chapter 19 of Title 30 of the **Delaware Code**.

1. (a) Name and address of subsidiary corporation:

\_\_\_\_\_

\_\_\_\_\_

(b) State of incorporation of subsidiary corporation: \_\_\_\_\_

(c) Federal Employer Identification Number of subsidiary corporation:

\_\_\_\_\_

2. (a) Name and principal place of business of subsidiary corporation's parent banking organization or trust company:

\_\_\_\_\_

\_\_\_\_\_

(b) Percentage of outstanding voting shares of subsidiary corporation owned by parent banking organization or trust company: \_\_\_\_\_

3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?

\_\_\_ yes \_\_\_ no

4. Are the activities of the subsidiary corporation within this state confined to the maintenance and management of its intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940 as amended (15 USC 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State within the meaning of 30 **Del.C.** § 1902(b)(8)?

\_\_\_ yes \_\_\_ no

5. Is the subsidiary corporation a banking organization or trust company as defined by 5 **Del.C.** §101?

\_\_\_ yes \_\_\_ no

6. Describe the principal activities of the subsidiary corporation:

\_\_\_\_\_

---

---

7. Effective date of election: \_\_\_\_\_

The undersigned hereby certifies that the undersigned is duly authorized on behalf of the subsidiary corporation to make an election to be taxed under 30 **Del.C.** Ch. 19 and that all statements herein are true and correct to the best of the undersigned's knowledge and belief.

_____	_____	_____
Date	Signature of President, Treasurer or Other Proper Officer	Title
	_____	_____
	Print Name	Phone No.
	_____	
	_____	
	_____	
	Print Address	

Mail or deliver original completed form to:  
Office of the State Bank Commissioner  
555 E. Loockerman Street, Suite 210  
Dover, DE 19901

Mail or deliver copy to:  
Delaware Division of Revenue  
820 N. French Street  
Wilmington, DE 19801.

## FORM B

### Annual Report of a Subsidiary Corporation Electing to be Taxed in Accordance with Chapter 19 of Title 30

Tax Year \_\_\_\_\_

1. (a) Name and address of subsidiary corporation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Federal Employer Identification Number of subsidiary corporation:

\_\_\_\_\_

2. (a) Name and address of parent banking organization or trust company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Percentage of outstanding voting shares of subsidiary corporation owned by parent banking organization or trust company: \_\_\_\_\_

3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?  
\_\_\_\_ yes \_\_\_\_ no

4. Are the activities of the subsidiary corporation within this state confined to the maintenance and management of its intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940 as amended (15 USC 80a-1 et

# FINAL REGULATIONS

seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State within the meaning of 30 **Del.C.** §1902(b)(8)? \_\_\_ yes \_\_\_ no

5. Is the subsidiary corporation a banking organization or trust company as defined by 5 **Del.C.** §101? \_\_\_ yes \_\_\_ no

Attach copy of the subsidiary corporation's Delaware Income Tax Return for the tax year listed above.

The undersigned hereby certifies that the undersigned is duly authorized on behalf of the subsidiary corporation to make this return and that all statements herein are true and correct to the best of the undersigned's knowledge and belief.

Date	Signature of President, Treasurer or Other Proper Officer	Title
	Print Name	Phone No.
	_____	
	_____	
	_____	
	Print Address	

Mail or deliver original completed form to:  
Office of the State Bank Commissioner  
555 E. Loockerman Street, Suite 210  
Dover, DE 19901  
**8 DE Reg. 474 (09/01/04)**

### 1114 Alternative Franchise Tax Chapter 11 of Title 5 of the Delaware Code

Effective Date: Proposed

1.0 This regulation applies to banking organizations and trust companies, other than federal savings banks not headquartered in this State but maintaining branches in this State, that annually elect to pay an alternative franchise tax pursuant to Section 1101A of Title 5 of the **Delaware Code**. The election to pay the alternative franchise tax is made by filing an original final alternative franchise tax return on the due date, or an amended return within 180 days of the due date of the original return.

#### **2.0 Definitions**

"Bank" means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

"Banking organization" means:

- A bank or bank and trust company organized and existing under the laws of this State;
- A national bank, including a federal savings bank, with its principal office in this State;
- An Edge Act corporation organized pursuant to § 25(a) of the Federal Reserve Act, 12 U.S.C. § 611 et seq. (an "Edge Act Corporation"), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an "Agreement Corporation"), and maintaining an office in this State;
- A federal branch or agency licensed pursuant to § 4 and § 5 of the International Banking Act of 1978, 12 U.S.C. § 3101 et seq., to maintain an office in this State;
- A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized

pursuant to Chapter 14 of Title 5 of the **Delaware Code**, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5 of the **Delaware Code**; or

- A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

**“International Banking Transaction”** shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to Section 771 of Title 5 of the **Delaware Code** or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

- The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
- The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
- The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
- The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;
- The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to an Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or
- The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

**“International Banking Facility”** means a set of asset and liability accounts, segregated on the books and records of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

**“National Bank”** means a banking association organized under the authority of the United States and having a principal place of business in this State.

**“Net Operating Income Before Taxes”** means all pre-tax net income from the operations of a banking organization or trust company, including extraordinary items and other adjustments, computed in accordance with principles used by the Federal Financial Institutions Examination Council or other appropriate federal authority.

**“Out-of-state bank”** has the same meaning as in Section 795 of Title 5 of the **Delaware Code**, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. § 21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

**“Resulting branch in this State of an out-of-state bank”** has the same meaning as in Section 1101(a) of Title 5 of the **Delaware Code**, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the **Delaware Code**, and, in addition, a branch office in this State of an out-of-state bank.

**“Securities Business”** means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.

**“Trust Company”** means a trust company or corporation doing a trust company business which has a principal place of business in this State.

**3.0 Instructions for Filing the Estimated Alternative Franchise Tax Return**

3.1 A banking organization or trust company whose alternative franchise tax liability for the current year is estimated to exceed \$10,000 should file an estimated alternative franchise tax return with the State Bank Commissioner, instead of the estimated franchise tax report in Regulation No. 1104 or No. 1111, and pay estimated alternative franchise tax:

3.1.1 Filing. The estimated alternative franchise tax return shall be filed with the State Bank Commissioner on the first day of March of the current year. Filing an estimated tax return for a particular taxation method is not a mandatory election of that particular method. Additional tax due that results from the underpayment

of estimated taxes will be computed on the basis of the final method properly chosen.

3.1.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated alternative franchise tax return required by section 3.1.1., or an estimated franchise tax report pursuant to Regulation No. 1104 or No. 1111, unless the State Bank Commissioner is satisfied that such failure was not willful.

3.1.3 Form. The estimated alternative franchise tax return is contained in this regulation as Form 1114E.

3.1.4 Rounding. All amounts shall be rounded to the nearest dollar.

3.1.5 Calculation of estimated alternative franchise tax. The total estimated alternative franchise tax shall be calculated as follows:

3.1.5.1 The estimated net operating income before taxes of the banking organization or trust company;

3.1.5.2 Plus the estimated net operating income before taxes of any corporation(s) making an election as provided in Regulation No. 1101;

3.1.5.3 Less any deductions set forth in Section 1101A(c)(1) of Title 5 of the **Delaware**

**Code:**

3.1.5.4 Less the estimated net operating income before taxes of any subsidiary corporation(s) and Edge Act corporation(s) making an election as provided in Regulation No. 1113;

3.1.5.5 Apportion the entire net income to the State of Delaware in accordance with Section 1101A(c)(6) of Title 5 of the **Delaware Code** (attach Schedule 1 – Apportionment Percentage Calculation Worksheet [apportionment percentage shall be rounded to the nearest tenth of a percent]);

3.1.5.6 Multiply the elective income tax base by the rate of taxation set forth in Section 1101A(c)(7) of Title 5 of the **Delaware Code**;

3.1.5.7 Plus the estimated location benefit tax liability calculated in accordance with Section 1101A(d) of Title 5 of the **Delaware Code**, (attach Schedule 2 – Location Benefit Tax Calculation Worksheet);

3.1.5.8 Adjust the subtotal estimated alternative franchise tax for applicable employment tax credits pursuant to Section 1105 of Title 5 of the **Delaware Code**, calculated in accordance with Regulation No. 1109;

3.1.5.9 Adjust the subtotal estimated alternative franchise tax for TravelLink tax credits calculated in accordance with Department of Transportation (DelDOT) TravelLink tax credit reporting requirements;

3.1.5.10 Adjust the subtotal estimated alternative franchise tax for Historic Preservation Tax Credits calculated in accordance with Chapter 18 of Title 30 of the **Delaware Code** and the regulations thereunder.

3.1.6 Payment of estimated alternative franchise tax. The estimated alternative franchise tax liability shall be due and payable as follows:

3.1.6.1 40% due on or before June 1 of the current taxable year;

3.1.6.2 20% due on or before September 1 of the current taxable year;

3.1.6.3 20% due on or before December 1 of the current taxable year.

#### **4.0 Instructions for Filing the Final Alternative Franchise Tax Return**

4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization or trust company and the final alternative franchise tax return, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30; provided, however, that a banking organization may file this return on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income. A banking organization or trust company whose original final franchise tax report was filed pursuant to Regulation No. 1105 or No. 1112 may elect to pay the alternative franchise tax pursuant to Section 1101A of Title 5 of the **Delaware Code** by filing an amended final alternative franchise tax return, as provided in this regulation, within 180 days of the due date of the original return.

4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final alternative franchise tax return required by subsection 4.1, or the final franchise tax report in Regulation No. 1105 or No. 1112, unless the State Bank Commissioner is satisfied that such failure was not willful.

4.3 Form. The final alternative franchise tax return is contained in this regulation as Form 1114F.

4.4 Rounding. All amounts shall be rounded to the nearest dollar.

4.5 Calculation of final alternative franchise tax. The total final alternative franchise tax shall be calculated as follows:

4.5.1 The net operating income before taxes of the banking organization or trust company, (attach a statement of net income that is filed with an appropriate financial regulatory agency):

4.5.2 Plus the net operating income before taxes of any corporation(s) making an election as provided in Regulation No. 1101, (attach Regulation 1101 form – Election To Be Treated As A Subsidiary Corporation Under Sections 1101(f) or 1101A(c)(3) of Title 5 of the **Delaware Code** and a separate report of income for each electing corporation):

4.5.3 Less any deductions set forth in Section 1101A(c)(1) of Title 5 of the **Delaware Code**:

4.5.4 Less the net operating income before taxes of any subsidiary corporation(s) and Edge Act corporation(s) making an election as provided in Regulation No. 1113:

4.5.5 Apportion the entire net income to the State of Delaware in accordance with Section 1101A(c)(6) of Title 5 of the **Delaware Code** (attach Schedule 1 – Apportionment Percentage Calculation Worksheet [apportionment percentage shall be rounded to the nearest tenth of a percent]):

4.5.6 Multiply the elective income tax base by the rate of taxation set forth in Section 1101A(c)(7) of Title 5 of the **Delaware Code**:

4.5.7 Plus the location benefit tax liability calculated in accordance with Section 1101A(d) of Title 5 of the **Delaware Code**, computed as of December 31 of the year prior to the year for which alternative franchise tax is paid (attach Schedule 2 – Location Benefit Tax Calculation Worksheet):

4.5.8 Adjust the subtotal alternative franchise tax for applicable employment tax credits pursuant to Section 1105 of Title 5 of the **Delaware Code** calculated in accordance with Regulation No. 1109, (attach Employment Tax Credit Calculation Worksheet):

4.5.9 Adjust the subtotal alternative franchise tax for Travelink tax credits calculated in accordance with Department of Transportation (DelDOT) Travelink tax credit reporting requirements, (attach DelDOT approval and calculation worksheet):

4.5.10 Adjust the subtotal alternative franchise tax for Historic Preservation Tax Credits calculated in accordance with Chapter 18 of Title 30 of the **Delaware Code** and the regulations thereunder, (attach a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with Section 1105(g) of Title 5 of the **Delaware Code**, and if the credits have been transferred, sold or assigned to the taxpayer by another person, also attach a Certificate of Transfer in accordance with Section 1814(c) of Title 30 of the **Delaware Code**).

## **5.0 Payment of Final Alternative Franchise Tax**

5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final alternative franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated alternative franchise tax or installment. If the final alternative franchise tax is not paid by March 1, a penalty for late payment of the final alternative franchise tax shall be assessed.

## **6.0 Additional Tax Due to Underpayment of Estimated Alternative Franchise Tax or Installment**

6.1 In the case of any underpayment of alternative estimated franchise tax or an installment of estimated alternative tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

6.1.1 The amount of the estimated alternative franchise tax or installment payment which would be required to be made if the estimated alternative tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year; over

6.1.2 The amount, if any, of the estimated alternative tax or installment paid on or before the last date prescribed for payment.

6.2 The period of the underpayment shall run from the date the estimated alternative franchise tax or installment was required to be paid to the earlier of the date when such estimated alternative tax or installment is

paid or the date of the final payment of tax for the year:

6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated alternative franchise tax or any installment shall not be imposed if the total amount of all payments of estimated alternative tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated alternative tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

#### **7.0 Penalty - Late Payment of Final Alternative Franchise Tax**

7.1 In the case of a late payment of final alternative franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

#### **8.0 Election to be listed as a "Subsidiary Corporation"**

8.1 Regulation No. 1101 shall apply to elections to be treated as a subsidiary corporation pursuant to Section 1101A(c)(3) of Title 5 of the **Delaware Code**.

8.2 Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to Section 1101A(c)(3) of Title 5 of the **Delaware Code** and has filed with the State Bank Commissioner the required election form in accordance with Regulation No. 1101 shall provide a report of income for each electing corporation as of December 31 of each year to be submitted in conjunction with the final alternative franchise tax return due January 30; provided, however, that a banking organization may file this report on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income.

8.3 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 1101 must be completed each year for each Electing Corporation and submitted with the final alternative franchise tax return.

#### **9.0 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30**

9.1 Regulation No. 1113 shall apply to elections to be taxed in accordance with Chapter 19 of Title 30 pursuant to Section 1101A(c)(2) of Title 5 of the **Delaware Code**.

#### **10.0 Election by an Edge Act Corporation to be Taxed in Accordance with Chapter 19 of Title 30**

10.1 Regulation No. 1113 shall apply to elections to be taxed in accordance with Chapter 19 of Title 30 pursuant to Section 1101A(c)(4) of Title 5 of the **Delaware Code**.

#### **11.0 Instructions for Filing an Amendment to the Final Alternative Franchise Tax Return**

11.1 Filing. To amend a previously filed final alternative tax return, or to elect the alternative franchise tax method as provided in Section 1101A(a) of Title 5 of the **Delaware Code**, place a check mark (✓) in the box provided on Form 1114F and complete the return in accordance with Section 4 of this regulation. Attach a complete copy of the original filing along with a statement of explanation for all changes.

#### **Form 1114E - Estimated Alternative Franchise Tax Return**

Chapter 11 of Title 5 of the Delaware Code


List below corporation(s) electing under Section

1101A(c)(3) of Title 5 of the Delaware Code and include Federal EIN for each. Attach additional pages if necessary.

- |     |   |         |
|-----|---|---------|
| 1.  | <u>Estimated net operating income before taxes of banking organization or trust company</u>       | _____   |
| 2.  | <u>Estimated net operating income before taxes of electing corporation(s)</u>                     | _____   |
| 3.  | <u>Estimated net operating income before taxes of corporations taxed under Ch. 19 of Title 30</u> | _____   |
| 4.  | <u>Subtotal net operating income before taxes [add lines 1 and 2 and subtract line 3]</u>         | _____   |
| 5.  | <u>Deductions:</u>  |         |
|     | (a) <u>Estimated net operating income before taxes of any non-United States branch office.</u>    | _____   |
|     | (b) <u>Estimated gross income derived from international banking transactions.</u>                | _____   |
|     | (c) <u>Estimated gross income of an international banking facility.</u>                           | _____   |
|     | (d) <u>Estimated income earned from business activities conducted outside the United States.</u>  | _____   |
|     | (e) <u>Estimated interest income from obligations of volunteer fire companies.</u>                | _____   |
|     | (f) <u>Estimated examination fees paid to the Office of the State Bank Commissioner.</u>          | _____   |
|     | (g) <u>Estimated income derived from acting as an insurer.</u>                                    | _____   |
| 6.  | <u>Total estimated deductions [add lines 5(a) - (g)]</u>  | _____   |
| 7.  | <u>Estimated entire net income before apportionment [subtract line 6 from line 4]</u>             | _____   |
| 8.  | <u>Estimated apportionment percentage [from Schedule 1-D, Line 6 – attach completed Schedule]</u> | _____ % |
| 9.  | <u>Estimated elective income tax base [multiply line 7 by percentage on line 8]</u>               | _____   |
| 10. | <u>Bank income tax table:</u>   |         |
|     | (a) <u>First \$50,000,000 of line 9 at 7.0%</u>   | _____   |
|     | (b) <u>Next \$50,000,000 of line 9 at 5.0%</u>  | _____   |
|     | (c) <u>Next \$400,000,000 of line 9 at 3.0%</u>   | _____   |

**FINAL REGULATIONS**

(d) Next \$800,000,000 of line 9 at 1.0% \_\_\_\_\_  
 (e) Amount of line 9 over \$1,300,000,000 at 0.5% \_\_\_\_\_

11. Estimated total bank income tax liability  
[add lines 10(a) - (e)] \_\_\_\_\_

12. Estimated total location benefit tax liability  
[from Schedule 2, Line 11 - attach completed Schedule] \_\_\_\_\_

13. Estimated alternative franchise tax liability  
before tax credits [add lines 11 and 12] \_\_\_\_\_

14. Tax credits:  
 (a) Estimated total employment tax credits \_\_\_\_\_  
 (b) Estimated Travelink tax credits \_\_\_\_\_  
 (c) Estimated historic preservation tax credits \_\_\_\_\_

15. Estimated total tax credits  
[add lines 14(a) - (c)] \_\_\_\_\_

16. Estimated total alternative franchise tax liability  
[subtract line 15 from line 13] \_\_\_\_\_

17. Payment structure and dates:  
 (a) June 1 (40% of line 16 due) \_\_\_\_\_  
 (b) September 1 (20% of line 16 due) \_\_\_\_\_  
 (c) December 1 (20% of line 16 due) \_\_\_\_\_

I, the undersigned officer, hereby certify that this estimated report, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

<u>Date</u>	<u>Signature of President, Treasurer or Other Proper Officer</u>	<u>Title</u>
	<u>Print Name</u>	<u>Phone No.</u>
		<u>E-mail</u>
	<u>Print Address</u>	

Mail Completed Form To:  
Office of the State Bank Commissioner  
555 E. Loockerman Street, Suite 210  
Dover, DE 19901  
Form 1114F - Final Alternative Franchise Tax Return  
Chapter 11 of Title 5 of the Delaware Code

Amended Final Alternative Tax Return  
(check box if filing an amended return)

<u>Name of Banking Organization or Trust Company</u>	<u>Tax Year</u>
<u>Address</u>	<u>Federal Employer Identification Number</u>

List below corporation(s) electing under Section 1101A(c)(3) of Title 5 of the Delaware Code and attach to tax return Regulation 1101 form – Election To Be Treated As A Subsidiary Corporation Under 5 Del.C. § 1101(f) or § 1101A(c)(3); include Federal EIN for each. Attach additional pages if necessary.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- |    |  |       |
|----|--|-------|
| 1. | <u>Net operating income before taxes of banking organization or trust company – [attach statement of net income]</u>                                       | _____ |
| 2. | <u>Net operating income before taxes of electing corporation(s) – [attach separate report of income for each electing corporation]</u>                     | _____ |
| 3. | <u>Net operating income before taxes of corporations taxed under Ch. 19 of Title 30 – [attach separate report of income for each electing corporation]</u> | _____ |
| 4. | <u>Subtotal net operating income before taxes [add lines 1 and 2 and subtract line 3]</u>  | _____ |
| 5. | <u>Deductions:</u>   |       |
|    | (a) <u>Net operating income before taxes of any non-United States branch office.</u>   | _____ |
|    | (b) <u>Gross income derived from international banking transactions.</u>   | _____ |
|    | (c) <u>Gross income of an international banking facility.</u>  | _____ |
|    | (d) <u>Income earned from business activities conducted outside the United States.</u>   | _____ |
|    | (e) <u>Interest income from obligations of volunteer fire companies.</u>   | _____ |
|    | (f) <u>Any examination fee paid to the Office of the State Bank Commissioner.</u>  | _____ |
|    | (g) <u>Income derived from acting as an insurer.</u>   | _____ |
| 6. | <u>Total deductions</u>  | _____ |

- [add lines 5(a) - (g)] \_\_\_\_\_
7. Entire net income before apportionment  
[subtract line 6 from line 4] \_\_\_\_\_
8. Apportionment percentage  
[from Schedule 1-D, line 6 – attach completed  
Schedule] \_\_\_\_\_ %
9. Elective income tax base  
[multiply line 7 by percentage on line 8] \_\_\_\_\_
10. Bank income tax table:  
(a) First \$50,000,000 of line 9 at 7.0% \_\_\_\_\_  
(b) Next \$50,000,000 of line 9 at 5.0% \_\_\_\_\_  
(c) Next \$400,000,000 of line 9 at 3.0% \_\_\_\_\_  
(d) Next \$800,000,000 of line 9 at 1.0% \_\_\_\_\_  
(e) Amount of line 9 over \$1,300,000,000 at 0.5% \_\_\_\_\_
11. Total bank income tax liability  
[add lines 10(a) - (e)] \_\_\_\_\_
12. Total location benefit tax liability  
[from Schedule 2, line 11 – attach completed  
Schedule] \_\_\_\_\_
13. Alternative franchise tax liability before tax credits  
[add lines 11 and 12] \_\_\_\_\_
14. Tax credits:  
(a) Total employment tax credits  
[calculated in accordance with Regulation  
No. 1109, attach completed Employment  
Tax Credit Calculation Worksheet] \_\_\_\_\_  
(b) Travelink tax credits  
[calculated in accordance with Department of  
Transportation (DelDot) reporting requirements;  
attach DelDot approval and calculation  
worksheet] \_\_\_\_\_  
(c) Historic preservation tax credits  
[attach Certificate of Completion in accordance  
with Section 1105(g) of Title 5 of the Delaware  
Code and, if applicable, a Certificate of Transfer  
in accordance with Section 1814(c) of Title 30  
of the Delaware Code] \_\_\_\_\_
15. Total tax credits  
[add lines 14(a) - (c)] \_\_\_\_\_
16. Total alternative franchise tax liability  
[subtract line 15 from line 13] \_\_\_\_\_

- 17. Estimated tax payments:
  - (a) June 1 payment \_\_\_\_\_
  - (b) September 1 payment \_\_\_\_\_
  - (c) December 1 payment \_\_\_\_\_
  - (d) Total estimated tax payments \_\_\_\_\_
  - [add lines 17(a) - (c)] \_\_\_\_\_
- 18. March 1 final tax payment  
[subtract line 17(d) from line 16] \_\_\_\_\_
- 19. Additional tax due to underpayment of estimated tax or installment (if applicable) \_\_\_\_\_
- 20. Penalty for late payment of final tax (if applicable) \_\_\_\_\_
- 21. Total final tax payment  
[add lines 18, 19 and 20] \_\_\_\_\_

I, the undersigned officer, hereby certify that this return, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

<u>Date</u>	<u>Signature of President, Treasurer or Other Proper Officer</u>	<u>Title</u>
	_____	_____
	<u>Print Name</u>	<u>Phone No.</u>
	_____	_____
	_____	<u>E-mail</u>
	<u>Print Address</u>	
	_____	

Mail Completed Form To:  
Office of the State Bank Commissioner  
555 E. Loockerman Street, Suite 210  
Dover, DE 19901

**Schedule 1 – APPORTIONMENT PERCENTAGE CALCULATION WORKSHEET**

As of December 31, 20 \_\_\_\_\_

**Schedule 1-A: Real and Tangible Personal Property:**

(a) Within Delaware

(b) Within and Without Delaware

# FINAL REGULATIONS

	(1) Value at January 1, 20__	(2) Value at December 31, 20__	(1) Value at January 1, 20__	(2) Value at December 31, 20__
1. <u>Real and tangible personal property owned</u>	_____	_____	_____	_____
2. <u>Real and tangible personal property rented (eight times annual rental paid)</u>	_____	_____	_____	_____
3. <u>Total property value [add lines 1 and 2]</u>	_____	_____	_____	_____
4. <u>Average property value [add line 3, columns (1) and (2); then divide by 2]</u>	(a) _____	_____	(b) _____	_____

Note: Disregard any property that is not used in the taxpayer's business.

**Schedule 1-B: Wages, Salaries, and Other Compensation:**

	(a) Within Delaware	(b) Within and Without Delaware
1. <u>Wages, salaries and other employee compensation paid</u>	(a) _____	(b) _____

**Schedule 1-C: Receipts:**

	(a) Within Delaware	(b) Within and Without Delaware
1. <u>Sales of tangible personal property</u>	_____	_____
2. <u>Rents and royalties from tangible property</u>	_____	_____
3. <u>Patent and copyright royalties</u>	_____	_____
4. <u>Gains from the sale or other disposition of real property</u>	_____	_____
5. <u>Gains from the sale or other disposition of tangible property for which an allowance for depreciation is permitted for federal income tax purposes</u>	_____	_____
6. <u>Interest, fees or penalties in the nature of interest, and loan servicing fees from loans secured by real property, and gains from the sale of loans secured by real property</u>	_____	_____
7. <u>Interest, fees or penalties in the nature of interest, and loan servicing fees from loans not secured by real property, and gains from the sale of loans not secured by real property</u>	_____	_____
8. <u>Gross receipts from interest, dividends, gains and other income from investment assets and activities and from trading assets and activities</u>	_____	_____
9. <u>All other gross receipts</u>	_____	_____



FINAL REGULATIONS

	<u>(a) Assets of banking organization or trust company</u>	<u>(b) Assets directly attributable to the operations of a branch operating entirely outside of Delaware (if applicable).</u>
1. <u>Property</u>	_____	_____
2. <u>Cash</u>	_____	_____
3. <u>Interest bearing balances</u>	_____	_____
4. <u>Securities</u>	_____	_____
5. <u>Loans and leases</u>	_____	_____
6. <u>Trading account assets</u>	_____	_____
7. <u>Securitized assets</u>	_____	_____
8. <u>TOTAL (add lines 1 - 7)</u>	<u>(a)</u>	<u>(b)</u>
9. <u>Total location benefit tax base [subtract line 8(b) from line 8(a)]</u>		_____
10. <u>Location benefit tax table</u>		
<u>(a) Minimum location benefit tax</u>		<u>\$2,000,000</u>
<u>(b) First \$5,000,000,000 of line 9 at 0.015%</u>		_____
<u>(c) Next \$15,000,000,000 of line 9 at 0.010%</u>		_____
<u>(d) Next \$80,000,000,000 of line 9 at 0.005%</u>		_____
11. <u>Total location benefit tax liability [add lines 10(a) - (d)]</u>		_____

10 DE Reg. 643 (10/01/06)

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STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

## EXECUTIVE ORDER NUMBER NINETY-ONE

**Re: Executive Order Number Ninety-One Amending Executive Order Number 84**

**WHEREAS**, by Executive Order Number 84, adopted April 13, 2006, I created a Task Force to examine issues surrounding a shortage of licensed speech/language pathologists in the State of Delaware; and

**WHEREAS**, the Task Force has commenced its work as contemplated by Executive Order No. 84, but needs additional time to gather facts and obtain the advice and input of national experts on the issues relating to the shortage of licensed speech/language pathologists; and

**WHEREAS**, it is appropriate to extend the deadline for the Task Force to complete its work and render its findings as contemplated by Executive Order No. 84,

**NOW THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby order and declare as follows:

1. Executive Order No. 84, dated April 13, 2006 is amended by striking Paragraph 5 of the Order in its entirety and replacing it with the following:

“5. The Task Force shall submit its findings to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor by March 1, 2007.”

2. Except as otherwise provided herein, the provisions of Executive Order No. 84 shall remain effective in their entirety.

Approved and adopted: November 6, 2006

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

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STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

## EXECUTIVE ORDER NUMBER NINETY-TWO

**Re: Executive Order Ninety-Two Authorizing The Establishment Of A Special Fund To Assist Any Delaware National Guard Member Or Delaware Based Reservist Who May Be Ordered To Active Duty Or State Active Duty For Any Mobilization Of Any Duration Who Suffer Serious Financial Hardships, As A Result Of Mobilization**

**WHEREAS**, since September 11, 2001, the United States of America, acting in concert with other nations and the Department of Homeland Security, has deployed its armed forces to the Persian (Arabian) Gulf, other worldwide locations, and within the boundaries of the Continental United States, to fight terrorism, provide for domestic emergency services, and protect the lives and property of their citizens; and

**WHEREAS**, members of the Delaware Army and Air National Guard, and other Delawareans who are members of the Army, Air Force, Navy, Marine Corps, and Coast Guard Reserve being called to serve in annual

training status, individual training status, federal active service or state active duty; and

**WHEREAS**, many individuals and organizations desire to extend financial aid and assistance to ameliorate the hardships of Delawareans called to annual training, individual training, active federal service or state active duty and their immediate family members or authorized dependents; and

**WHEREAS**, the Department of Military Affairs, Joint Force Headquarters, Delaware, Commanded by the Adjutant General of the State of Delaware, has been directed by the Department of Defense of the United States to plan, organize, and manage the Defense Family Assistance and Wellness Program for all Guard and Reserve personnel within the State of Delaware; and

**WHEREAS**, it is the policy of the State of Delaware to minimize the hardships to its people arising from the call to annual training, individual training, active federal service or state active duty for mobilizations of any size or duration,

**NOW THEREFORE, I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY ORDER ON THIS 14TH DAY OF NOVEMBER, 2006:**

1. The Adjutant General of the State of Delaware is authorized and directed to establish and maintain the Delaware National Guard and Reserve Emergency Assistance Fund (hereinafter the "DNGREAF"). The DNGREAF shall be maintained as a separate fund, separate from the General Fund or any special fund of the State.

2. Under rules and regulations developed and prescribed by the Adjutant General, the DNGREAF shall:

a. Receive, collect and accept donations of money from whatever source or origin for the benefit of:

(i) Members of National Guard and Reserve units based within the State of Delaware, ordered to active military duty or State active duty as a result of any mobilization or domestic emergency for any duration; and

(ii) Members of the reserve components of the armed forces of the United States whose units are or were permanently stationed in the State of Delaware at the time these units were ordered to active federal service or state active duty as a result of mobilization of any duration; and

(iii) The dependents of any persons described in subparagraphs (i) and (ii).

b. Disburse and pay to eligible persons (as defined in subparagraph (a)) such funds as may be necessary and appropriate to alleviate financial hardship resulting from the call of a National Guardsman or Reservist to active federal service or state active duty as a result of any mobilization for any duration.

c. Be managed in accordance with policies and procedures established by the Adjutant General of the State of Delaware. These procedures shall ensure sound management of funds deposited in the DNGREAF, and equitable distribution of those funds to eligible persons. These procedures shall specify periodic reports to be submitted to the Governor on the activities of the DNGREAF.

d. The Adjutant General of the State of Delaware has the authority to allow exceptions to the eligibility criteria and disburse funds to non-eligible individuals subject to a favorable majority vote by the DNGREAF board of directors.

3. The DNGREAF shall not pledge, encumber, or obligate in any way the credit of the State of Delaware.

4. All funds collected and managed through the Delaware National Guard Emergency Assistance Fund pursuant to Executive Order No. 43, issued April 4, 2003, shall be included in the DNGREAF created by this Order and subject to distribution under the terms of this Order.

5. Executive Order No. 43, dated April 4, 2003, is rescinded.

Approved and adopted: November 14, 2006

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

**DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY**  
**NOTICE OF PUBLIC HEARING**

The Delaware Manufactured Home Relocation Authority (the "Authority") will hold a public hearing to discuss proposed amendments to the Authority's regulations relating to the administration of the Delaware Manufactured Home Relocation Trust Fund ("Trust Fund") established pursuant to 25 **Del.C.** §7012. The Authority was established by the Delaware Legislature pursuant to 25 **Del.C.** §7011. The primary purpose of the Authority is to: (a) provide financial assistance to manufactured homeowners who are tenants in a manufactured home community where the community owner changes the use of land or converts the manufactured home community to a condominium or cooperative community; and (b) to provide financial assistance to manufactured home community owners for the removal and/or disposal of non-relocatable or abandoned manufactured homes when there is a change in use or conversion. The Authority set an initial \$3.00 monthly assessment for deposit into the Trust Fund, effective April 1, 2004. Under the statute, one-half of the monthly assessment is the obligation of the Tenant of a rented lot and one-half of the assessment is the obligation of the Landlord. The monthly assessments collected by the Authority are deposited into the Trust Fund, and the Authority is responsible for administering this fund. To carry out its statutory responsibilities, the Authority has established procedures under which applicants for payment from the Authority may be approved and to set maximum benefits that may be payable to applicants under certain circumstances.

Pursuant to its statutory authority, at the Authority's meeting on October 25, 2006, the Authority adopted a resolution proposing for adoption certain revisions to the existing regulations to be used for the administration of the Trust Fund. The proposed regulations approved at the October 25, 2006 meeting of the Authority and published herein will: (a) increase the monthly assessment from \$3.00 per month to \$4.50 per month, effective April 1, 2007 and (b) set the maximum payment available to a tenant for a single section home and a multi-section home whose home has been determined to be non-relocatable at \$10,000.00 and \$18,000.00 respectively.

The public hearing will be on Monday, January 22, 2007, beginning at 6:00 p.m. and ending at 7:30 p.m. in the Auditorium located at the offices of the Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901. In the event of inclement weather that requires the January 22, 2007 public hearing to be postponed, the public hearing will be held on Monday, January 29, 2007 at 6:00 p.m. and ending at 7:30 p.m. at the same location described above.

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

William A. Denman, Esquire  
Parkowski, Guerke & Swayze, P.A.  
116 W. Water Street  
Dover, DE 19904  
(302) 678-3262  
Email: wdenman@pgslegal.com

Anyone wishing to present oral comments at this hearing should contact Mr. William A. Denman at (302) 678-3262 by Friday, January 19, 2007. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony, should submit such comments by January 31, 2007 to:

William A. Denman, Esquire  
Parkowski, Guerke & Swayze, P.A.  
116 W. Water Street  
Dover, DE 19904  
(302) 678-3262  
Email: wdenman@pgslegal.com

**DELAWARE RIVER BASIN COMMISSION**  
**NOTICE OF PUBLIC HEARING AND COMMISSION MEETING**

The Delaware River Basin Commission will hold a public hearing and business meeting on Tuesday, December 12, 2006 at 10:15 a.m. at the Commissioner's office, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC website at <http://www.drbc.net>, or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION**  
**NOTICE OF PUBLIC HEARING**

The Delaware Harness Racing Commission (DHRC), pursuant to 3 **Del.C.** §10005, proposes to change DHRC Rules 3, 5 and 8. The Commission will hold a public hearing on the proposed rule changes on January 9, 2007. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

The proposed changes are for the purpose of updating the rules to reflect current policies, practices and procedures. For example, Rule 3 updates position titles and outdated practices, Rule 5 adds new language requiring the use of safety vests, and Rule 8 updates drug testing procedures and trainer responsibilities.

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**DEPARTMENT OF EDUCATION**

The Department of Education will hold its monthly meeting on Thursday, December 21, 2006 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**NOTICE OF PUBLIC COMMENT PERIOD****Attendant Services §1915(c) Home and Community-Based Services Waiver Application**

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 512, and, in compliance with State Notice procedures as set forth in the Federal Register, September 27, 1994, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) has submitted an Attendant Services §1915(c) Home and Community-Based Services (HCBS) Waiver application to the Centers for Medicare and Medicaid Services (CMS).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this waiver must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by December 31, 2006. The Attendant Services §1915(c) HCBS Waiver application can be viewed at:

**[Attendant Service Waiver1006.pdf](#)**

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 MEDICAID AND MEDICAL ASSISTANCE****NOTICE OF PUBLIC COMMENT PERIOD****Long Term Care Medicaid  
Sections 20350 and 20400**

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 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance.

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 Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 (new fax number) by December 31, 2006.

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 COMMENT PERIOD**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of proposed Department of Insurance **Regulation 704** relating to **Homeowners Premium Consumer Rate Comparisons**. The docket number for this proposed regulation is 321.

The proposed regulation would require homeowner's insurance companies to provide survey data to the Department of Insurance for the purposes of allowing consumers of residential homeowners insurance the opportunity to compare rates from different companies. The survey data would have to be filed with the Department on an annual basis. The regulation would also require the insurers to provide direct email responses to the consumer. The **Delaware Code** authority for the change is 18 **Del.C.** §§311 and 2501 et seq.

The text can also be viewed at the Delaware Insurance Commissioner's website at [www.delawareinsurance.gov](http://www.delawareinsurance.gov) and clicking on the link for "Proposed Regulations."

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m., Wednesday, January 3, 2007, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, sent by fax to 302.739.5566 or emailed to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

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**DEPARTMENT OF INSURANCE****NOTICE OF PUBLIC COMMENT PERIOD**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of proposed Department of Insurance Regulation 1215 relating to RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES. The docket number for this proposed regulation is 322.

The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with 18 **Del.C.** §§311 and 1113 and Sections 5.1 and 5.2 of Regulation 1212. The proposed regulation adopting new tables more accurately reflect differences in mortality in determining minimum reserve liabilities for certain life products.

The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/>

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[inscom/departments/documents/ProposedRegs/ProposedRegs.shtml](http://inscom/departments/documents/ProposedRegs/ProposedRegs.shtml).

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m., Wednesday, January 3, 2007, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, sent by fax to 302.739.5566 or emailed to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

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## **DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

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

### **NOTICE OF PUBLIC COMMENT PERIOD**

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with **Del. Code** Title 24 Chapter 13 proposes to adopt Rule 12.0 – Use of Rifle and Shotgun. This adoption will allow the use of rifles and shotguns by trained security/armored car guards to be equipped to handle situations where the risk of terrorist activity is high or under genuine risk to life or to property. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by December 31, 2006, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, January 25, 2006, 10:00 a.m., at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

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## **DEPARTMENT OF STATE**

**DIVISION OF PROFESSIONAL REGULATION**

**1400 Board of Electrical Examiners**

### **NOTICE OF RESCHEDULED PUBLIC HEARING**

The Delaware Board of Electrical Examiners, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §1406(a)(1), proposed changes to its Regulations 6.0, 7.0, and 8.0 relating to electricians' liability insurance. Specifically, the changes to **6.0 License and Insurance, 7.0 Expiration and Renewal, and 8.0 Continuing Education** would allow licensees to attest to maintenance of their required liability insurance during the renewal process. The Board also proposed to change **15.0 Inspection Agencies** to end the Division of Professional Regulation's practice of mailing quarterly lists of licensed electricians to all licensed inspection agencies.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the Delaware *Register of Regulations*, Volume 10, Issue 4 on October 1, 2006. However, notice was not published in two (2) Delaware newspapers of general circulation, as required by 29 **Del.C.** §10115, so the public hearing could not be conducted on November 1, 2006 as originally scheduled. The public hearing has, therefore, been rescheduled for January 3, 2007.

A public hearing will be held on the proposed regulatory changes on Wednesday, January 3, 2007 at 8:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed changes or to make comments at the public hearing should contact Judy Letterman by calling (302) 744-4504.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION**  
**2500 Board of Pharmacy**  
**NOTICE OF PUBLIC HEARING**

The Delaware Board of Pharmacy, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §2509, proposes changes to its **Regulation 8.0** affecting the licensure requirements for wholesale distributors.

A public hearing is scheduled for Wednesday, January 17, 2007 at 9:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Mariah Krass at the above address. The final date to submit written comments will be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Mariah Krass at the above address or by calling (302) 744-4526.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION**

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**Welcome to the Division of Professional Regulation**

Our mission is to credential qualified professionals to ensure the protection of the public's health, safety and welfare. For additional information see [Director's Letter](#) and [About Agency](#).

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Nov. 30, 2006

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# DEPARTMENT OF EDUCATION

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# DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

## DIVISION OF FAMILY SERVICES

### Office of Child Care Licensing

Statutory Authority: 29 Delaware Code, §9003; 31 Delaware Code, §§341-345  
(29 Del.C. §9003; 31 Del.C. §§341-345)

## FINAL

## ORDER

### 101 Rules for Early Care and Education and School-Age Centers

#### Summary of the Evidence and Information Submitted

The Office of Child Care Licensing seeks to adopt revisions to the formerly entitled *Delacare: Requirements for Day Care Centers* which was adopted in 1988. In addition to a review of best practices in the field of early care and education and school-age care, conducting a comparison of child care center regulations of contiguous States and States with similar demographics to those of Delaware, the Office of Child Care Licensing received input from several sources to revise these rules. Consensus on the rule changes was reached by a task force and its subcommittees that met periodically from September 2001 to June 2006. The task force consisted primarily of early care and education and school-age center program directors along with licensing specialists and those whose interests would be affected by the revisions. Two periods of public comment were opened, the first in February 2004. Public comments during that period led to the withdrawal of the proposed regulations while a financial impact study was conducted as directed by Governor Minner. The findings of the financial impact survey were set forth in *Delacare: Requirements for Day Care Centers Fiscal Impact Study* released October, 2005. These findings coupled with public comments and further task force consideration and advice were the basis upon which the *Delacare: Rules for Early Care and Education and School-Age Centers* were set forth again in August 2006 for public comment. The period of public comment concluded on September 22, 2006.

#### Comments Received

A public comment period was announced and held beginning August 1, 2006 to September 22, 2006. Public hearings were held in the evening in four locations throughout the State as follows:

- September 11, 2006 - Newark
- September 13, 2006 - Georgetown
- September 19, 2006 - Wilmington
- September 21, 2006 - Dover

A total of 56 people/organizations offered comments. Of those comments, 22 Centers were represented which was equivalent to 5% of the 426 Centers licensed under *Delacare: Requirements for Day Care Centers* in the month of September 2006. 38 out of 56 (68%) persons/organizations offered verbal or written comments which stated their general support for the revisions and only 4 out of 56 (7%) were in general opposition.

Information received during this period was analyzed and additional changes were made to the revisions. These changes fall under the following categories:

- To be aligned to comply with the Americans with Disabilities Act (ADA) to accommodate the needs of individuals with disabilities at Centers as recommended by multiple Delaware advisory counsels whose missions are to advocate on behalf of persons with disabilities.
- To accommodate concerns regarding the fiscal impact of changes to Delacare rules in the areas of staff qualifications, staffing requirements, annual training requirements, communication with parents, outdoor play area, fall zone depths, sleeping arrangements, heating and cooling

- equipment inspection, pet care, transportation of children, immunization information, and positive behavior management
- To correct or clarify rules to better ensure the ability of Office of Child Care Licensing to regulate child care centers
  - To correct grammatical mistakes, and omissions
  - To reword rules for clarity and consistency in use of wording while keeping the original intent of the rule

### **Finding of Facts**

The Office of Child Care Licensing is within the Division of Family Services, Department of Services for Children, Youth and their Families. The Secretary of this Department finds that is appropriate to amend 9 **DE Admin. Code** 101 or as it was otherwise known as *Delacare: Requirements for Day Care Centers* and to adopt the revisions to the rules. The new title will become *Delacare: Rules for Early Care and Education and School-Age Centers*. The adoption of the revisions is sought to establish a new baseline of care which more appropriately reflects accepted quality standards that support healthy, safe and enriching early care and education and school-age practices. The 1988 *Delacare: Requirements for Day Care Centers* does not reflect the body of knowledge that has been acquired in the field of early care and education. The existing Requirements no longer offer adequate safeguards or protection for children in care nor do they promote standards and practices that promote optimal development and learning in order for children to be ready for and succeed in school and life. All other States have revised or readopted Center rules since 1988, most in the past 10 years leaving Delaware to have the oldest set of child care center regulations.

### **Decision to Adopt the Rules**

For the foregoing reasons, the Department Secretary concludes that it is appropriate to revise 9 **DE Admin. Code** 101 and adopt the revisions to create a new set of rules titled *Delacare: Rules for Early Care and Education and School-Age Centers*. Therefore, pursuant to 31 **Delaware Code**, Chapter 3, Subchapter III, Subsections 341-345, also known as "The Delaware Child Care Act" and 29 **Delaware Code**, Chapter 90, Subsection 9003(7), 9 **DE Admin. Code** 101 is hereby adopted.

### **Text and Citation**

The text of 9 **DE Admin. Code** 101 adopted hereby shall be available at <http://www.state.de.us/research/AdminCode/title9/index.shtml#TopOfPage> and said rules shall be cited as 9 **DE Admin. Code** 101 in the Administrative Code of Regulations for the Department of Services for Children, Youth and their Families.

### **Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 31 **Delaware Code**, Chapter 3, Subchapter III, Subsections 341-345, also known as "The Delaware Child Care Act" and 29 **Delaware Code**, Chapter 90, Subsection 9003(7) on (date). The effective date of this Order adopting *Delacare: Rules for Early Care and Education and School-Age Care Centers* shall be on January 1, 2007.

**IT IS SO ORDERED** the 26th day of October 2006  
Cari DeSantis, Secretary, Department of Services for Children, Youth and their Families  
Carlyse Giddins, Director, Division of Family Services  
Patricia Quinn, Administrator, Office of Child Care Licensing

Approved for adoption on this 26th day of October 2006

**DELACARE**

**REQUIREMENTS RULES FOR DAY EARLY CARE AND EDUCATION AND SCHOOL-AGE CENTERS**  
**OFFICE OF CHILD CARE LICENSING**  
**STATE OF DELAWARE DIVISION OF FAMILY SERVICES**  
**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**  
**DIVISION OF FAMILY SERVICES STATE OF DELAWARE**  
**NOTICE OF RESCISSION AND PROMULGATION**

The Office of Child Care Licensing, Division of Program Support Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates the following requirements rules for day early care and education and school-age centers as authorized in the **Delaware Code**, Title 31, Chapter 3, Subchapter # III, Subsections 341-344 345, also known as "The Delaware Child Care Act". The terms "Early Care and Education and School-Age" Centers are now used in the field instead of "day care" centers. The Code refers to these types of licensed facilities as day care centers. All previous rules, regulations and standards pertaining to such facilities are null and void except to the extent all rules, regulations, standards, enforcement actions, decisions, investigations and the like previously promulgated or taken by the Office of Child Care Licensing shall continue unabated and shall remain in full force and effect notwithstanding promulgations of these regulations or rules. These requirements rules shall take effect on September 1, 1988 January 1, 2007.

Charles E. Hayward Cari DiSantis, Secretary Date  
Department of Services for Children, Youth and Their Families

Virginia D. Miller Carlyse Giddins, Director Date  
Division of Program Support Family Services

**FOREWORD**

Day Early Care and Education and School-Age Care, generally known as "day care" or "child care", is the most commonly are the terms now used term to refer to the range of services available for children who are away from their own homes for a part of the day. Generally parents/guardians seek substitute care for reasons of employment, although a variety of situations prompt the need for day care outside of their own homes. The primary characteristic of day these types of care arrangements is the delegation by the parent(s)/guardian(s) of the responsibility for the care, education, and protection, supervision or guidance of the child to the day early care and education or school-age care provider.

The need for protecting children receiving care outside their own homes was recognized by the Delaware General Assembly as early as 1915. Since 1950, Delaware has required currently requires child-day early care and education and school-age facilities centers to be licensed as authorized in the Delaware Code, Title 31, Chapter 3, Subchapter # III, Subsections 341- 344 345, also known since July, 2001 as "The Delaware Child Care Act". The licensing law defines the types of facilities that are to be regulated by the State, and gives the authority to "prescribe reasonable standards" "prescribe, by regulation or otherwise, any reasonable standards" and "license such facilities" "license such of these (facilities)" to the Department of Services for Children, Youth and Their Families Office of Child Care Licensing. The purpose of the law is to protect the health, safety and well-being of the children who receive care in day early care and education and school-age facilities centers. Licensing of these facilities is a preventive function which has as its purpose setting requirements rules which must be met in order for a facility to be able to operate.

In developing the current revision of Day Early Care and Education and School-Age Center Licensing Requirements Rules, the Department Office of Child Care Licensing sought the advice and assistance of knowledgeable persons representative of the field of child-care early care and education and school-age care and those whose interests are affected by the rules. These new requirements rules, now under the title of "**Delacare: Requirements Rules for Day Early Care and Education and School-Age Centers**", were primarily drawn from the Model Child Care Standards Act—Guidance to States to Prevent Child Abuse in Day Care Facilities, January 1985, other Delaware facility rules concerning the care of children, the licensing requirements rules of other states, and current research in child development, early care and education and health and safety care issues related to day children in care, statistical and demographic reports, and national professional accreditation standards.

The ~~requirements rules~~ are divided into ~~five~~ three (3) distinct parts. The first part contains ~~requirements rules~~ which that must be met by all ~~day early care and education and school-age~~ centers in order to be licensed. The remaining ~~four~~ parts contain ~~separate additional requirements rules~~ for facilities providing specialized services - night care and care in school-age centers. Through this design, the ~~Department Office of Child Care Licensing~~ has attempted to define specific ~~requirements rules~~ rather than broad standards so that compliance can be measured more accurately and consistently.

The ~~Department Office of Child Care Licensing~~ sincerely appreciates the contribution and efforts of all the individuals involved in the development of **Delacare: Requirements Rules for Day Early Care and Education and School-Age Centers** and asks for their continued support in working together to provide better ~~care and~~ services to children in ~~day care centers~~.

**Patricia Quinn**, Administrator, Office of Child Care Licensing  
**Janet I. Carter**, Former Administrator, Office of Child Care Licensing  
**Lynn E. Jezyk**, Rule Development Manager and **Marion C. Hyson**, Consultant

**The following individuals participated in the task force that developed Delacare: Rules for Early Care and Education and School-Age Centers:**

**Jennifer Barber**  
Women and the Law Section of the Delaware Bar

**Cheryl Siok,**  
**Mary Ann Hall or Ellen Hall**  
The Learning Center

**Linda E. Kelly Bassett**  
Sanford S. Murphey Day Care Center

**Alisa Hassler**  
Millsboro Day Care & Preschool and

**Jeff Benatti**  
New Castle County Head Start, Inc.

**Deb Hofmann**  
Girls, Inc. of DE

**Yvonne Biddle**  
Love-n-Learn Nursery-n-Preschool

**Frances P. Johnson**  
Wesley Preschool (retired)

**State Senator Patricia M. Blevins**  
Delaware State Senate

**Cynthia Jones** (formerly of)  
Kingswood Community Center

**Peg Bradley**  
DOE – Office of Early Care and Education

**Evelyn Keating**  
The Family and Workplace Connection

**Norvella Brown**  
DHSS – Purchase of Care

**Pauline Koch**  
The National Association for Regulatory  
Administration

**Martha Buell**  
University of DE and Northern DE, Early Head Start

**Joan Lambeth**  
Nannie's Day Care and Kids Korner Day Care

**Marie Cantrell**  
KinderCare Learning Centers, Inc.

**M. Jonelle Lambertson-Jones**  
Lambertson's Day Care

**Joan Carlson**  
DSCYF – Office of Child Care Licensing

**State Representative Pamela S. Maier**  
Delaware House of Representatives

**Colleen Conaty**  
Xavier – A School for Young Children

**Valerie Martin**  
Delaware Association of Independent  
Schools and The Tatnall School

**Janet Cornwell**  
Delaware Early Childhood Center and ECAP programs

**Lynn A. Dickey**  
DOE – Child and Adult Care Food Program

**Peggy Gerety**  
Great Expectations Children’s Learning Centers

**Lynn McIntosh**  
Polytech High School

**Shirley Meissner**  
Bayhealth Medical Center/Kent General  
Hospital Child Care Center

**Dayna Moore**  
Lessons Learned Day Care and Preschool

**Donna Godfrey Rich**  
Parent Representative E.I. DuPont de Nemours and Co.

**Barbara Sheppard-Taylor**  
Delaware Technical and Community College

**Ethel D. Stevens**  
Sussex County Child Care Professionals and  
Georgetown Day Care

**Sharon Stull**  
Western Family YMCA School’s Out

**Thom May**  
DHSS – Division of Public Health

**Nancy McConnell**  
Educational Enrichment Center

**Betty Gail Timm**  
The Nursery-Kindergarten Association of DE and  
Zion Kindergarten/Preschool and Extended Care

**Debbie Torbert**  
Newark Day Nursery and Children’s Center

**Anna Traudt**  
Delaware Association for the Education  
of Young Children and children first preschool

**Mary Watson**  
Southern DE Center for Children and Families

**Kathy Wilson**  
DSCYF-Office of Child Care Licensing  
Delaware First

**Phyllis Wilson**  
DSCYF – Office of Child Care Licensing

#### **School-Age Care Subcommittee**

**Sharon Stull and Dan Zakrociemski**  
Western Family YMCA

**Debbie Torbert and Dane Hutchinson**  
Newark Day Nursery

**Evelyn Keating**  
The Family and Workplace Connection

**Vivian Murphy**  
DSCYF- Office of Child Care Licensing

**Lori Bailey and Andrea LaMotte**  
Dover Community YMCA

**Debbie Toner and Melissa Walter**  
Beach Babies Child Care

**Ellen Hall**  
The Learning Center

**Denise Croney**  
Greater Newark Boys and Girls Club

**Judy William and Kathy Cagel**  
The Wonder Years Kids Club

**Claudia Monroe**  
Sussex Family YMCA

**Darlene Farley**  
Bear/Glasgow YMCA

## INTRODUCTION

### 1.0 Legal Base

The legal base for these licensing requirements rules is in the **Delaware Code**, Title 31, Welfare, Part I, In General, Chapter 3, Child Welfare, Subchapter # III, The Delaware Child Care Act, Subsections 341-344345 and Title 29, State Government, Part VIII, Departments of Government, Chapter 90, Department Of Services For Children, Youth And Their Families, Subsection 9003 (7).

### 2.0 Purpose

The overall purpose of these requirements rules is the protection and promotion of the health, safety, and well-being, and positive development of children who receive services in day early care and education and school-age centers. These rules reflect the baseline or minimum standards that shall be expected in Delaware's licensed early care and education and school-age centers. All licensed centers shall have the option to exceed the rules or standards set by the Office of Child Care Licensing.

## PART I. GENERAL PROVISIONS

### 3.0 Definition of Regulated Service

3.1 Day Early Care and Education and School-Age Centers provide care, education, protection, supervision and or guidance for thirteen (13) or more children, including preschool children who are related to the operator. Service is provided on a regular basis for periods of less than twenty-four (24) hours per day, unattended by parent or guardian, and for compensation. This definition shall include but is not limited to full and part time - day care, child care, early care, early care and education, early childhood education, preschool, nursery school, extended care, extended day care, extended child care, independently operated kindergartens, before and/or after school care, school-age center, school-age care, out of school care, school's out care, school vacation/holiday care and summer child care. The following facilities which operate for less than twenty four (24) hours per day are not included in the definition of day care center:

A. ~~Summer camps licensed by the Division of Public Health, or summer schools or classes for religious instruction conducted by churches during summer months known as Vacation Bible Schools, for periods not to exceed four (4) weeks during a twelve (12) month period.~~

B. ~~Child care facilities established in connection with a religious institution, a business, or recreation center, in which children are provided care for brief periods of time, while parents are on the premises.~~

C. ~~Any public or private school that provides regular and thorough instruction through at least the sixth (6<sup>th</sup>) grade in the subjects prescribed for the schools of the State, in a manner suitable to children of the same age and stage of advancement, and that reports to the State Board of Education pursuant to 14 Del.C., Chapter 27, 2704. This exclusion shall include all programs operated by such schools and shall also include preschool education programs for handicapped persons as defined by 14 Del.C., Chapter 31, 3101 (4).~~

D. ~~Preschool, kindergarten and school age programs operated independently for no more than four (4) hours per day and such preschool or kindergarten programs which operate two (2) schedules or no more than four (4) hours each with each session admitting different children.~~

3.2 Early care and education and school-age Centers located at public or private schools that are operated by an agency or individual other than the public or private school entity shall be required to be licensed under these rules.

3.3 The following facilities that operate for less than twenty-four (24) hours per day shall be exempt from licensure under these rules:

3.3.1 Camps permitted or exempted by the Division of Public Health;

3.3.2 Summer schools or classes specifically for religious instruction conducted by religious institutions during summer months;

3.3.3 Programs established in connection with a religious institution, a business, or recreation center, in which children are provided care for brief periods of time, while parents/guardians are on the premises, are readily accessible at all times on an on-call basis and are able to resume control of the child immediately;

3.3.4 Programs that offer activities for children over the age of six (6) who attend at their own discretion on an "open door" basis, where there is no compensation, and where there is no agreement, written or

implied, between the program and the parent(s)/guardian(s) for the program to assume responsibility for the care of the child;

3.3.5 Programs that offer care on an ad hoc, sporadic and isolated basis in order to meet an emergency or special need, or

3.3.6 Any public or private school that provides regular and thorough instruction through at least the sixth (6<sup>th</sup>) grade in the subjects prescribed for the schools of the State, in a manner suitable to children of the same age and stage of advancement, and that reports to the State Board of Education pursuant to **Delaware Code**, Title 14, Chapter 27, Subchapter I, Subsection 2704. This exclusion shall include all programs operated by such schools and shall also include preschool education programs for handicapped persons as defined by **Delaware Code**, Title 14, Chapter 31, Subchapter I, Subsection 3101 (4).

3.4. The requirements rules are divided into five (5) three (3) parts:

Part I - General Provisions;

Part II — Drop in Care

Part III II - Night Care; and

Part IV III - School-Age Care Center

Part V — Specialized Day Care

3.5 To be licensed as a an Day Early Care and Education and School-Age Center, the General Provisions of Part I must shall be met. In addition, Day Care Centers must shall also meet the following requirements rules before providing the following services Night Care or operating a School-Age Center:

To provide Drop in Care, a Day Care Center must also meet Part II requirements.

3.5.1 To provide Night Care, a an Day Early Care and Education Center must shall also meet Part III II requirements rules-;

3.5.2. To provide operate a School-Age Care Center, a Day Care Center must shall also meet Part IV III requirements rules.

D- To provide Specialized Day Care, a Day Care Center must also meet Part V requirements.

#### **4.0 Definition of Terms**

**“Administrative appeal hearing”** means the process that entitles an applicant or licensee the opportunity to appeal the Division’s decision to deny or revoke a license.

**“Adult”** means a person who has reached his or her eighteenth (18th) birthday.

**“Applicant”** means an individual, agency, corporation or partnership applying for a license that is obtained from the Office of Child Care Licensing.

6. “Assistant Caregiver” means a person, working under the observation and supervision of a caregiver or Program Director, who performs direct child care functions and related duties and meets the qualifications specified in Requirement 86.

7. “Caregiver” means a person immediately responsible for the direct care, supervision, guidance and education of children at a Center who plans and monitors the program of daily activities for a group(s) of children, supervises Assistant Caregiver(s) and meets the qualifications specified in Requirement 85.

8. “Chief Administrator” means the person designated by the governing body, of a Center to assume direct responsibility for and continuous supervision of the day to day operation of the Center. The Chief Administrator may also be the owner and/or Program Director.

**“Center”** means the licensed early care and education and/or school-age center.

**“Certified Child Care Health Consultant”** means an independent contractor who has completed the National Training Institute for Child Care Health Consultant Training and is trained to assist early care and education and school-age centers with health and safety issues.

**“Child”** means a person who has not reached the age of eighteen (18) years.

**“Child Abuse”** means any physical injury to a child by those responsible for the care, custody and control of the child, through unjustified force as defined in **Delaware Code**, Title 11, Chapter 4, Subsection 468, emotional abuse, torture, criminally negligent treatment, sexual abuse, exploitation, maltreatment or mistreatment as defined in **Delaware Code**, Title 16, Chapter 9, Subchapter I, Subsection 902.

**“Child Neglect”** means the failure to provide, by those responsible for the care, custody and control of the child, the proper or necessary: education as required by law; nutrition; or medical, surgical or any other care necessary for the child’s well being as defined in **Delaware Code**, Title 16, Chapter 9, Subchapter I, Subsection

902.

**"Child Sex Abuse"** means any sexual offense or child exploitation as defined in **Delaware Code**, Title 11, Chapter 85, Subchapter IV, Subsection 8550.

**"Child with ~~Special Needs~~ Disabilities"** means a child who has been diagnosed by an appropriate a qualified professional as having a physical, intellectual, emotional, developmental or chronic medical conditions(s) or impairments(s) which would require significant modifications(s) in the regular program of activities for that child at a Center **[or as defined by applicable Federal and State Laws]**.

**"Clock Hour(s)"** means the actual number of hours or time a participant spends attending the instructional portion of a training designed to develop or enhance early care and education or school-age care competencies.

**"Comprehensive Professional Development System"** means an organized entity within an appropriate Department within the State of Delaware that promotes and coordinates systems and activities to advance the development of the early care and education and school-age care workforce. "Delaware First" has been the name under which a comprehensive professional development system was established for early care and education and school-age care professionals in Delaware.

**"Complaint"** means an accusation that a Center is not in compliance with the licensing rule(s) or the licensing law(s). Complaints may be written or oral and may be anonymous.

**"Corrective Action Plan"** means the citing of the relevant rule(s) of non-compliance, a statement of the nature of the non-compliance, the action required to return to compliance and the date by which that compliance shall be attained.

11. "Direct Child Care" means the care, supervision, guidance and education of children.

**"Delaware First"** means the comprehensive professional development system for early care and education and school-age care professionals in Delaware.

**"Department"** means the Department of Services for Children, Youth and Their Families.

**"Denial"** means the process of refusing to grant a license after receipt of an original or renewal application. This constitutes refusal of official permission to operate.

**"Direct Child Care"** means the providing of care, education, protection, supervision or guidance of children.

**"Direct Observation"** (of children or staff members) means that staff are physically present in the same room or area with children or other staff members, are visually monitoring the interactions of children and/or staff, and are alert to any problems that may occur.

**"Direct Voice Contact"** means a licensee is required to speak directly with a Licensing Specialist from the Office of Child Care Licensing through a phone call or face-to-face contact. When direct voice contact is required, leaving a voice mail message is not acceptable.

**"Division"** means the Division of Program Support Family Services within the Department.

14. "Drop in Care" means the day care of children on a one time, occasional or unscheduled basis to meet the short term needs of families, some of which may be due to shopping, recreation and tourism.

**"Early Care and Education"** means the care, education, protection, supervision or guidance of children beginning at birth.

**"Early Childhood Administrator"** means a staff member with direct responsibility for the Center's total program of services~~], including the administrative aspects,~~ provided to children and their families~~], and including, when applicable, the administrative aspects]~~. The Early Childhood Administrator approves curriculum, and when also serving as the Early Childhood Curriculum Coordinator, develops and evaluates curriculum, and implements and/or monitors implementation of curriculum and daily activities for children at the Center. The Early Childhood Administrator supervises the Early Childhood Curriculum Coordinator, and when necessary, Early Childhood Teachers and meets the qualifications specified in Rules 24.5.1 and when applicable, 24.6, 24.7, 24.9.1, and 24.9.2.

**"Early Childhood Assistant Teacher"** means a staff member who works under the supervision of at least an Early Childhood Teacher and performs direct child care functions and related duties and assists in the implementation of curriculum. The Early Childhood Assistant Teacher meets the qualifications specified in Rules 24.11.1 and when applicable, 24.11.2.

**"Early Childhood Caregiver"** means a staff member who was formerly a Caregiver at a particular Center licensed before the effective date of these rules or transfers only to a Center licensed before the effective date of these rule that is directly affiliated with the original Center and has qualified for this position at that same Center, and who works under the supervision of at least an Early Childhood Teacher and performs direct child care

functions and related duties and assists in the implementation of curriculum. The Early Childhood Caregiver meets the qualifications specified in Rule 24.12.1.

**“Early Childhood Curriculum Coordinator”** means a staff member who works under the supervision of the Early Childhood Administrator and is immediately responsible for the direct care, supervision, guidance and education of children at a Center. The Early Childhood Curriculum Coordinator develops and evaluates curriculum, and implements and/or monitors implementation of curriculum and daily activities for children at the Center. The Early Childhood Curriculum Coordinator may supervise Early Childhood Teachers, Early Childhood Assistant Teachers, Early Childhood Caregivers, Early Childhood Interns, Volunteers and Substitutes and meets the qualifications specified in Rules 24.8.1 and when applicable, 24.9.1 and 24.9.2.

**“Early Childhood Intern”** means a staff member who works under the supervision of an Early Childhood Teacher and the direct observation of at least an Early Childhood Assistant Teacher or Early Childhood Caregiver and performs direct child care functions and related duties and meets the qualifications specified in Rules 24.13.1 and when applicable, 24.13.2.

**“Early Childhood Teacher”** means a staff member who works under the supervision of an Early Childhood Administrator or Early Childhood Curriculum Coordinator and is immediately responsible for the direct care, supervision, guidance and education of children at a Center. The Early Childhood Teacher implements the curriculum and daily activities for a group(s) of children. The Early Childhood Teacher may supervise Early Childhood Assistant Teachers, Early Childhood Caregivers, Early Childhood Interns, Volunteers and Substitutes and meet the qualifications specified in Rule 24.10.1.

**“Family”** means biological or adoptive father or mother, but may be interpreted broadly to include any person, whether related to the child by blood or not, who resides with the child, takes part in the child’s family life and also may have responsibility for, or legal custody of the child.

**“Field Trip”** means an excursion trip or program activity ~~off the Center property requiring the use of vehicles.~~

**“Governing Body”** means the ~~entity with the~~ person or group of persons with ultimate responsibility for and authority over the operation of a Center, as for example, an owner(s) or Board of Directors.

**“Group Size”** means the maximum number of children assigned to a specific staff member or group of staff members, occupying an individual classroom or well-defined physical space within a large room.

**“Health Care Provider”** means a professional who practices medicine with or without supervision and is sanctioned by an established licensing body. The most common types of health care providers include physicians, advance practice nurses (nurse practitioners), and physician assistants.

**“Individualized Educational Program”** (IEP) means a written statement of a child’s educational program which identifies the services for a child with disabilities or special needs so that he or she may grow and learn during the school year. To develop an IEP, the local education agency officials and others involved in the child’s educational program meet to discuss education related goals.

**“Individualized Family Service Plan”** (IFSP) means a document written at least once each year by the parent(s)/guardian(s) and personnel serving infants/toddlers with disabilities or special needs.

**“Infant”** means a child ~~younger who is less than twelve (12) months of age~~ one (1) year old.

**“Informal Hearing”** means a meeting between the Division and the licensee when a temporary suspension order has been issued.

**“Institutional Abuse”** means when a person responsible for a child’s care in an out-of-home setting jeopardizes the well being of a child that results or may result in physical or emotional injury.

**“License”** means the Office of Child Care Licensing’s granting of authority through a written certification, issued by the Department, ~~of to a Center’s authorization~~ licensee at the Center’s location to operate under applicable State Law(s).

**“Licensee”** means the entity legally responsible for a licensed Center.

**“Licensing Specialist”** means the individual in the employment of the Department of Services for Children, Youth and their Families, Division of Family Services, Office of Child Care Licensing and is responsible for performing regulatory and enforcement activities in the licensure of early care and education and school-age centers.

**“Meal”** means breakfast, lunch or dinner.

**“Night Care”** means care for any child between the hours of ~~7:00 P.M.~~ 7:00 P.M. and ~~7:00 A.M.~~ 7:00 A.M. when the period includes any portion of the child’s normal sleeping hours.

**“Office of Child Care Licensing”** means the organization within the Department authorized under

Delaware Code, Title 31, Chapter 3, Subchapter III, to promulgate and enforce rules, regulations and standards for the conduct of child care, including the licensing thereof, and the development and implementation of policies and procedures.

**"Owner"** means the person(s), firm, partnership, association, organization, corporation or governmental entity with legal and/or fiscal responsibility for and authority over the operation of the Center.

**"Parent(s)/guardian(s)"** means the child's natural or adoptive mother or father or other legally responsible person—a birth or adoptive parent, legal guardian or any other person having responsibility for, or legal custody of, a child.

**"Preschool-Age Child"** means a child ~~two (2)~~ three (3) through ~~four (4)~~ five (5) years of age who is not yet attending a public or private kindergarten program. If a child is older than five (5) years of age and is not yet attending a public or private kindergarten program, that child shall be considered in the preschool-age group until attending either kindergarten or first grade which ever comes first.

**"Professional Development"** means the continuous pursuit of essential knowledge and skills to develop or enhance generally accepted competencies in the early care and education and school-age care field.

**"Program Director"** means the employee of the Center with direct responsibility for developing, implementing and supervising the total program of services provided to children.

**"Regularly or on a regular basis"** means ~~day-early care and education and school-age care services~~ which are available and provided at a Center on more than one (1) day in any one (1) week.

**"Revocation"** means the process of rescinding a license during the effective dates of a license. This constitutes revocation of official permission to operate.

**"Secretary"** means the Secretary of the Department of Services for Children, Youth and Their Families.

**"School-Age Administrator"** means a staff member of a School-Age Center with direct or supervisory responsibility [School-Age] for the Center's total program of services~~[- including the administrative aspects.]~~ provided to children and their families~~], and including, when applicable, the administrative aspects].~~ The School-Age Administrator approves curriculum and also, when not assigning such duties to a School-Age Site Coordinator, develops and evaluates curriculum, and implements and/or monitors implementation of curriculum and daily activities for children at the School-Age Center. The School-Age Administrator supervises School-Age Site Coordinators and when necessary, School-Age Site Assistants and School-Age Interns, and meets the qualification specified in Rules 89.2.1 and 89.2.2.

**"School-Age Care"** means care, education, protection, supervision or guidance for school-age children in any of the following circumstances: before and/or after school; ~~and full-time during school holidays;~~ and/or summer months.

**"School-Age Center"** means a Center that exclusively provides care for school-age children.

**"School-Age Child"** means a child five (5) years of age or older **[or]** who is attending kindergarten or higher grade ~~[in a public or private school]~~. A child shall be considered school-age for staff /child ratio purposes beginning the first day attending either kindergarten or first grade which ever comes first.

**"School-Age Intern"** means a staff member of a School-Age Center who works under the supervision of at least a School-Age Site Coordinator, or School-Age Site Assistant who is designated as responsible for the School-Age Center, and under the direct observation of at least a School-Age Site Assistant and performs direct child care functions and related duties and meets the qualifications specified in Rules 89.5.1 and when applicable, 89.5.2.

**"School-Age Site Assistant"** means a staff member of a School-Age Center who works under the supervision of at least a School-Age Site Coordinator and performs direct child care functions and related duties and assists in the implementation of curriculum. The School-Age Site Assistant who is designated as responsible for the School-Age Center may supervise School-Age Interns, Volunteers and Substitutes and meets the qualifications specified in Rule 89.4.1.

**"School-Age Site Coordinator"** means a staff member of a School-Age Center who works under the supervision of the School-Age Administrator and is immediately responsible for the day-to-day operations of the **[School-Age]** Center, direct care, supervision, guidance and education of the children. The School-Age Site Coordinator implements curriculum and daily activities for children at the School-Age Center. Also, when assigned such duties, the School-Age Site Coordinator develops and evaluates curriculum, and monitors implementation of curriculum. The School-Age Site Coordinator may supervise School-Age Site Assistants, School-Age Interns, Volunteers and Substitutes and meets the qualifications specified in Rules 89.3.1 and, when applicable, 89.3.2.

**"Snack"** means supplemental food served between meals.

~~"Specialized Day Care" means care to children with special needs which necessitate more than usual personal care and/or special equipment or architectural features in the facility.~~

~~"Staff or Staff Member" means any full or part time employee of a Center including substitutes or volunteers.~~

~~"Substitute" means a paid staff member who is temporarily filling in for a position during the absence of a permanent staff member and works under the supervision of at least an Early Childhood Teacher, School-Age Site Coordinator, or School-Age Site Assistant who is designated as responsible for the School-Age Center, and when necessary, under the direct observation of at least an Early Childhood Assistant Teacher, Early Childhood Caregiver, or School-Age Site Assistant.~~

~~"Supervision" (of children) means the appropriate number of staff members are physically present in the area or room where children are being cared for and are providing watchful oversight and timely attention to the children's actions and needs.~~

~~"Supervision" (of staff) means performing monitoring and evaluation functions of assigned staff which includes the observation of interactions of assigned staff with children and families, staff's adherence to the Delacare: Rules for Early Care and Education and School-Age Centers, and the Center's policies and procedures. [When performing monitoring functions,] supervisory staff shall be physically present in the same room or area as assigned staff and directly observe staff to monitor on-going interaction with children.~~

~~"Suspension Order" means a notice issued by the Office of Child Care Licensing that the license to operate a Center has been suspended.~~

~~"Toddler" means a child between the ages of twelve (12) and twenty four (24) months who is one (1) to three (3) years of age.~~

~~"Training" means successful participation in any formal an organized professional development activity that is approved or accepted by the Office of Child Care Licensing as related to improvement in an employee's skills or knowledge related to job performance excluding routine supervision and including designed to develop or enhance the early care and education or school-age care competencies participation at conferences, workshops, relevant courses and in service training sessions.~~

~~"Variance" means the nontransferable written authorization issued by the Division to use alternative means which meet the intent of the specific licensing rule(s) and is based on the need(s) or circumstance(s) of the Center.~~

~~"Volunteer" means any person who provides an unpaid service or support to a Center. Volunteers shall be under the supervision of at least an Early Childhood Teacher, School-Age Site Coordinator, or School-Age Site Assistant who is designated as responsible for the School-Age Center and, when necessary, under the direct observation of at least an Early Childhood Assistant Teacher, Early Childhood Caregiver, or School-Age Site Assistant.~~

~~"Working Day(s)" means any weekday Monday through Friday but not including the weekend (Saturday and Sunday) and a State of Delaware legal holiday that falls on a weekday.~~

## **5.0 General Requirements Licensing Process and Procedures**

### **5.1 License Required To Operate**

~~5.1.1 No person shall operate, establish, manage, conduct, assist in or maintain a Day Care Center, or hold out, advertise or represent by any means to do so, without first obtaining a license from the Department pursuant to 31 Del.C., Chapter 3. Any person so involved shall be subject to criminal or civil penalties in accordance with State Law. An agency, corporation, partnership or individual shall not operate or maintain a Center unless issued a license to do so by the Office of Child Care Licensing.~~

### **5.2 Authority to Inspect**

~~5.2.1 An applicant or licensee shall allow access to the premises by any authorized representative of the Office of Child Care Licensing, of another State agency, or any local building, fire or health agency for the purposes of determining compliance with applicable provisions of these rules. On-site inspections may be conducted without prior notice.~~

~~5.2.2 An applicant or licensee shall permit any authorized representative of the Office of Child Care Licensing access to information, files and records relevant to determining compliance with applicable provisions of these rules and to interview any staff member, or child.~~

### **5.3 Issuance of License**

~~5.3.1 To qualify for a license, an applicant or licensee shall demonstrate to the satisfaction of the~~

Office of Child Care Licensing that the Center is in full or substantial compliance with applicable provisions of these rules.

5.3.2 A license shall be issued only to the Center for which application is made and for the address of the Center's actual site on the application, and shall not be transferable, assignable or subject to sale.

5.4 Posting of License

A licensee shall post its current license to operate a Center in a place conspicuous to the public.

5.5 License for Each Center Site Location

5.5.1 A separate application shall be made for each Center site location.

5.5.2 A Center that operates in two (2) or more buildings at the same site location shall have the option of applying for a single license for all buildings at the site location, or for a separate license for each building at the site location.

5.5.3 An agency or individual who operates an early care and education and/or school-age Center at a public or private school but is not employed by the school shall be required to apply for a license for each Center site location.

5.5.4 A license shall not be transferable, assignable or subject to sale.

5.6 Nullification of License

5.6.1 When a Center is sold, leased or discontinued or the operation has moved to a new location or the license has been revoked, the current license shall immediately become null and void and shall be returned to the Department.

34. ~~A Center shall comply with the applicable provisions of Titles VI and VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, Executive Order No. 11246 of September 24, 1965, and any other Federal or State anti discriminatory act, law, statute, regulation or policy, along with all amendments and revisions of such laws.~~

35. ~~The Department may investigate or visit any Center licensed, with or without notice, to examine the condition of the Center. The Chief Administrator shall allow authorized Department representatives access to any information reasonably related to compliance with applicable licensing requirements.~~

A. ~~A Center shall admit representatives of the Department and furnish all reasonable facilities for thorough examination of its records and reports.~~

36. ~~The Department is authorized to request the appropriate State and local fire, health and building officials to conduct inspections and examinations of a Center to determine compliance with State and local ordinances, codes and regulations with reports submitted to the Department.~~

5.7 Complaint Procedure

5.7.4 An investigation by the Office of Child Care Licensing shall be made if a complaint is received by the Department regarding these rules, *Delaware: Rules for Early Care and Education and School-Age Centers*. The Department Office of Child Care Licensing shall notify the Center licensee that a complaint is being investigated. The results of the Department's Office of Child Care Licensing's investigation shall be reported in writing to the Center investigated. If the complaint is substantiated or if any other violations are found as a result of the investigation, the Center licensee shall be required to abate the violations and come into full [or substantial] compliance with State Law and the rules and regulations promulgated by the Department Office of Child Care Licensing.

**[5.7.1 Complaints relating specifically to laws, rules, or regulations of other governmental entities shall be referred to the appropriate entity for investigation. At the time of the referral the Office of Child Care Licensing shall request a report on the investigation findings.]**

5.7.2. An investigation by the Department of Services for Children, Youth and their Families, Division of Family Services, Office of Children's Services, Institutional Abuse Investigation Unit shall be made if a complaint is received regarding the abuse or neglect of a child at the Center by a staff member. ~~[A parallel investigation by the Office of Child Care Licensing and/or law enforcement agency may also occur under this circumstance.]~~

## 6.0 Types of Licenses

6.1 Annual License

6.1.1 An annual license is issued when the Center meets all the ~~Requirements for Day Care Centers~~ Office of Child Care Licensing determines that a licensee is in full [or substantial] compliance with applicable provisions of these rules. An annual license is effective for one (1) year from the date of issue, unless it

is revoked or surrendered sooner.

6.2 An annual license is effective for one (1) year from the date of issuance, unless it is:

6.2.1 Modified to a provisional license;

6.2.2 Revoked;

6.2.3 Surrendered prior to the expiration date; or

6.2.4 Suspended.

6.3 Provisional License

6.3.1 A provisional license may be issued when the ~~Department~~ Office of Child Care Licensing determines that:

A. An applicant is temporarily unable to comply with all of the requirements in the **Requirements for Day Care Centers**.

6.3.1.1 ~~The effect of non-compliance to any rule or regulation does not present or will not present an unreasonable~~ There is no serious risk to the health, safety and well-being of the children ~~or staff of the Center;~~ and

6.3.1.2. ~~The Center~~ A licensee has a plan of correction that has been approved by the ~~Department~~ submitted to the Office of Child Care Licensing and the Office of Child Care Licensing has approved a written corrective action plan.

~~A provisional license may also be issued when a Center is initially licensed. A provisional license may be issued for up to one year and may not be renewed.~~

6.3.2 A provisional license may be replaced with an annual license when ~~all of the following conditions exist~~ the Office of Child Care Licensing determines that a licensee has corrected all violations in advance of the expiration date of the provisional license and has come into full [or substantial] compliance with applicable provisions of these rules.

A. ~~The Center corrects the deficiencies related to the requirements in advance of the expiration date of the provisional license and no additional areas of non-compliance exist.~~

B. ~~Compliance with the requirements has been verified by an on-site observation by a Department representative or by written evidence provided by the Center.~~

C. ~~All other terms of the license remain the same.~~

6.3.3 A request to replace a provisional license and to issue an annual license ~~must~~ shall be made in writing by the ~~Center~~ licensee. If the request is approved, an annual license shall be issued.

## 7.0 Procedures for Initial Licensure

7.1 An applicant ~~must~~ shall apply for a license on a form provided and in a manner prescribed by the ~~Department~~ Office of Child Care Licensing.

4 7.2 ~~Within ninety (90) days after~~ Upon receipt of a completed application, a ~~an~~ Department Office of Child Care Licensing representative will make a reasonable effort to shall:

A. ~~Provide consultation to aid the applicant in complying with the~~ **Requirements for Day Care Centers**;

7.2.1 ~~Review the application, confer with the applicant, and inspect the premises for which the application is made to determine whether the applicant has fully~~ [or substantially] complied with applicable provisions of these rules;

~~Request appropriate authorities to verify compliance with applicable fire safety regulations, environmental health regulations, nutritional standards, building codes, zoning ordinances and other State and local laws;~~

7.2.2 ~~Make a recommendation to the Division Director~~ Office of Child Care Licensing regarding licensure the issuance of a license. If a license is granted, it shall be an initial provisional license issued for six (6) months. An annual license shall be issued if when the ~~Center~~ licensee fully [or substantially] meets all the applicable provisions of these requirements rules set forth in the **Requirements for Day Care Centers**. ~~If a license is denied, the Center shall be notified by a letter stating the reason(s) for denial and setting forth the applicant's rights to an appeal of the decision.; or~~

7.2.3 If an initial license to operate is denied, notify the applicant in writing of the reason(s) for denial and set forth the applicant's rights to an appeal from the decision.

7.3 The expiration date of the first annual license and each subsequent renewal of an annual license shall be at one (1) year intervals from the initial date of issuance.

## **8.0 Annual Licensing Process Procedures for License Renewal**

8.1. A Center licensee shall request from submit a written request to the Department Office of Child Care Licensing to seek a license renewal application form at least ninety (90) calendar days before the expiration date of the Center's current license.

8.2. A Center licensee shall submit the a completed application for a license renewal to the Division Office of Child Care Licensing at least sixty (60) calendar days before expiration of the Center's current license.

46. The Department may conduct a review, including an on-site visit of the Center, no later than thirty (30) days before expiration of the current license.

8.3 When a licensee makes timely and sufficient application for renewal of an annual license, the existing license shall not expire until the Office of Child Care Licensing makes a decision on the renewal application.

8.4 A provisional license may be renewed when the Office of Child Care Licensing determines that a licensee has demonstrated good faith efforts to achieve compliance but requires additional time to achieve full compliance with applicable provisions of these rules.

47. The Department representative shall make a recommendation to the Division Director regarding licensure. An annual license shall be issued if the Center meets all the requirements set forth in the **Requirements for Day Care Centers**. If a license is denied, the applicant shall be notified by a letter stating the reason(s) for denial and setting forth the applicant's rights to an appeal of the decision. If the Department cannot complete its review within the period set out in 43, the Division Director may extend the license for a period not to exceed thirty (30) days.

## **9.0 Terms of a License**

9.1 The license shall contain and display the following:

9.1.1 Status of the license: annual, provisional or extension;

9.1.2 Effective date of the license;

9.1.3 Expiration date of the license;

9.1.4 The maximum number of children who may be served at one (1) time; and

9.1.5 The applicable type of regulated service for which authorization to operate has been granted.

9.2. A licensee shall operate a Center within the terms of its license.

## **10.0 Changes Affecting License**

10.1. A Center ~~The Office of Child Care Licensing~~ shall notify the Department in writing at least ninety (90) days before determine whether to modify a current license or to require the licensee to submit an application for a new license when any of the following changes occur:

10.1.1 ~~[A planned change of ownership and/or sponsorship; A planned reduction, addition or substantial change in the indoor or outdoor spaces of the Center.]~~

10.1.2 ~~[A planned change in location, name and/or telephone number of the Center; A change in the name of the Center;]~~

10.1.3 ~~[A planned reduction, addition or substantial change in the indoor or outdoor spaces of the Center. A change in the applicable type of regulated services authorized as defined in these rules.]~~

10.1.4 ~~[A planned change in the Chief Administrator name of the Center; A change in Center capacity.]~~

~~[10.1.5 A substantial planned change in the applicable type of regulated services authorized; or provided and/ or population served;]~~

F. A planned change in hours of operation.

G. ~~The Center shall give notice as soon as possible if any of the above changes occur without prior planning.~~

~~[10.1.6 A change in Center capacity.]~~

49. The Department will then determine whether such changes require a modification of the current license or require the submission of an application for a new license. The Center will be notified in writing within thirty (30) days as to whether the modification is approved by the Division Director or a new license is required.

## **11.0 Order to Suspend a License**

If the health, safety or well-being of children in care is in serious or imminent danger, the Office of Child Care Licensing may immediately suspend the license upon issuance of a written suspension order. The order shall state the reason(s) for the suspension. Within ten (10) working days of the issuance of the suspension order, the Division Director, or designee shall hold an informal hearing with the licensee or the licensee's representative.

## **12.0 Denial, and Revocation Or Suspension Of A License**

12.1 ~~The Department~~ Division may ~~revoke, suspend or deny~~ or revoke a license for reason which include good cause, including but are not limited to the following:

12.1.1 ~~Failure to comply with the applicable provisions of 31 Del.C., Chapter 3, State Law(s) and the Department's rules and regulations pertaining to the law; or of these rules;~~

12.1.2 ~~Violation of the terms and or conditions of a its license; or~~

12.1.3 ~~Use of Fraud or misrepresentation in obtaining a license or in the subsequent operation of the facility; or~~

12.1.4 ~~Refusal to furnish the Department with files, reports or records as required by the law; or~~

12.1.5 ~~Refusal to permit an authorized representative of the Department to gain admission to the Center during operating hours; or~~

12.1.6 ~~Engaging in any activity, policy, practice or staff member conduct or practices, engaged in or permitted, which that adversely affects or presents a serious or imminent danger to the is deemed by the Division to be detrimental to the education, health, safety and or well-being of any child attending the center; children; or~~

G. ~~Any conduct or practices which are in violation of State Law related to abuse or neglect of children.~~

12.1.7 Conduct that otherwise demonstrates unfitness by the owner, administrator or any staff member to operate a Center.

## **13.0 Appeal**

13.1. ~~Any person or Center who has been denied~~ If the Division denies or revokes a license to operate or whose license has been revoked or suspended, the Division shall be notified notify the licensee in writing at least ten (10) working days prior to taking such action, of the reason(s) for such a decision and setting forth the person or Center's right to an specify the licensee's entitlement to appeal of the decision and request an administrative appeal hearing. The Division shall notify the licensee in writing of the findings of its investigation and of the reasons for denial or revocation, before taking such action.

~~52. Any person or Center who has been denied a license or whose license has been revoked or suspended by the Department, shall be entitled to a hearing and a review by a hearing officer, designated by the Secretary of the Department or his designee, who has no previous involvement in the matter.~~

13.2. ~~The Department will give ten (10) days' notice specifying reasons for proposed revocation or denial before a revocation or denial occurs. If a request for a hearing, either If a written or verbal request for an administrative appeal hearing is received by the Division within the ten (10) working days period of the date the notice of denial or revocation was mailed, the Division shall ensure that a an administrative appeal hearing shall be is held within thirty (30) working days from the date the request for an administrative appeal hearing is received, unless for good cause, the Hearing Officer grants postponement. Revocation or denial shall not occur until a written decision is rendered.~~

13.3 The administrative appeal hearing shall be conducted by a Hearing Officer who has had no previous involvement in the matter prompting the administrative appeal hearing.

13.4 If a licensee requests an administrative appeal hearing in a timely manner, its existing license shall remain in effect until an official written decision has been rendered subsequent to the administrative appeal hearing; except that the Office of Child Care Licensing shall have the authority to suspend the license immediately whenever If the health, or safety or well-being of children in care is in serious or imminent danger, the Department may immediately suspend the license upon the issuance of written notice. If there is an immediate suspension, a hearing shall be held within ten (10) days of the written notice to the Center.

13.5 If a licensee does not make a timely request for an administrative appeal hearing to appeal the decision in accordance with Rule 13.2 or does not request an administrative appeal hearing, the action to deny or

revoke a license shall take effect thirty (30) working days after the issuance of the notice. However, if the health, safety or well-being of children in care is in serious or imminent danger, denial or revocation shall be effective immediately upon the issuance of a written notice by the Division.

#### **14.0 Rule Variance**

14.1. Upon the written request by a Center of an applicant or licensee, the Department Division may grant a variance from a specific any of these requirement rules if there is documentation that the requested alternative complies with the applicant or licensee has documented to the satisfaction of the Division that the intent of the specific requirement rule for which variance is sought shall be satisfactorily achieved in a manner other than that prescribed by the rule.

A. The decision of the Department, including any qualification under which the variance is granted, shall be documented through a written agreement with the Department and a signed copy shall be sent to the Center. A variance may remain in effect for as long as a Center continues to comply with the intent of the requirement(s) or may be time-limited.

B. The agreement shall contain provisions for a regular review of the variance.

C. When a Center fails to comply with a variance agreement in any particular, the agreement shall be subject to immediate cancellation.

14.2 The Division shall render its decision on the request in writing, including the conditions for which the variance is granted, and shall send a signed copy of the decision to the applicant or licensee. A copy of the decision shall be maintained on file by the Division and the licensee.

14.3 The variance may be time-limited or may remain in effect for as long as the licensee continues to maintain the health, care, safety, protection, supervision, and needed services of children.

14.4 The Division shall monitor the licensee's compliance with the variance. If the licensee fails to comply with the variance, the Division shall initiate necessary enforcement action.

### **GENERAL**

#### **OTHER JURISDICTIONAL APPROVALS**

56. A Center shall have written certification, as required, from the State Division of Revenue and local business authorities.

### **ADMINISTRATION AND ORGANIZATION**

#### **15.0 GENERAL REQUIREMENTS Notification to the Office of Child Care Licensing**

15.1 A licensee shall notify the Office of Child Care Licensing in writing at least ninety (90) consecutive calendar days before any of the following changes occur:

15.1.1 A change of ownership or sponsorship;

15.1.2 A change of location;

15.1.3 A change in the name of the facility or program;

15.1.4 A change in the applicable type of regulated service being provided;

15.1.5 A change in licensed capacity; or

15.1.6 The anticipated closing of the facility or program.

15.2 A licensee shall notify the Office of Child Care Licensing within five (5) working days of the resignation or termination of the Early Childhood or School-Age Administrator.

15.3 A licensee shall notify the Office of Child Care Licensing ~~[by direct voice contact]~~ within one (1) working day **[by direct voice contact during the Office of Child Care Licensing's working hours]** if any of the following occur:

15.3.1 A[ny] fire [ , ;] flood [ ;] or any serious damage due to any [other] natural or man-made disaster(s) that impact the ability to operate safely;

15.3.2 ~~[The death of a child while in the care of a Center; or~~ Injury of a child while in the care of a Center requiring inpatient or outpatient treatment. The direct voice contact shall be followed by a written report on a form provided by the Office of Child Care Licensing;]

~~15.3.3 [Injury of a child while in the care of a Center requiring inpatient or outpatient treatment. The verbal report shall be followed by a written report on a form provided by the Office of Child Care Licensing. Suspected abuse or neglect of a child while at the Center including immediately calling the 24-Hour Child Abuse/Neglect Hotline (currently listed as 1-800-292-9582) to report the abuse or neglect; or]~~

~~[15.3.4 Any known conviction(s) of a staff member including those which prohibit continued employment at the Center, see Rules 20.2.6 - 20.2.8]~~

~~[15.4 A licensee shall immediately notify the Office of Child Care Licensing by direct voice contact during the Office of Child Care Licensing's working hours of the death of a child while in care. If a death occurs after such working hours, the licensee shall immediately call the 24-hour Child Abuse/Neglect Hotline (currently listed as 1-800-292-9582).]~~

## 16.0 Governing Body

16.1 A Center licensee shall have an identifiable owner and/or functioning governing body with responsibility for and authority over the operation of the Center. The owner or governing body shall designate a person to function as the Early Childhood or School-Age Administrator of the Center.

16.1.1 A licensee of a privately-owned Center shall have documents identifying the name(s) and address(es) of owner(s).

16.1.2 A corporation, partnership or association shall have documents, when applicable, identifying all members of the governing body; their addresses; their terms of membership, if applicable; officers of the governing body, if applicable; and terms of office of all officers, if applicable.

16.1.3 A Center licensee shall have a procedure for informing all parent(s)/guardians of children attending the Center of the identities of governing body members.

~~58. The governing body of a Center shall appoint a person to serve as the Chief Administrator of the Center to assure the day to day management responsibility for the Center.~~

16.2 The owner or governing body of a Center shall ensure that the Center licensee complies with all applicable local, State and Federal Laws and regulations.

~~60. A Center shall report by telephone to the Department within twenty four (24) hours any of the following circumstances:~~

~~A. Any fire which requires the services of a fire department, or other disaster at the Center;~~  
~~B. Any accident, injury or illness occurring while a child is in care at the Center which results in death or inpatient or outpatient hospitalization. The verbal report shall be followed by a written report on a form provided by the Department;~~

~~C. Unanticipated temporary or permanent closing;~~  
~~D. Suspected abuse or neglect of a child while on the premises;~~  
~~E. Any known convictions of Chief Administrator, Director or staff members as specified in requirement 73B.~~

~~61. A Center shall post its current license in a prominent place accessible to the view of parents and visitors.~~

16.3 A Center licensee shall have an organized system of business and management and sufficient staff, space and equipment to fulfill the following functions:

- 16.3.1 Administrative functions;
- 16.3.2 Fiscal functions;
- 16.3.3 Clerical functions;
- 16.3.4 Cleaning and maintenance functions;
- 16.3.5 Food services functions;
- 16.3.6 Direct child care functions; and
- 16.3.7 Supervisory functions.

## 17.0 Insurance Coverage

A Center licensee shall carry secure and maintain on file written documentation of motor vehicle, fire and comprehensive general liability insurance covering fire and liability as protection for children in care , as required by State Law(s).

~~64. A Center shall ensure that any vehicle authorized for use in transporting children in care by any of the Center's staff on the Center's business shall have insurance which covers liability.~~

## 18.0 Records

18.1 A Center licensee shall maintain files and records applicable to licensing.

18.2 ~~66124~~. A Center licensee shall keep daily attendance records for children, staff and volunteers identifying the hours of children's attendance and exact hours worked by staff and volunteers each day.

18.2.1 A licensee shall establish a system for taking attendance when the children arrive and depart the Center and periodically throughout each day to ensure the whereabouts of children in attendance at any given time.

18.3 A licensee shall keep a written record of the daily schedule of all staff members, including their position titles, and their exact hours worked throughout the hours of operation at the Center.

18.4 A Center licensee shall have an on-site file for each child including:

18.4.1 The child's name, home address and home telephone number;

18.4.2 Emergency telephone numbers for the parent(s)/guardian(s) and other designated person while the child is in care;

18.4.3 Name and telephone number of the child's physician health care provider;

18.4.4 Identifying information for all persons authorized to pick the child up from the Center;

18.4.5 Date of admission;

18.4.6 The hours a child is scheduled to attend the Center;

18.4.7 A statement of any special problems, medical, developmental, or educational ~~or~~ needs of the child including allergies, existing illnesses or injuries, previous serious illnesses or injuries and any **[prescribed]** medication **[prescribed for long-term, continuous use including those for emergency situations]**;

18.4.8 If provided by the parent(s)/guardian(s), for a child who has been identified as a having disability or special need, copies of IEP ~~[s]~~ IFSP ~~[s]~~ [, Section 504 plan] and records of the child's progress in meeting developmental and educational goals, including copies of assessments and referrals to special services;

18.4.9 Written authorization from the parent(s)/guardian(s) for emergency medical care;

18.4.10 Transportation permission, if appropriate;

18.4.11 Health information as required by Requirement Rule 61.1;

18.4.12 Injury and illness records including copies of reports submitted to the Department Office of Child Care Licensing as required by Requirement Rule 15.3.2 & 15.3.3 and copies of reports required by Requirement Rule 65.1;

18.4.13 Administration of medication records of a child;

18.4.14 If provided by the parent(s)/guardian(s), court orders on custody and visitation arrangements; and

18.4.15 The original copy of *The Parents Right to Know Act* form signed by the parent(s)/guardian(s).

18.5. A Center licensee shall have a procedure to ensure that all emergency telephone numbers information supplied by parents/guardians are is continuously updated and available to staff member(s) responsible for a particular child on a need-to-know basis.

## 19.0 Personnel Files

19.1 A Center licensee shall have a personnel file for each ~~employee and volunteer~~ staff member included in staff/child ratio as specified in Requirement 97. The personnel file shall include:

19.1.1 Name, date of birth, home address and telephone number;

19.1.2 Date of employment or volunteer start date;

19.1.3 Initial application form;

19.1.4 Reference letters ~~or telephone notes on character references~~;

19.3.5 Release of employment history form, Service Letters obtained and/or pertinent documentation;

E. Record of attendance at training sessions;

19.3.6 Documents attesting to professional development plans and qualifications and education;

19.3.7 Written records of required medical examinations and tuberculosis screening testing;

19.3.8 A statement signed by the ~~employee or volunteer~~ staff member stating the employee's staff member's status relative to conviction, current indictment or involvement in any criminal activity involving

violence against a person, child abuse or neglect; possession, sale or distribution of illegal drugs; sexual misconduct; gross irresponsibility or disregard for the safety of others; or serious violations of accepted standards of honesty or ethical behavior; or any case of child abuse or neglect substantiated by the Division of Family Services [for the respective responsible entity in any other state or country];

19.3.9 Verification of fingerprinting form;

19.3.10 Release form and verification of adult abuse registry check;

19.3.11 If transporting children, a copy of a current driver's license;

19.3.12 Copy of job description;

19.3.13 [Documentation of receiving information on child abuse and neglect reporting

procedures; Orientation form that includes written documentatin that the information as required per Rule 25.0 was initially and periodically reviewed;]

~~[19.3.14 Orientation form that includes written documentation that the information as required per Rule 25.0 was initially and periodically reviewed;]~~

19.3.1 ~~[54]~~ Record of attendance for training regarding annual training hours and/or meeting qualifications; and

19.3.1 ~~[65]~~ Date of termination.

## HUMAN RESOURCES

### 20.0 Personnel Policies

#### 20.1 General.

20.1.1 ~~Center licensee~~ shall have written personnel policies and practices and ~~shall~~ make them available to all ~~employees staff~~ and prospective ~~employees staff~~.

20.1.1.1 These policies shall include, as appropriate, procedures for hiring, discipline, dismissal, suspension and lay-off of ~~employees staff~~ in accordance with applicable laws.

20.1.1.2 A statement signed by the staff member on the orientation form shall confirm that the particular staff member has reviewed the relevant personnel policies and practices and has had the opportunity to ask questions and receive clarification.

20.1.2. A ~~Center licensee~~ shall have written job descriptions for every job position at the Center.

#### 20.2 General Qualifications

20.2.1 A ~~Center licensee~~ shall have on file for each ~~employee staff member~~ at least two (2) ~~character letter[s] of reference[s] from two (2) adults who are familiar with the staff member but who are not related to the staff member.~~ These references shall verify that the ~~employee staff member is of good character and reputation~~ **[, respects and understands children, and is sensitive to meeting their needs];**.

A. ~~Is of good character and reputation;~~

B. ~~Respects and understands children, is sensitive to and capable of meeting their needs;~~

C. ~~Is in sufficient physical, mental and emotional health to perform activities related to child~~

care

20.2.2 A licensee shall ensure that each staff member has an understanding of and respect for children and their needs and for a child's family and culture. ~~[Also that each staff member is capable of performing activities related to providing care which include~~ For those staff members assigned to direct child care duties, this includes, but is not limited to] meeting children's physical needs such as feeding and diapering, supervising children's activities, supporting children's physical, intellectual, social and emotional growth, dealing with emergencies in a calm manner, and carrying out methods of positive behavior management as stipulated in these rules and within the responsibilities of their particular position.

20.2.3 A licensee shall require a staff member to sign a release of employment history form and obtain Service Letters from the staff member's current or most recent previous employer. In addition, if the staff member was employed in a health care facility and/or child care facility within the past five (5) years, the licensee shall also obtain a service letter from such employer(s).

20.2.3.1 Volunteers who will be alone with children shall be required to provide service letters regardless of time spent at the Center providing unpaid services; or

20.2.3.2 Volunteers who are not alone with children and are providing unpaid services of less than five (5) days or forty (40) hours a year shall not be required to provide service letters.

20.2.4 A licensee shall require staff members to be fingerprinted for child care by the Delaware

State Police as soon as they are hired or schedule an appointment to be fingerprinted no later than the fifth working day. Staff members shall be required to provide the fingerprint verification form to the licensee as proof of being fingerprinted.

20.2.4.1 Volunteers who will be alone with children shall be required to have background checks regardless of time spent at the Center providing unpaid services; or

20.2.4.2 Volunteers who are not alone with children and are providing unpaid services of less than five (5) days or forty (40) hours a year shall not be required to have background checks.

20.2.5 A licensee shall request the results of an adult abuse registry check through the Department of Health and Social Services for applicable staff members as soon as they are hired or no later than the fifth working day.

20.2.6 A Center licensee shall not employ or retain any person as an ~~employee or volunteer~~ a staff member with:

Any emotional or physical condition or behavior which would impair his/her ability to care for children;

20.2.6.1 Any conviction, current indictment or substantial evidence of involvement in any criminal activity involving: violence against a person; child abuse or neglect; possession, sale or distribution of illegal drugs; sexual misconduct; gross irresponsibility or disregard for the safety of others; or serious violations of accepted standards of honesty or ethical behavior;

20.2.6.1.1 The Center licensee may, at its own discretion, make exceptions to the above requirement rule when it is documented that the health and safety of children would not be endangered except as prohibited by the Child Protection Registry Law as defined in **Delaware Code**, Title 16, Chapter 9, Subchapter II, Subsection 923.

20.2.7 The Center licensee shall not employ or retain in any capacity any person whose child or children are removed from his/her custody because of abuse or neglect.

20.2.8 A licensee shall not employ or retain in any capacity any person convicted of any offense defined as child sex abuse in **Delaware Code**, Title 11, Chapter 85, Subchapter IV, Subsection 8550.

20.2.9 A licensee shall ~~[ensure that no inform]~~ employee staff member[s] ~~[of a Center that]~~ shall ~~[use or be under the effects of]~~ alcohol or ~~[illegal drugs or any substance or medication which would impair his/her ability to care for children during hours of work]~~ other drug use that adversely affects essential job functions is unacceptable and the prohibition of unlawful use, possession, manufacture, distribution of controlled substances or alcoholic beverages in the workplace].

## **21.0 Health Requirements**

21.1 A Center licensee shall have for every ~~employee and volunteer~~ staff member included in the staff/child ratios:

21.1.1 Written report from a ~~licensed physician or nurse practitioner~~ health care provider of a medical examination ~~health appraisal~~ attesting to the health of the ~~employee or volunteer~~ staff member, including ~~[his/her physical and emotional ability to care for children the ability to perform essential job functions as described in Rule #134]~~, completed within ~~six (6) months~~ one (1) year prior to the date of employment and on file with the Center within the first month of employment;

21.1.2 Written evidence on file with the Center within the first month of employment of freedom from communicable tuberculosis verified within one (1) year prior to the date of initial employment ~~in day care at the Center~~, with further testing required ~~only upon known exposure to the disease~~ every fifth year of employment; and

21.1.3 Written evidence of follow-up of any known health problem of the ~~employee or volunteer~~ staff member affecting or potentially affecting his/her ability to care for children.

## **22.0 Child Abuse and Neglect**

22.1 A Center licensee shall ~~require provide~~ each employee staff member of the Center to read and sign a statement clearly defining written instruction governing the reporting provision of the Delaware child abuse and neglect law(s) and regulations, Center policies and procedures for reporting and documenting suspected abuse and neglect, and outlining the employee's responsibility to report all incidents of child abuse or neglect according to State Law maintain on file written documentation of their receipt of this information.

78. A Center shall report any suspected or alleged incident of child abuse or neglect to the Division of

~~Child Protective Services through the Child Abuse Reporting Number and shall cooperate fully in the investigation of any incident.~~

~~22.2. A licensee shall not discourage, inhibit, penalize or otherwise impede any staff member from reporting any suspected or alleged incident of child abuse or neglect.~~

~~22.3 A Center licensee shall have develop, adopt, follow and maintain on file written policies and procedures for handling any suspected incident of suspected child abuse/ or neglect by an employee including: which occurs while a child is in the Center's care. The policies and procedures shall contain provisions specifying that:~~

~~22.3.1 The licensee shall immediately report the suspected abuse or neglect as required by Law;~~

~~22.3.2 The licensee immediately shall take remedial action to protect children from harm;~~

~~22.3.3 The licensee shall take long-term corrective action to eliminate the factors or circumstances that may have caused or may have otherwise resulted in a continuing risk of abuse or neglect to children if the abuse or neglect occurred at the Center by a staff member;~~

~~22.3.4 A procedure for ensuring that the employee involved does not work directly Any staff member alleged to have perpetrated an incident of child abuse or neglect shall not have direct contact with any child, or be reassigned to other duties that do not involve contact with children until the investigation of the incident is has been completed; and~~

~~22.3.5 A procedure for terminating any employee involved in a founded incident of child abuse if the person's continued employment at the Center would place the children at risk The licensee shall take disciplinary action against any staff member who committed an act of child abuse or neglect.~~

### **23.0 Owner of a Center**

~~23.1 The Owner of a Center shall be considered staff and actively involved if present at the Center during regular hours of operation for seven (7) or more hours per week and is required to follow all rules concerning a staff member of the Center.~~

~~23.2 The Owner of a Center shall only count toward staff/child ratios if fully qualified as at least an Early Childhood Assistant Teacher, Early Childhood Caregiver or School-Age Site Assistant if left alone with children or as at least an Early Childhood Intern or School-Age Intern if not left alone with children.~~

~~23.3 Inactive Owners of a Center or those working less than seven (7) hours per week shall not be considered staff nor assume any direct child care duties and assign day-to-day operational responsibilities to an Early Childhood or School-Age Administrator.~~

### **24.0 Staff Qualifications**

~~24.1 For a An employee who is in a position at a particular Center licensed before the effective date of these requirements rules, the licensee shall ensure that a staff member who is already in a particular position or a new hire at that Center shall have two (2) calendar years from the effective date to meet the qualifications of that position provided the person remains at that Center;~~

~~24.1.1 Has four (4) calendar years from the effective date or no later than January 1, 2011 to meet the qualifications of an Early Childhood Administrator, Early Childhood Curriculum Coordinator or Early Childhood Teacher.~~

~~24.1.2 Has two (2) calendar years from the effective date or no later than January 1, 2009 to meet the qualifications of an Early Childhood Assistant Teacher, Early Childhood Caregiver or Early Childhood Intern.~~

~~24.1.3 Is eligible for the time-limited periods to qualify for a particular position provided that person remains at that Center or transfers only to a Center licensed before the effective date of these rules and is directly affiliated with the original Center. A Center directly affiliated with the original Center shall mean that the staff member is still employed by the same parent organization/company and at least retains all years of service when transferred.~~

~~24.1.4 Has a written professional development plan kept in that staff member's personnel file that documents the particular position desired, the goals to achieve that position, the progress made toward the position at least a yearly basis, and the target date for goal completion when working toward qualifying for a particular position during the time-limited period.~~

~~A person appointed to a position after these requirements become effective shall meet the qualifications of these requirements for that position.~~

24.2 A licensee shall ensure that each staff member at a Center submits written documentation to the Office of Child Care Licensing that shows how a staff member is fully qualified for a particular position. The documentation shall consist of copies of training certificates, transcripts, diploma(s), or staff training records. Upon approval from the Office of Child Care Licensing, the licensee shall ensure that the letter of approval for each qualified staff member is filed in that staff member's personnel file.

24.3 A licensee shall ensure that a staff member qualifying for a particular position in a Center may, when applicable, use college/university credits based on specific topic areas/titles, substitutions for college/university credits, or other training that is demonstrated to be equivalent to a particular qualification in these rules all as approved or accepted by the Office of Child Care Licensing.

24.4 A licensee shall ensure that a person appointed to a position at a Center that becomes newly licensed subsequent to the effective date shall meet the qualifications of these rules for that position.

#### **Chief Administrator**

81. The Chief Administrator shall be qualified by demonstrated knowledge, training and experience to fulfill the responsibilities of the position.

82. The Chief Administrator or a responsible person knowledgeable of the day care operation designated by the administrator shall be on the premises during the hours the Center is in operation.

#### **24.5 Program Director Early Childhood Administrator**

24.5.1 A Center licensee shall ensure that the Program Director Early Childhood Administrator of the Center is at least twenty-one (21) years of age and meets one (1) of the following requirements qualifications:

24.5.1.1 At least an Associate Degree ~~[from an accredited college or university] in [or in] a field related to child development, early childhood education, psychology, social work, special education, elementary education, nursing, human services or business administration including at least fifteen (15) college/university credits in course content covering [each at least three (3)] of the following topic areas – child development [; ], [early childhood-level developmental] curriculum [planning], [positive] behavior management, [and] health & safety [, nutrition, family/community and professionalism] ; [and includes successful completion of three (3) college/university credits, or forty five (45) clock hours of training in early childhood administration or business administration directly related to operating a Center,]~~ and twenty-four (24) months of experience working with children preschool age or younger in a group setting; [or]

24.5.1.2 At least a four (4) year Bachelor degree from an accredited ~~[a an accredited] college or university including at least twelve (12) fifteen (15) college/university credits hours in course content covering [each at least three (3)] of the following topic areas – of child development; or [early childhood-level developmental] curriculum [planning] , [positive] behavior management, [and] health & safety [, nutrition, family/community and professionalism] ; education [and includes successful completion of three (3) college/university credits, or forty five (45) clock hours of training in early childhood administration or business administration directly related to operating a Center,]~~ and one (1) year twenty-four (24) months of experience working with children preschool age or younger in a group setting ~~[or; .]~~

~~[24.5.1.3 At least an Associate or Bachelor degree from a college or university either of which shall be in early childhood education including successful completion of three (3) college/university credits, or forty five (45) clock hours of training in early childhood administration or business administration directly related to operating a Center, and twenty four (24) months of experience working with children preschool age or younger in a group setting.]~~

B. At least an Associate Degree in a field related to child development, early childhood education, psychology, social work, special education, elementary education, nursing or any health field, including at least twelve (12) credit hours of child development or early childhood education, and eighteen (18) months of experience working with children in a group setting;

C. A Child Development Associate Credential and twenty four (24) months of experience working with children in a group setting;

D. At least a high school degree and twelve (12) credit hours of child development or early childhood education from an accredited college or university and thirty six (36) months of experience working with children in a group setting.

i. Successful completion of a vocational child care program approved by the Department of Public Instruction can be substituted for three (3) credit hours of child development or early childhood education.

24.6 An Early Childhood Administrator, who before the effective date of these rules was known as the

Program Director at a particular Center and qualified for that position with a Bachelor or Associate degree and twelve (12) college/university credits in child development or early childhood education, shall be able to apply those particular college/university credits to the credit requirement of Rule 24.5.1 provided that person remains at that Center or transfers only to a Center licensed before the effective date of these rules and is directly affiliated with the original Center.

**[24.7 A licensee shall ensure that the Early Childhood Administrator who manages the Center's administrative duties such as human resources/personnel and fiscal has at least three (3) college/university credits or forty-five (45) clock hours of training in administration which may be included in the total number of college/university credits required for the position unless such duties are not the responsibility of the Early Childhood Administrator.**

**24.7.1 A written plan approved by the Office of Child Care Licensing shall be required if such duties are not the responsibility of the Early Childhood Administrator. The written plan shall identify the person/entity performing these duties, and the qualifying factors regarding the person/entity. Any changes involving the person/entity performing these duties shall require a new plan approved by the Office of Child Care Licensing.]**

24.8 An Early Childhood Administrator, who before the effective date of these rules was known as the Program Director at a particular Center shall be able [to] serve as the Early Childhood Administrator provided that person remains at that original Center or transfers only to a Center licensed before the effective date of these rules [ , and] is directly affiliated with the original Center, and meets all of the following qualifications:

24.8.1 [Has] three (3) college/university credits, or forty-five (45) clock hours of training in [early childhood administration or business] administration [directly] related to operating a Center [ :

24.8.2 Meets at least one (1) of the qualifications of an Early Childhood Teacher as stated in Rule 24.10.1;

24.8.2.1 For Rule 24.11.1.4, the nine (9) college/university credits may be in early childhood education or child development; and

24.8.3 Has an Early Childhood Curriculum Coordinator on staff that meets the qualifications of that position with at least an Associate degree as stated in Rule 24.9.1.2.

~~84- A Chief Administrator or employee in the position of Caregiver may serve as Program Director provided that she/he meets the qualifications specified in Requirement 83.~~

~~A. The Program Director or other employee meeting the requirements for Caregiver shall be present at all times during the hours the Center is in operation.~~

**24.9 Early Childhood Curriculum Coordinator**

24.9.1 A licensee shall ensure that an Early Childhood Curriculum Coordinator is at least twenty (20) years of age and meets one (1) of the following qualifications:

24.9.1.1 At least a high school degree or its equivalent and successful completion of fifteen (15) college/university credits in child development or early childhood education of which six (6) college/university credits shall be in early childhood curriculum development and planning and thirty-six (36) months of experience working with children preschool age or younger in group setting;

24.9.1.2 At least an Associate degree [from an accredited college or university] in [or in] a field related to child development, [early childhood education], psychology, social work, special education, nursing or human services, including at least fifteen (15) college/university credits in child development or early childhood education and twenty-four (24) months of experience working with children preschool age or younger in a group setting;

**[24.9.1.3 At least an Associate degree from an accredited college or university in early childhood education and twelve (12) months of experience working with children preschool age or younger in a group setting; or]**

24.9.1.4 At least a Bachelor degree from a college or university including at least fifteen (15) college/university credits in child development or early childhood education and twelve (12) months of experience working with children preschool age or younger in a group setting; or

~~**[At least an Associate or Bachelor degree from a college or university, either of which shall be in early childhood education and twelve (12) months of experience working with children preschool age or younger in a group setting.]**~~

**24.10 Early Childhood Administrator or Early Childhood Curriculum Coordinator – Specialized Training**

24.10.1 A licensee shall ensure that either the Early Childhood Administrator or Early Childhood

Curriculum Coordinator has successfully completed three (3) college/university credits, which may be included in the ~~[fifteen (15) total number of]~~ college/university credits required for the position, or forty-five (45) clock hours of training in infant and/ or toddler development and curriculum if the Center serves infants and/or toddlers.

24.10.2 A licensee shall ensure that either the Early Childhood Administrator or Early Childhood Curriculum Coordinator has successfully completed ~~[three (3) college/university credits, which may be included in the college/university credits required for the position, or forty five (45)]~~ fifteen (15) clock hours of training in school-age care if the Center serves school-age children. **[The clock hours may be translated from college/university credits and included in the total number of college/university credits required for the position.]**

24.11 ~~Garegiver~~ Early Childhood Teacher

24.11.1 A ~~Center~~ licensee shall ensure that a ~~an~~ ~~Garegiver~~ Early Childhood Teacher is at least eighteen (18) years of age and meets one (1) of the following ~~requirements~~ qualifications:

24.11.1.1 At least a high school degree or its equivalent and successful completion of both "Training for Early Care and Education 1 and 2" and twelve (12) months of experience working with children preschool age or younger in a group setting;

24.11.1.2 At least a high school degree or its equivalent and a valid Child Development Associate Credential that is current and has not expired and twelve (12) months of experience working with children preschool age or younger in a group setting;

24.11.1.3 At least a high school degree or its equivalent and successful completion of the Delaware Department of Labor's Early Childhood Apprenticeship Program and twelve (12) months of experience working with children preschool age or younger in a group setting;

24.11.1.4 At least a high school degree or its equivalent and successful completion of nine (9) college/university credits - three (3) in child development, three (3) in early childhood education and three (3) in **[positive]** behavior management and twelve (12) months of experience working with children preschool age or younger in a group setting;

**[24.11.1.4.1 Forty-five (45) clock hours in positive behavior management may substitute for three (3) college/university credits.]**

24.11.1.5 At least a high school degree with successful completion of a vocational/technical high school three (3) year program in early childhood education approved by Delaware's Department of Education and twelve (12) months of experience working with children preschool age or younger in a group setting;

24.11.1.6 At least a high school degree or its equivalent and successful completion of the course work toward a Montessori Infant and Toddler Full/Associate Credential or a Montessori Early Childhood Full/Associate Credential from a MACTE approved training program and twelve (12) months of experience working with children preschool age or younger in a group setting;

24.11.1.7 At least a high school degree or its equivalent and successful completion of a one (1) year early childhood diploma program from a two (2) year college and twelve (12) months of experience working with children preschool age or younger in a group setting;

24.11.1.8 At least an Associate degree **[from an accredited college or university]** with six (6) college/university credits in child development or early childhood education and three (3) months of supervised student teaching or twelve (12) months of experience working with children preschool age or younger in a group setting; or

24.11.1.9 At least a ~~four (4) year~~ Bachelor degree from an ~~accredited~~ **[a an accredited]** college or university including at least ~~three (3) six (6) college/university credits~~ hours in ~~of~~ child development or early childhood education and three (3) months of supervised student teaching or ~~six (6) twelve (12) months of experience working with children preschool age or younger in a group setting;~~

B. At least an Associate Degree with three (3) credit hours in child development, or early childhood education and six (6) months of experience working with children in a group setting;

C. A Child Development Associate Credential with six (6) months of experience working with children in a group setting;

D. At least a high school degree with successful completion of a vocational child care program approved by the Department of Public Instruction or a one (1) year certificate program in child development or early childhood education approved by the Department and six (6) months of experience working with children in a group setting;

E. At least a high school degree or its equivalent and sixty (60) clock hours of

training in child development or early childhood education approved by the Department and one (1) year of experience working with children in a group setting;

i. An individual may be hired conditionally for a six (6) month period in the position of Caregiver before completion of the sixty (60) clock hours of training if the Center has written documentation of compliance with the one (1) year experience requirement and written documentation of enrollment in Department approved training for said individual. At the end of the six (6) month period, the Center shall have written documentation of completion of the sixty (60) hours of training in said individual's personnel file.

#### **Assistant Caregiver**

86. A Center shall ensure that an Assistant Caregiver is at least sixteen (16) years of age and works under the observation and supervision of a Caregiver or Program Director at all times.

#### **24.12 Early Childhood Assistant Teacher**

**24.12.1** A licensee shall ensure that an Early Childhood Assistant Teacher is at least eighteen (18) years of age and meets one (1) of the following qualifications:

**24.12.1.1** At least a high school degree or its equivalent and successful completion of "Training for Early Care and Education 1" and six (6) months of experience working with children preschool age or younger in a group setting;

**24.12.1.2** At least a high school degree with successful completion of that traditional high school's career pathway program in early childhood as recognized by the Office of Child Care Licensing **[and six (6) months of experience working with children preschool age or younger in a group setting]** ; or

**24.12.1.3** At least a high school degree or its equivalent and successful completion of six (6) college/university credits - three (3) in child development and three (3) in early childhood education and six (6) months of experience working with children preschool age or younger in a group setting.

**24.12.2** A staff member who, before the effective date of these rules, was in the position formerly known as a Caregiver at a particular Center shall have one (1) of the following opportunities to qualify for the position of Early Childhood Assistant Teacher. These opportunities shall be time-limited to two (2) calendar years from the effective date of these rules as stated in Rule 24.1.2

**24.12.2.1** Demonstrate through the development of a portfolio that prior training and experience is equivalent to the information taught in "Training for Early Care and Education 1". Successful completion of this option shall be receiving a grade of seventy-five percent (75%) or better and is recognized as equivalent to completing "Training for Early Care and Education 1" and is applicable toward advancing to higher positions in any Center.

**24.12.2.2** Pass a test recognized by the Office of Child Care Licensing as equivalent to the information taught in "Training for Early Care and Education 1". Successful completion of this option shall be receiving a grade of seventy-five percent (75%) or better and is recognized as equivalent to completing "Training for Early Care and Education 1" and is applicable toward advancing to higher positions in any Center.

#### **24.13 Early Childhood Caregiver**

**24.13.1** A licensee shall ensure that an Early Childhood Caregiver is at least eighteen (18) years of age, and before the effective date of these rules, was in the position formerly known as a Caregiver at a particular Center licensed before the effective date of these rules. Successful completion of the training required for this position is time-limited to two (2) calendar years from the effective date of these rules as stated in Rule 24.1.2. The position of Early Childhood Caregiver is acceptable provided that person remains at that Center or transfers only to a Center licensed before the effective date of these rules and is directly affiliated with the original Center. The Early Childhood Caregiver shall meet the following qualification:

**24.13.1.1** Demonstrates successful completion of a total of sixty (60) clock hours of training based on the early care and education core topic areas and divided into each of the following: Child Development (fifteen (15) clock hours), **[Developmentally Appropriate Developmental]** Curriculum **[+]** Planning (twelve (12) clock hours), Positive Behavior Management (twelve (12) clock hours), Health (three (3) clock hours), Safety (three (3) clock hours), Nutrition (three (3) clock hours), **[Families Family/Community]** (six (6) clock hours), and Professionalism (six (6) clock hours). Such clock hours taken prior to the effective date of these rules or during the time-limited period shall count toward this position.

#### **24.14 Early Childhood Intern**

**24.14.1** A licensee shall ensure that an Early Childhood Intern is at least sixteen (16) years of age and meets one (1) of the following qualifications:

24.14.1.1 At least successful completion of either Delaware First's "Introduction to Child Care" or "Child Development" completed within twelve (12) months of employment; or

24.14.1.2 At least successful completion of three (3) college/university credits in either child development or early childhood education;

24.14.1.2.1 Fifteen (15) year olds may be hired only if they are attending a vocational/technical high school three (3) year program in early childhood education or a traditional high school's career pathway program in early childhood. Documentation proving enrollment in such programs shall be on file at the Center.

24.14.2 A licensee shall ensure that an Early Childhood Intern under the age of eighteen (18) does not provide direct child care to children who are close in age. Such an Early Childhood Intern shall be at least four (4) years older than any child in his or her direct care.

24.15 Staffing

24.15.1 A licensee shall ensure that the Center has at least one (1) staff member who meets the qualifications for the position of Early Childhood Administrator.

24.15.2 A licensee shall ensure that the Center has at least one (1) staff member who meets the qualifications for the position of Early Childhood Curriculum Coordinator.

24.15.3 An Early Childhood Administrator shall also be able to serve as the Early Childhood Curriculum Coordinator if the following circumstances have been met:

24.15.3.1 The Early Childhood Administrator meets the qualifications with at least an Associate degree as stated in Rule 24.5.1.1; and

24.15.3.2 The Center has a capacity of sixty (60) or fewer children; or

24.15.3.3 The licensee shall ensure through a written plan approved by the Office of Child Care Licensing that ~~someone other than the Early Childhood Administrator consistently manages~~ the Center's **business** administrative duties such as human resources/personnel and ~~financial responsibilities~~ **fiscal are not the responsibility of the Early Childhood Administrator. The written plan shall identify the person/entity performing these duties, and the qualifying factors regarding the person/entity. Changes involving the person/entity performing these duties shall require a new plan approved by the Office of Child Care Licensing.**

24.15.4 A licensee shall ensure that a staff member who meets the qualifications for the position of an Early Childhood Administrator or Early Childhood Curriculum Coordinator is at the Center at least seventy-five percent (75%) of the hours of operation.

24.15.4.1 If an Early Childhood Administrator is responsible for two (2) or more Centers, each with capacities of sixty (60) or fewer children, a staff member who meets the qualifications for the position of an Early Childhood Administrator or Early Childhood Curriculum Coordinator shall be at each Center at least fifty percent (50%) of the hours of operation.

24.15.5 A licensee shall follow a one (1) to four (4) ratio of Early Childhood Teachers to Early Childhood Assistant Teachers, Early Childhood Caregivers and Early Childhood Interns as indicated in the table below:

<u>Early Childhood Teacher(s)</u>	<u>Total # of Early Childhood Assistants, Caregivers and Interns</u>
<u>1</u>	<u>1 to 4</u>
<u>2</u>	<u>5 to 8</u>
<u>3</u>	<u>9 to 12</u>
<u>4</u>	<u>13 to 16</u>
<u>5</u>	<u>17 to 20</u>
<u>6</u>	<u>21 to 24</u>
<u>7</u>	<u>25 to 28</u>
<u>8</u>	<u>29 to 32</u>
<u>9</u>	<u>33 to 36</u>
<u>10</u>	<u>37 to 40</u>

(and continue as needed)

24.15.5.1 The ratio of Early Childhood Teachers to Early Childhood Assistant Teachers, Early Childhood Caregivers, and Early Childhood Interns shall be based on the number of staff as needed to comply with staff/child ratios as stated in Rule 29.1. A licensee may choose to use more staff than required without needing to increase the number of Early Childhood Teachers. [Part-time staff members working in the positions of Early Childhood Assistant Teachers, Early Childhood Caregivers, and Early Childhood Interns may be grouped as one (1) Full Time Equivalent (FTE) when their combined part-time work schedules add up to the equivalent of a full time staff person at the Center.]

24.16 ~~Caregiving Staff~~ Direct Child Care Duties

24.16.1 A Center licensee shall ensure that staff charged with caring for children is are not given other duties which would interfere with ~~child~~ providing care to children.

24.17 ~~Substitute and Volunteer Staff~~

24.17.1 A Center licensee shall have substitute staff that are at least sixteen (16) years of age, including documentation of their qualifications ~~for such staff~~, to fill a particular positions during the absences of permanent staff. A substitute that is temporarily filling in for a position in which he or she is not fully qualified shall be allowed to count toward child/staff ratios if supervised by at least an Early Childhood Teacher, School-Age Site Coordinator, or School-Age Site Assistant who is designated as responsible for the School-Age Center and under the direct observation of at least an Early Childhood Assistant Teacher, Early Childhood Caregivers, or School-Age Site Assistant at all times.

24.17.1.1 ~~If a substitute is used~~ When it is known beforehand that a position will be temporarily available for two (2) or more months continuously ~~or longer~~, the person or persons substituting in that position shall be fully qualified for the position~~(s)~~ throughout the whole time period.

24.17.2 A licensee shall ensure that volunteers are at least sixteen (16) years of age and counted for the purposes of staff/child ratios only when it is documented that they are fully qualified for the particular position in which they are volunteering and present at the Center for seven (7) or more hours a week.

24.17.3 A licensee shall ensure that volunteers present less than seven (7) hours a week are not counted toward staff/child ratios and be under the supervision of at least an Early Childhood Teacher, School-Age Site Coordinator, or School-Age Site Assistant who is designated as responsible for the School-Age Center and under the direct observation of at least an Early Childhood Assistant Teacher, Early Childhood Caregiver, or School-Age Site Assistant at all times and not be alone with the children at any time.

24.17.4 A licensee shall ensure that a substitute or volunteer may be fifteen (15) years old only if they are attending a vocational/technical high school three (3) year program in early childhood education or a traditional high school's career pathway program in early childhood. Documentation proving enrollment and attendance in such programs shall be on file at the Center.

## **25.0 Orientation and Training**

25.1 A Center licensee shall document that ~~each new employee~~ all staff members ~~has~~ have been given an orientation training session with the opportunity to ask questions and receive clarification including at the beginning of employment at the Center and periodic updates as information is revised on the following:

25.1.1 Emergency and evacuation procedures;

25.1.2 Center policies ~~including on discipline~~ positive behavior management, routine and emergency health care including health exclusions, child accident and injury procedures, administration of medication, child care, goals and program for children, recordkeeping, family involvement, safety and sanitation procedures, nutrition and food safety, transporting children, if applicable, and release of children;

25.1.3 Center personnel and administrative policies;

25.1.4 Child abuse and neglect law and reporting requirements and Center procedures to report abuse and neglect;

25.1.5 Recognition of the symptoms of childhood illnesses, including reportable communicable diseases, child abuse, sexual abuse and neglect;

25.1.6 ~~Title VI Requirements~~ Information on any other Federal or State Laws or regulations applicable to children and families in care including non-discrimination; and

25.1.7 Applicable licensing ~~requirements~~ rules and the location of a copy of the complete rules shall be made available at the Center for staff review whenever requested.

90.- A Center shall ensure that orientation for all substitutes and volunteers includes instruction in the following:

A. Responsibilities of their particular functions;

- B. Emergency and evacuation procedures;
- C. Center policies including discipline, child care, sanitation procedures and release of children.

## **26.0 Annual Training**

26.1 A Center licensee shall document that all staff, including an actively involved Owner the Chief Administrator and Program Director the Early Childhood or School-Age Administrator, participate in at least fifteen (15) ~~[eighteen (18) clock hours of]~~ staff development and Department approved **[training annually]** in working with children and improving job performance **[annual training]**. ~~[Any s S]taff member[s providing direct child care and working twenty-five (25) or more hours per week shall participate in eighteen (18) clock hours of training annually, and those]~~ working less than twenty-five (25) hours per week shall participate in nine (9) clock hours of training annually. **[Staff members not providing direct child care shall participate in three (3) clock hours of training annually.]** Only owners, substitutes, or volunteers that work or volunteer less than seven (7) hours per week shall be exempt from the annual training requirements.

26.1.1 A Center licensed before the effective date of these requirements shall have one (1) calendar year from the effective date to achieve compliance with the annual training requirement **[For staff members providing direct child care, A a]l** training shall be within topics or core areas **[essential to working with children and improving job performance in the associated with improving quality in]** early care and education and school-age care **[field]**. Topics shall include **[attention to]** the following **[early care and education]** core areas: Child Development **[(which may include observation and assessment)]**; Developmental Curriculum Planning **[(which may include language and literacy)]**; Understanding Children's Behavior; Health **[-&]** Safety **[& ;]** Nutrition; Family/Community **[(which may include multiculturalism and diversity)]**; Professionalism; and **[Administrative Issues Administration]**.

26.1.2 **[For staff members not providing direct child care such as those assigned only to clerical janitorial and food service duties, training shall be in topics specific to the job functions of their particular position.]**

**[26.1.3]** Training in CPR, First Aid and Administration of Medication shall not count toward a staff member's annual training requirement even when required for a particular position.

26.2 A licensee shall ensure that staff members complete annual training during the time period beginning at the start date and ending at the expiration date of the Center's license.

## **27.0 Annual Professional Development Plan**

27.1 A licensee shall ensure that each year all staff members complete individual Professional Development Plans which includes input from the staff member and is approved by the Early Childhood or School-Age Administrator. The Professional Development Plans shall at least include written documentation of the following:

27.1.1 Current qualifications;

27.1.2 Annual goal(s) for the individual staff member's professional development;

27.1.3 Progress made toward the goal(s);

27.1.4 All training completed by the staff member during that particular year including copies of training certificates and/or proof of successful completion of the training; and

27.1.5 How listed training is related to goals.

27.2 A licensee shall ensure that the individual Professional Development Plans are available for review by the Office of Child Care Licensing as a part of the Center's annual licensure renewal process.

## **28.0 First Aid and CPR Training**

28.1 A licensee shall document that staff in all positions except Early Childhood and School-Age Interns have proof of completing a First Aid course every three (3) years and receive current certification in cardiopulmonary resuscitation (CPR).

28.1.1 Staff who are assigned to care for children eight (8) years of age and younger shall have proof of completing a First Aid course applicable to infants and/or children and receive current certification in CPR for infants and/or children.

28.1.2 Staff who are assigned to care for children nine (9) years of age and older shall have proof of completing a First Aid course applicable to children and adults and receive current certification in CPR for

adults.

28.2 A licensee shall ensure that staff members in positions requiring First Aid and CPR complete First Aid and CPR training within six (6) months from the date of hire.

28.3 A licensee shall ensure that staff of a Center licensed before the effective date of these rules shall have six (6) months from the effective date of these rules to complete First Aid and CPR training.

28.4 A licensee shall ensure that at least one (1) staff member with First Aid and CPR training applicable to the ages of all children at the Center is present during all hours of operation when children are in attendance including the beginning and end of the day and during off-site activities such as outings or field trips.

**29.0 Number of Staff**

29.1 A Center licensee shall follow the following minimum staff/child ratios and maximum group sizes for each age group listed during normal daily activities at the Center as indicated in the table below:

<u>Age of Child</u>	<u>Minimum Staff/Child Ratio</u>	<u>Maximum Group Size</u>
<u>0-12 Months Infant Under 1 Year</u>	<u>1:4</u>	<u>8</u>
<u>2-24 Months Young Toddler 1 to 2 Years</u>	<u>1:7.6</u>	<u>12</u>
<u>Older Toddler 2 to 3 Years</u>	<u>1:4.8</u>	<u>16</u>
<u>Young Preschool Child 3 to 4 Years</u>	<u>1:4.2</u>	<u>10</u>
<u>Older Preschool Child 4 to 5 Years or older (Or not yet in K* or first grade which ever comes first)</u>	<u>1:4.5</u>	<u>12</u>
<u>School-Age Child 5 Years and up or older (Or at least in K* or first grade which ever comes first)</u>	<u>1:2.5</u>	<u>15</u>

\* K - Kindergarten

~~29.1.1 A Center licensed before the effective date of these requirements rules shall have two (2) four (4) calendar years from the effective date or no later than January 1, 2011 to achieve compliance with staff/child ratios and maximum group sizes requirements.~~

29.2 A licensee shall ensure that a Center develops a plan to accomplish maximum group size requirements. The plan shall be approved by the Office of Child Care Licensing and address the maximum number of children assigned to a specific staff member or group of staff members, occupying an individual classroom or well-defined physical space within a large room. The approved plan shall be implemented to achieve maximum group size requirements at the Center.

~~93. A Center shall ensure that for mixed age groups with children over twenty four (24) months of age, the staff/child ratio shall be that required for the age group with the largest number of children present in the group.~~

29.3 A licensee shall maintain the full staff/child ratio for infants at all times.

~~29.4 A Center licensee shall ensure that for mixed age groups with children under twenty four (24)~~

months of age, the staff/child ratio and group size requirements shall be are that for the age of the youngest child present.

29.5 A Center licensee shall ensure that the curriculum goals and program of daily activities for each group of children shall be planned and monitored is implemented by a Caregiver an assigned staff member in the position of Early Childhood Teacher, School-Age Site Coordinator, Early Childhood Assistant Teacher, School-Age Site Assistant, or Early Childhood Caregiver with approval and monitoring by either the Early Childhood Administrator, School-Age Administrator or Early Childhood Curriculum Coordinator, or School-Age Site Coordinator when assigned such duty.

29.6 A Center licensee shall assign sufficient Caregivers and Assistant Caregivers staff to each group of children to meet staff/child ratios.

29.6.1 Only staff members who are qualified, physically present, and working with children can shall be counted for the purposes of staff/ child ratios.

~~97. A Center shall ensure that volunteers shall be counted for the purposes of staff/child ratios only when appropriately qualified and present at the Center for more than ten (10) hours a week.~~

29.7 A Center licensee shall ensure that for children one (1) year and older, during nap times when children are sleeping, at least one-half (1/2) of the normal staff complement/child ratios as required by Requirement Rule 29.1 shall be are physically present with each group of children and directly observing the children.

29.8 A Center licensee shall provide appropriate care and supervision of children at all times.

A. ~~Children at the Center shall not be left unattended at any time.~~

29.9 A Center licensee shall have at least two (2) staff present when seven (7) or more children one (1) year and older are present.

29.9.1 The Center licensee shall have emergency procedures providing immediate access to emergency service and additional staff when only one (1) staff member is present with children at the Center.

29.9.2 When only one (1) staff member is present with children, that staff member shall have no other responsibilities than caregiving direct child care during that time.

29.10 A licensee shall ensure that during times when children are normally arriving at the beginning of the day and leaving at the end of the day, the Center shall not be required to maintain segregation of age groups for children one (1) year and older will not be required but shall show evidence of that there is an organized approach to the supervision of and accountability for children and staff/child ratios are still maintained.

### **First Aid and CPR-**

~~102 A Center shall document that a person certified in first aid and a person certified in cardiopulmonary resuscitation (CPR) for infants and children are present during all hours of operation of the Center when children are present including the beginning and end of the day.~~

### **30.0 Staff Communication**

30.1 A Center licensee shall have an organized system of **[documented]** communication between among staff to ensure that any staff member ~~or volunteer~~ assuming responsibility for a child or children as, for example, during shift changes, is adequately informed of any significant information, problem, need or special circumstance involving the child or children.

A. ~~The Center shall have an organized system of communicating with parents to ensure that parents are informed on a regular basis of the child's progress, any accidents or critical incidents involving the child, developmental milestones achieved by the child and any other important information relating to the child.~~

## **PHYSICAL ENVIRONMENT AND SAFETY**

### **31.0 General**

31.1 A Center licensee shall ensure that every building, or part thereof that is used as a Center, shall be is constructed, used, furnished, maintained and equipped in compliance with all applicable requirements established by Federal, State, local and municipal regulatory bodies.

31.1.1 The Center licensee shall have written certification of compliance from the appropriate regulatory bodies governing zoning, building construction and safety, sanitation and fire safety.

## 32.0 Usable Space

32.1 A Center licensee shall maintain all areas of the facility in a clean, safe condition free from hazards to the health and safety of children.

32.2 A Center licensee shall ensure that all structures, fences, equipment and grounds are maintained so as to be free from any hazard to health and safety.

32.3 A Center licensee shall ensure that grounds adequately drain either naturally or through installed drainage systems so that there is no standing drainage water on the premises.

32.4 A Center licensee shall ensure that garbage and rubbish are stored securely in non-combustible, covered containers in separate areas inaccessible to children and shall be removed on a regular basis but not less than once every week.

32.4.1 Outdoor containers, other than dumpsters, shall be cleaned after each collection.

32.4.2 Indoor trash containers shall be emptied daily and kept clean.

32.5 A Center licensee shall ensure that trash collection receptacles are stored in designated areas away from the children's play areas.

32.6 A Center licensee shall ensure that all areas accessible to the Center ~~[and outdoor play area]~~ determined to be unsafe including steep grades, cliffs, open pits, swimming pools, high voltage boosters, propane gas tanks, streets or roads, driveways, railroad tracks, or parking lots, shall be are fenced off or have natural barriers to protect children.

## 33.0 Outdoor Area

33.1 A Center licensee shall maintain or have access to an outdoor play area with at least ~~fifty (50)~~ seventy-five (75) square feet for each child for the maximum number of children who will use the playground at one (1) time.

33.1.1 The outdoor play area shall be large enough to accommodate at least one-fourth ~~[third (1/3) fourth (1/4)]~~ of the licensed capacity of the facility at any one (1) time ~~[and is a minimum of 1,500 square feet]~~.

33.2 A licensee of a Center licensed before the effective date of these rules shall maintain or have access to an outdoor play area with at least fifty (50) square feet for each child for the maximum number of children who will use the playground at one (1) time.

33.2.1 The outdoor play area shall be large enough to accommodate at least one-fourth (1/4) of the licensed capacity of the facility at any one (1) time.

33.2.2 If the capacity of a Center licensed before the effective date of these rules changes for any reason, the licensee shall be required to ensure that the outdoor play area is in compliance with Rule 33.1.

33.3 A licensee shall ensure that the outdoor play area shall be is situated adjacent to or within close proximity to the Center and available to the children

33.3.1 The play area shall be accessible by a safe route.

33.4 A Center licensee shall ensure that outdoor play areas ~~located near or adjacent to hazardous areas determined by the Department to be unsafe (including, but not limited to, streets, roads, driveways, parking lots, railroad tracks, swimming pools, rivers, streams, steep grades, cliffs, open pits, high voltage boosters or propane gas tanks)~~ shall be fenced or otherwise protected by a natural or man-made barrier or enclosure are fenced.

33.4.1 Fencing shall be sturdy, safe and reinforced at intervals so as to give adequate support, constructed to discourage climbing and not prevent observation of children by staff.

33.4.2 Fencing shall be a minimum of four (4) feet in height with openings no larger than three and one-half (3½) inches.

33.4.3 Gates shall be equipped with self-closing and positive self-latching closure mechanisms. The latch or securing device shall be high enough or of a type such that small children cannot open it.

33.4.4 Fenced areas shall have at least two (2) exits, with at least one (1) being remote from the building.

33.5 For a Center licensed before the effective date of these rules, the existing fencing shall be acceptable as long as it is safe, free from hazards and in good repair. When the fencing is replaced, the new fencing shall fully comply with Rule 33.4.

33.6 For a Center licensed before the effective date of these rules that has no existing fencing, that

Center shall have two (2) years from the effective date or no later than January 1, 2009 to install fencing fully in compliance with Rule 33.4.

33.7 A Center licensee shall ensure that the protective surface of the outdoor play area beneath and in the fall zones of climbing equipment, slides, swings and similar equipment, shall be is of approved resilient material which absorbs falls.

~~33.7.1 Protective surfaces The fall zones around playgrounds shall be [at least between six (6) to] twelve (12) inches deep [as determined by the height of the highest climbing surface of the equipment] and consist of wood chips, mulch, engineered wood fibers, sand, [or] pea gravel [, safety-tested shredded or unitary rubber or rubber like materials, or rubber mats]; or~~

~~33.7.2 Made of safety tested shredded or unitary rubber, or rubber like materials.]~~

33.7.2.1 The use of shredded tires shall be permitted if the licensee obtains a guarantee from the supplier that the materials are free from steel wires or other contaminants and follows specific instructions from the supplier to determine the appropriate depth.

33.7.2.2 All materials used for protective surfaces shall be of a size that prevents choking.

**33.7.2 The materials used in the fall zone shall follow the instructions as listed in the most recent publication of the United States Consumer Product Safety Commission's (CPSC) *Handbook for Public Playground Safety* regarding critical heights of tested materials (see CPSC website at <http://www.cpsc.gov/cpsc/pub/pubs/325.pdf> - Table - Critical Heights (in feet) of Tested Materials (currently on page 5 of the CPSC document); or**

**33.7.3 The materials used in the fall zone shall follow the specific instructions as documented form the supplier to determine the appropriate depth or thickness.]**

~~33.7.34 Protective surfaces shall extend at least six (6) feet in all directions from play equipment. For swings, the protective surfacing shall extend, in back and front, twice the height of the suspending bar.~~

33.8 A licensee shall ensure that all surfaces of the outdoor play area are made up of materials that do not present a safety or choking hazard. Only pea gravel shall be acceptable as cover for the outdoor play area if using a gravel or stone-like surfacing.

33.9 For a Center licensed before the effective date of these rules, that Center shall have two (2) years or no later than January 1, 2009 to replace small gravel or small stones with pea gravel or with another surface as approved by the Office of Child Care Licensing.

33.10 A licensee shall ensure that the outdoor play area shall have has equipment for vigorous play and large muscle activity [with attention to the needs of the diversity of children served and their abilities to participate] and shall be is free of hazards.

33.10.1 Staff shall inspect the outdoor play area before children begin to play to ensure there are no hazards present and play equipment is safe for use.

33.11 A licensee shall ensure that outdoor play equipment shall be is securely anchored unless portable by design, in good repair and placed with regard for safe use.

33.11.1 Outdoor sandboxes or play areas containing sand shall be maintained in a safe and sanitary manner.

33.11.2 Separate outdoor sandboxes shall be covered when not in use.

33.12 A licensee shall ensure that the outdoor play area shall be situated to provide has a shaded rest area for children.

33.13 When a Center licensee can demonstrate that the outdoor space requirement rule cannot be met, the Center licensee shall provide, in addition to the indoor play space required by Requirement Rule 36.1, a minimum of 700 square feet of open, accessible indoor play space suitable for large muscle activity.

33.13.1 The indoor space may shall be either at the site of the Center or at a nearby facility, such as a gymnasium or other recreational facility, accessible by a safe route.

33.13.2 The Center licensee shall have a written plan which specifies how large muscle activity will be provided.

33.13.3 The Center licensee shall have a written plan to ensure some opportunities for safe outdoor activities in accordance with Requirement Rules 47.1, 72.6 & 72.9.

33.13.4 When using public areas, staff shall inspect the area before children begin to play to ensure there are no hazards present and play equipment is safe for use.

33.14 For a Center licensed before the effective date of these rules, the indoor space as indicated in Rule 33.13.1 may be at a nearby facility that was previously used and approved by the Office of Child Care Licensing unless the capacity of the Center increases or the physical plant of the Center changes allowing room for an indoor play space.

33.15 A licensee shall ensure that a roof top or elevated play space above the first floor is protected by a non-climbable, secure and hazard-free barrier that is at least seven (7) feet in height.

#### **34.0 Riding Toys**

34.1 A licensee shall ensure that bicycles, tricycles, scooters, and other riding toys are the size appropriate for a child, in good condition and free of sharp edges or protrusions that may injure a child.

34.2 A licensee shall ensure that all children wear approved safety helmets while riding bicycles with wheels of twenty (20) or more inches in diameter.

34.2.1 Children shall not share helmets unless helmets are made with a nonporous interior lining and easily cleanable straps. All interior and exterior surfaces of the helmet shall be wiped clean between users.

34.2.2 Helmets shall be removed before allowing children to use playground equipment.

#### **35.0 Access To Space By Children**

35.1 A Center licensee shall ensure that interior space designated for the use of children is available to children when the Center is in operation and is arranged to allow each child adequate space for free movement and active play.

#### **36.0 Indoor Area**

36.1 A licensee shall ensure that a Center shall have ~~has~~ at least thirty-five (35) square feet for each child. Measurements shall be from wall to wall on the inside.

36.1.1 Toilet rooms, kitchen areas, isolation areas, offices, storage spaces, hallways, furnace rooms and other areas not used by children for sleep or play on a routine basis shall not be counted in computing required square footage.

36.2 A multi-purpose room shall be allowed to count toward the indoor square footage of a Center when the room is routinely available for usage every day the Center is open.

36.3 A licensee shall ensure that the floors of all rooms in a Center shall have a surface which is safe and cleanable.

#### **37.0 Sleeping Accommodations**

37.1 A Center licensee shall ensure that each child, except school-age children who do not sleep at the Center, has clean, age-appropriate individual rest equipment such as a crib, playpen, cot, bed or mat and bedding.

37.1.1 A child's rest equipment shall be labeled with the child's name and used only by the child while enrolled in attending the program.

37.1.2 Mattresses and sleeping equipment shall be covered with non-absorbent, cleanable coverings.

37.1.3 Cots, beds, mats and mattresses, and crib mattresses shall be cleaned and sanitized at least bi-monthly ~~weekly~~ and when soiled or wet.

~~D Crib mattresses shall be cleaned and sanitized at least weekly and when soiled or wet.~~

37.1.4 Rest equipment and bedding shall be cleaned and sanitized prior to being assigned to another child.

37.1.5 Each child under ~~twelve~~ **eighteen (18)]** months of age and/or not walking shall sleep in a crib or playpen. **[A child who is between twelve (12) and eighteen (18) months of age and is walking may sleep on a cot, bed, or mat and bedding with written permission from the child's parent(s)/guardian(s).]**

37.2 A licensee shall ensure that sleeping mats shall be ~~are~~ stored so that there is no contact with the sleeping surface of another mat or disinfected after each use.

37.3 A Center licensee shall ensure that cribs are not stacked while in use.

37.3.1 Cribs and playpens shall have slats so placed as to allow gaps of no larger than ~~two and three-eighths~~ (2-3/8) inches.

37.3.2 Cribs and playpens shall have top rails at least ~~nineteen (19)~~ **twenty (20)** inches above the mattress with the mattress set at its lowest position and side rail locked in its highest position.

37.3.3 Any latches on cribs or playpens shall be safe and secured.

37.3.4 Crib mattresses shall be firm and tight-fitting.

37.3.5 Soft surfaces such as soft mattresses, pillows, sofas and waterbeds shall be prohibited as infant sleeping surfaces.

37.3.6 All pillows, bumper pads, quilts, comforters, sheepskin, stuffed toys, and any other soft products shall be removed from cribs while an infant is in the crib.

37.3.7 Toys or objects hung over an infant in a crib shall be held securely and be of a size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.

37.4 A ~~Center~~ licensee shall ensure that seasonably appropriate top and bottom coverings, such as sheets and blankets, are provided for each child.

37.4.1 Sheets and blankets or other bedding shall be cleaned at least weekly and when soiled or wet.

37.5 A licensee shall ensure that rest equipment shall be is placed at least one and one-half (1 ½) feet apart while in use with children sleeping in alternating body positions aligning their head to the feet of the child next to them.

37.6 A licensee shall ensure that rest equipment shall be is maintained in a safe condition.

### 38.0 Area for Children Who Become Ill

38.1 A licensee shall ensure that a Center shall have has a separate area where children who are exhibiting illnesses/symptoms requiring exclusion from the Center shall be are cared for until they can be removed from the Center or are diagnosed as posing no risk to themselves or others.

38.1.1 The separate area shall be furnished with rest equipment provided with clean bedding.

38.1.2 This area shall not be located in the kitchen or toilet areas.

38.1.3 All items used by an ill child, including rest equipment, bedding, utensils and toys shall be cleaned and disinfected prior to being used by another child.

38.1.4 While in this area, staff shall ensure that the child is supervised and the child's individual needs for rest, comfort, food, drink and activity are met until the child can be picked up by a parent/guardian or suitably cared for elsewhere.

### 39.0 Toilet Facilities

39.1 A licensee shall ensure that a Center shall have has enclosed toilet rooms inside the building on the same floor as inside play area(s).

39.1.1 Toilet rooms shall have no locks within the children's reach.

39.2 A licensee shall ensure that a Center serving children over twenty-four (24) months of age shall have has at least the number of child-sized or standard toilets and sinks ~~as indicated by the table below in the following ratios:~~

<u>No. of Children and Staff</u>	<u>No. of Toilets</u>	<u>No. of Sinks</u>	<u>Maximum Ratio</u>
1-15	—1	—1	—1/15
16-35	—2	—2	—1/17.5
36-60	—3	—3	—1/20
61-80	—4	—4	—1/20
81-100	—5	—5	—1/20
101-125	—6	—6	—1/25
126-150	—7	—7	—1/25
151-175	—8	—8	—1/25
176-200	—9	—9	—1/25
200+			—1/25

A. ~~Urinals shall be counted as one half of a toilet for the purposes of this calculation provided that the population served includes a significant number of males and that a minimum of two (2) flush toilets are~~

available and accessible to both males and females.

39.2.1 One (1) to ten (10) child-sized toilets for children over twenty-four (24) months through preschool age;

~~B. Platforms and/or steps shall be available for use when child size toilets or sinks are not available.~~

39.2.2 One (1) to fifteen (15) standard toilets for school-age children and staff;

39.2.3 At least one (1) sink shall be in the toilet room-; and

39.2.4 Staff shall be counted in determining the number of toilets and sinks if the Center does not provide separate toilet facilities for staff.

39.3 For a Center licensed before the effective date of these rules, the existing number of toilets and sinks shall be acceptable as long as the conditions of the original Environmental Health plan approval continue to be met.

39.3.1 If the capacity or physical plant of a Center licensed before the effective date of these rules changes for any reason, the licensee shall be required to ensure that the toilets and sinks are in compliance with Rule 39.2.

39.4 A licensee shall ensure that a Center serving only children under twenty-four (24) months of age shall have has at least one (1) toilet and sink when fewer than twenty (20) children are served and at least two (2) toilets and sinks when more than twenty (20) children are served.

~~A. Staff shall be counted in determining the number of toilets and sinks if the Center does not provide separate toilet facilities for staff.~~

~~132. For a Center serving a mix of children above and below twenty four (24) months of age the Center shall either:~~

~~A. Meet the toilet and sink specifications of Requirement 130 based on the total number of children being served at the Center, provided that all toilets and sinks are utilized by children of all ages; or~~

~~B. Determine the number of children above and below twenty four (24) months of age and meet the toilet and sink specifications of Requirements 130 and 131 for each age category.~~

39.5 A licensee shall ensure that potty chairs shall are not be substituted for toilets and, if used, shall be are placed in the toilet room.

39.5.1 Potty chairs, when used, shall be cleaned and sanitized after each use in accordance with Requirements ~~Rules #138~~ Rules 40.1 and 439 40.2.

39.5.2 A licensee shall ensure that toilet rooms in a Center shall have has at least one (1) ~~openable~~ operable window or mechanical ventilation.

39.5.3 A ~~Center licensee~~ licensee shall provide soap, toilet paper and single service towels or hand drying device in the toilet room(s) and make them accessible to the children.

39.5.4 A ~~Center licensee~~ licensee shall ensure that all surfaces in a toilet room are smooth, cleanable and non-absorbent.

39.5.5 A licensee shall ensure that toilet room(s) in a Center shall be are maintained in a sanitary condition and cleaned daily or more frequently if needed.

## **40.0 Sanitation**

40.1 A ~~Center licensee~~ licensee shall ensure that areas and equipment specified in Requirements ~~Rules 40.2 and 40.3~~ are washed with soap and water and disinfected as required.

40.1.1 The disinfectant solution shall either be a self-made solution consisting of one-fourth (1/4) cup of household bleach to each gallon of water (one (1) tablespoon per quart), which shall be is prepared daily, labeled, placed in a bottle that is sealed with a cap and stored out of the reach of children or a commercially prepared disinfectant which indicates it kills bacteria, viruses and parasites and shall be used in accordance with label instructions.

40.2 A ~~Center licensee~~ licensee shall ensure that staff wash and disinfect the following equipment items or surfaces after each use:

40.2.1 Potty chairs which have first been emptied into a toilet;

40.2.2 Sinks and faucets used for handwashing after the sink is used for rinsing a potty chair;

40.2.3 Diapering surfaces, as required in Requirement ~~Rule 43.4-;~~

40.2.4 Food preparation and eating surfaces such as counters, tables, and high chair trays;

40.2.5 Toys mouthed by ~~infants and toddlers~~ children;

40.2.6 Mops used for cleaning;

40.2.7 Bibs; and

40.2.8 Thermometers.

40.3 A Center licensee shall ensure that staff wash and disinfect the following equipment items or surfaces at least daily:

40.3.1 Toilet and toilet seats;

40.3.2 Sinks and faucets;

40.3.3 Diaper pails and lids;

40.3.4 Drinking fountains;

40.3.5 Water table and water play equipment;

40.3.6 Play tables;

40.3.7 Mats that are not stored separately as specified in Requirement Rule 37.2 and

40.3.8 Smooth surfaced non-porous floors.

#### **41.0 Handwashing**

41.1 A Center licensee shall ensure that staff and children wash their hands regardless of glove usage with soap and running water and use single service towels for drying hands:

41.1.1 Before and after eating or handling food;

41.1.2 Before and after giving medications;

41.1.3 Before and after caring for a child who may be sick;

41.1.4 Before and after using a water-play table with other children;

41.1.5 After toileting or diapering;

41.1.6 After coming into contact with blood, fecal matter, urine, vomit, nasal secretions or other body secretions;

41.1.7 After handling animals or their equipment or after coming into contact with an animal's body secretions;

E After ~~caring for a child who may be sick~~; and

F. ~~After cleaning.~~

41.1.8 After playing in a sandbox;

41.1.9 After outdoor play;

41.1.10 After cleaning; and

41.1.11 After taking out the garbage.

41.2 A Center shall ensure that staff use disposable rubber or plastic gloves when cleaning surfaces or equipment contaminated with blood or vomit.

#### **42.0 Standard Precautions**

42.1 A licensee shall employ standard precautions for protection from disease and infection. Spills of body fluids (i.e. urine, feces, blood, saliva, nasal discharge, eye discharge, and injury or tissue discharges) shall be cleaned up immediately, as follows:

42.1.1 For spills of vomit, urine, and feces on any surface including the floors, walls, bathrooms, tabletops, toys, and diaper-changing tables shall be cleaned with soap and water and disinfected;

42.1.2 For spills of blood or blood-containing body fluids and injury and tissue discharges, the area shall be cleaned with soap and water and disinfected. Non-porous gloves shall be used in these situations;

42.1.3 Staff involved in cleaning contaminated surfaces shall avoid exposure of open skin sores or mucous membranes to blood or blood-containing body fluids and injury or tissue discharges by using non-porous gloves to protect hands when cleaning contaminated surfaces;

42.1.4 Blood-contaminated material and diapers shall be disposed of in a sealed plastic bag with a secure tie; and

42.1.5 Mops shall be cleaned, rinsed, disinfected, wrung dry and hung to dry.

#### **43.0 Diapering**

43.1 A Center licensee shall ensure that the diapers and other clothing of children are changed when

wet or soiled.

43.1.1 The Center licensee shall have an established procedure for periodic checking of diapers throughout the day at least hourly including visually inspecting children's diapers at least every two (2) hours.

43.1.2 The Center licensee shall ensure that a supply of clean diapers and extra clothing are provided available for each child either by providing them directly or requiring the parent(s)/guardian(s) to provide.

43.1.3 Soiled clothing shall be placed in a sealed plastic container or bag and labeled with the child's name and returned to the child's parent(s)/guardians at the end of the day.

43.2 A licensee shall ensure that a Center shall have has a diaper changing area with a clean, washable and non-absorbent surface.

43.2.1 There shall be a separate hand-washing sink convenient to within five (5) feet of the changing area.

43.2.2 The diaper changing area shall not be located in the kitchen area.

43.2.3 Disposable covers for the diaper changing area shall be used for each diaper change.

43.3 A licensee shall ensure that used disposable diapers shall be are placed in a foot-activated container that is used exclusively for diapers and lined with a leak-proof or impervious liner.

43.3.1 Such diapers shall be removed from the Center daily or more frequently if needed to prevent accumulation of odors, and placed in a closed container that is outside the building and used for trash collection.

43.3.2 The container shall be sanitized daily.

43.3.3 The container shall be within arms reach of the diaper changing area and inaccessible to children.

43.3.4 Diaper containers that require a hand to push the used diaper through a narrow opening or have exterior surfaces that must be touched with a hand or the used diaper itself shall be prohibited.

43.4 A Center licensee shall have an established procedure for changing diapers to include at least the following steps:

43.4.1 The Center licensee shall ensure that caregivers staff members use a diaper changing area in accordance with requirement Rule 43.2-;

43.4.2 The Center licensee shall ensure that caregivers staff members wash and dry each child during each diaper change with an individual disposable sanitary wipe or single service washcloth-;

43.4.3 The diaper changing area shall be cleaned and sanitized with a disinfectant solution after each use in accordance with Requirement Rules 40.1 and 40.2-;

43.4.4 The Center licensee shall ensure that disposable diapers and disposable covers are disposed of in accordance with requirement Rule 43.3-;

43.4.5 The Center licensee shall ensure that soiled non-disposable diapers are not emptied or rinsed and shall be placed in a sealed plastic container labeled with the child's name and returned to the child's parent(s)/guardians at the end of the day-;

43.4.6 A Center licensee shall ensure that caregivers staff members changing children's diapers shall wash their hands and the hands of the child with soap and water immediately after each diaper change-; and

43.4.7 This procedure shall be posted in the diaper changing area.

#### **44.0 KITCHENS Food Safety**

44.1 A licensee shall contact the Division of Public Health prior to opening to determine whether the Center requires a Food Establishment permit.

44.1.1 A licensee of a Center licensed before the effective date of these rules shall have thirty (30) days from the effective date to contact the Division of Public Health to determine whether the Center requires a Food Establishment permit.

44.1.2 A licensee shall provide the Office of Child Care Licensing documentation from the Division of Public Health that states the date the Center contacted the Division of Public Health and shows the designation of Food Establishment permit required or no Food Establishment permit required.

44.2 A licensee of a Center that conducts a food operation which does not require a Food Establishment permit shall not change that type of food operation to one which requires a Food Establishment permit, except as approved by the Division of Public Health.

44.3 A licensee shall ensure that a kitchen or food preparation area used in a Center shall be is provided with the necessary operable equipment for the preparation, storage, serving to prepare, store, serve and

clean-up of all meals and snacks for or all of the children and staff regularly served by such kitchen.

44.3.1 The Center shall have a hand-washing sink in the food preparation area, separate from the sink used for food preparation and dishwashing.

44.4 A licensee shall ensure that floors, walls and counter surfaces in a kitchen in which any food comes in contact with shall be are easily cleanable and impervious to water to the level of splash.

~~149. Food preparation areas and appliances shall be cleaned following each prepared meal.~~

44.5 The kitchen A licensee shall ensure that a Center shall have has refrigeration to keep perishable food cold (45 ~~forty (40)~~ degrees F. or colder).

44.5.1 There shall be a working thermometer in all refrigerators.

44.5.2 ~~The A~~ Center where children eat lunches prepared at home shall provide adequate refrigerated storage for such lunches.

~~151. A Center shall ensure that all eating, drinking and cooking utensils are thoroughly cleaned, rinsed and sanitized after each use and stored in a clean place.~~

~~152. A Center shall ensure that all dishes, cups and glasses used by children in care shall be free from chips, cracks or other defects.~~

~~A. The Center shall discard single service napkins, bibs, dishes and utensils after use.~~

~~B. Washable napkins, bibs and tablecloths shall be cleaned after each use.~~

~~153. A Center shall have a dishwasher or facilities capable of washing, rinsing and sanitizing utensils at proper time, temperature and pressure.~~

~~A. When a dishwasher is not used, dishes and utensils shall be air dried. They shall not be dried with a towel.~~

44.6 ~~154251.~~ A licensee of a Center shall ensure that all plastic dinnerware shall either be single service or approved by the National Sanitation Foundation or its equivalent dinnerware or utensils provided for meals or snacks are discarded immediately after use.

44.7 A Center licensee shall ensure that all food in a Center ~~shall be is~~ clean, wholesome, free from spoilage, ~~free from and~~ adulteration, correctly labeled and safe for human consumption.

44.8 A licensee shall ensure that storage areas for food in a Center ~~shall be are~~ cleanable and free of food particles, dust and dirt.

44.8.1 All food items shall be stored in closed or sealed containers which are labeled.

44.8.2 All food items shall be stored off the floor.

44.8.3 Food items shall be stored separately from cleaning materials.

44.9 A licensee shall ensure that the kitchen or food preparation areas in a Center shall be so is constructed and supervised ~~as~~ to prevent access by children unless staff is conducting a specific educational activity within the kitchen or food preparation area. Staff shall organize and supervise such educational activities to ensure the safety of all children participating.

## **STORAGE**

~~158. A Center shall store all drugs, poisons, solvents, matches and other hazardous materials in a safe manner out of the reach of children.~~

### **45.0 Storage of Personal Belongings**

45.1 A Center licensee shall provide children with adequate individual storage space for personal belongings so that clothing or bedding used by a child does not come into contact with that used by other children.

### **46.0 Doors, and Windows and Climate Control**

46.1 A Center licensee shall provide insect screening for all ~~outer exterior~~ doors and ~~openable operable~~ windows when such doors and windows are used for ventilation, provided that all requirements for fire safety have been met. This screening shall be in good repair.

46.2 A licensee shall ensure that unless adequate mechanical ventilation is provided, a Center ~~shall have has~~ window area equal, at a minimum, to four and one-half percent (4 ½%) of the floor area of the Center. Half (1/2) of such window area shall be ~~openable operable~~.

46.3 A licensee shall ensure that all floor or window fans in a Center ~~that are accessible inaccessible~~ to children ~~shall have a grille, mesh or other protective covering that prevents a child from tampering with the blades~~

of the fan and bear the safety certification mark of a recognized testing laboratory such as UL (Underwriters Laboratories) or ETL (Electrotechnical Laboratory).

46.4 A Center licensee shall ensure that all closets and bathrooms are provided with doors that can be readily opened from both sides.

46.5 A Center licensee shall ensure that all heating and cooling equipment is safely and appropriately shielded to prevent the injury of children.

46.5.1 All heating and cooling equipment shall be inspected annually by a heating/air conditioning contractor who verify in writing that the equipment is properly installed, cleaned and maintained to operate efficiently and effectively without emitting harmful chemical or microbiological substances.

46.5.2 Portable space heaters shall be prohibited.

46.6 A Center licensee shall take all reasonable precautions to ensure that heating elements including hot water pipes and radiators are insulated and installed in a manner that ensures the safety of children.

46.7 A licensee shall ensure that room temperatures in rooms used by the children shall be maintained at a minimum temperature of sixty-five (65) degrees F. and a maximum of eighty-five (85) degrees F. at floor level when the outside temperature is 1 degree F. unless there is conflict with Federal and State energy Laws.

46.7.1 A Center shall be required to temporarily close if the minimum or maximum room temperatures cannot be maintained.

46.8 For a Center licensed after the effective date of these rules, a licensee shall ensure that air conditioning is used in rooms occupied by children to keep rooms comfortable as per Rule 46.7 during the hot weather.

#### **47.0 Outdoor Climate**

47.1 A licensee shall be aware of extreme weather conditions such as air quality or wind chill factor that could affect the well being or health of children and limit outside playing time when such extreme weather conditions exist.

#### **48.0 Lighting**

48.1 A Center licensee shall provide ensure that a Center has sufficient natural and artificial lighting to allow for the supervision of the children and provide illumination of at least ~~twenty (20)~~ thirty (30) foot candles of natural or artificial light at floor level in all child care areas where children's activities occur.

48.2 A Center licensee shall ensure that parking areas, pedestrian walkways, or other exterior portions of the premises subject to use by occupants at night after dark shall be are illuminated.

#### **49.0 Water and Sewage**

49.1 A licensee shall ensure that the temperature level of the water from all water taps accessible to children in care in a Center shall not exceed 120 degrees F.

49.1.1 A licensee shall ensure that the water supply and the sewage disposal in a Center shall be are approved by the Division of Public Health and the Department of Natural Resources and Environmental Control, respectively.

49.1.1.1 All sinks in the kitchen and toilet rooms shall be designed to supply adequate hot and cold water, under pressure, at all times to meet the needs of children in care.

B The Center shall ensure that drinking water is always available to children.

49.1.1.2 All plumbing shall comply with the State or local plumbing code.

49.2 A licensee shall ensure that drinking water is always available to children and supplied to them upon their request.

#### **50.0 Hazardous Finishes and Surfaces**

50.1 A licensee shall ensure that the Center shall not utilize any excessively rough surface or finish where such surface or finish may present a hazard to children in care.

50.2 A licensee shall ensure that the Center shall not have walls or ceilings any building components, equipment, furnishing, or decorations surfaced with or containing hazardous materials containing asbestos such as asbestos, deteriorated lead-based paint, or lead-based paint present on accessible, friction or impact surfaces.

173. A Center shall not use lead paint for any purpose within the Center or on the exterior or grounds of

the Center, nor shall the Center purchase any equipment, furnishings or decoration surfaced with lead paint.

A. Where appropriate, the Center shall maintain evidence that the Center has been tested for and found to be free of lead paint hazards.

50.3 A licensee shall maintain evidence that the Center has been tested for and found to be free of lead-based paint hazards when conditions warrant such testing and/or testing is required.

## **51.0 Evacuation Emergency Planning**

51.1 A licensee shall have a written emergency plan describing procedures for both natural and man-made disasters for such situations as a fire, flood, earthquake, extreme weather conditions, power failure or utility disruptions, chemical or toxic spills, bomb threat, or terrorist attack.

51.1.1 The emergency plan shall include procedures for training staff about disaster preparedness, staff's specific responsibilities during a disaster, accounting for all children and staff, relocation process (if appropriate), and contacting appropriate emergency response agencies and parents/guardians.

51.2 A Center licensee shall have a written evacuation plan of the Center posted in each room the children use.

51.2.1 Monthly evacuation drills shall be held and documented practiced from all exit locations at varied times of the day and during varied activities including nap time. The record Each drill shall be documented and include information on the date and time of day of the drill, the number of children and staff members who participated, and the total amount of time necessary to evacuate the Center.

51.3 A licensee shall develop a written plan for procedures in the event that children and staff must remain at the Center for an extended period due to a natural or man-made disaster.

51.3.1 This plan shall include a list of emergency supplies for the care of children and procedures for feeding children and staff during the extended stay at the Center.

## **52.0 Firearms**

52.1 A licensee shall ensure that firearms and/or ammunition not be within the Center's premises at any time.

## **Smoking**

~~75. A Center shall prohibit smoking in areas used by the children and in food preparation areas.~~

## **53.0 Pets**

~~53.1 Center licensee shall ensure that any pets kept by or located in the Center are certified by a licensed veterinarian as not being carriers of illness that would be a hazard to children, are free from disease and vaccinated as prescribed by law or as recommended by a licensed veterinarian.~~

~~53.1.1 Animals in the Center shall be housed in protected containers and away from food preparation, storage and serving areas and toilet facilities for children and staff.~~

~~53.1.2 Animals shall be handled by children only under close staff supervision.~~

~~53.1.3 Animals shall be cared for in a safe and sanitary manner.~~

~~53.1.4 Animals such as ferrets, turtles, iguanas, lizards or other reptiles, psittacine birds (birds of the parrot family), or any other animals that are known to be carriers of illnesses shall not be kept at the Center.~~

## **54.0 First Aid Kits**

~~54.1 A Center licensee shall have, in locations readily accessible to staff, but not to children, first aid kits containing, but not limited to soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape and scissors. the following:~~

~~54.1.1 Disposable nonporous gloves;~~

~~54.1.2 Scissors;~~

~~54.1.3 Tweezers~~

~~54.1.4 A non-glass thermometer to measure a child's temperature;~~

~~54.1.5 Bandage tape;~~

~~54.1.6 Sterile gauze pads;~~

~~54.1.7 Flexible roller gauze;~~

54.1.8 Triangular bandages;

54.1.9 Safety pins;

54.1.10 Eye dressing;

54.1.11 Pen/pencil and note pad;

54.1.12 Instant cold pack;

54.1.13 Current American Academy of Pediatrics (AAP) standard first aid chart or equivalent first

aid guide;

54.1.14 CPR Barrier device;

54.1.15 Small plastic or metal splints; and

54.1.16 Non-medicated adhesive strip bandages, plastic bags for cloths, gauze, and other materials used in handling blood.

A. ~~A first aid manual shall be maintained at the Center and shall be readily available for use.~~

B. ~~A first aid kit shall be taken along with children when they are on field trips and other group visits outside the Center.~~

54.2 A licensee shall ensure that a first aid kit is taken along with children when on field trips and other group visits outside the Center that contains all items listed in Rule 54.1 and also include:

54.2.1 Water;

54.2.2 Liquid soap;

54.2.3 Any emergency medications needed for a child with special needs; and

54.2.4 List of emergency phone numbers, parents'/guardians' home and work phone numbers, and the Poison Control Center phone number.

## **55.0 Telephones**

~~55.1 A licensee shall ensure that a Center shall have has a working, listed telephone.~~

~~A. In order to ensure the accessibility of the Center to emergency calls from parents, the Center shall ensure that access to the telephone is limited to business calls and that the telephone is not taken off the hook during nap.~~

~~55.2 The Center A licensee shall post the following emergency telephone numbers by a telephone accessible to all staff:~~

~~55.2.1 911: Providing access to ambulance service or emergency medical services, police and fire departments;~~

~~B. Police Department;~~

~~C. Fire Department;~~

~~D. 55.2.2 Poison Control Center; and~~

~~55.2.3 Child Abuse Reporting Number.~~

~~55.3 The Center A licensee shall keep the following telephone numbers for all children in attendance in a place accessible to the telephone and to all staff:~~

~~55.3.1 Telephone numbers at which where parents/guardians can be reached; and~~

~~55.3.2 Telephone numbers of the physicians health care provider designated by parents/guardians;.~~

~~55.3.3 Number of the local County Health Officer of the Division of Public Health.~~

~~55.4 A licensee shall ensure that an operating phone is available to make emergency calls while on field trips or any excursion, including walks, outside of the Center.~~

## **56.0 General Safety Practices**

~~56.1 A licensee shall ensure that all containers of poisonous, and toxic, or hazardous materials kept in a Center shall be are prominently and distinctly marked or labeled for easy identification as to contents and shall be used only in such manner and under such conditions as will not contaminate food or constitute a hazard to the children in care or to staff.~~

~~56.1.1 The storage of flammable liquids and gases shall not be permitted in the Center except as allowed by the Office of the Fire Marshal.~~

~~56.1.2 All poisonous or toxic materials except materials required for routine cleaning and maintenance are to shall be locked in secure storage spaces and accessible only to authorized staff.~~

56.1.3 Materials required for routine cleaning and maintenance shall be stored and used in a safe manner.

56.2 A licensee shall ensure that porches, and elevated walkways or surfaces and elevated play areas in a Center, of more than two (2) feet in height shall have hazard-free barriers to prevent falls.

56.3 A licensee shall ensure that every exit, exit access and exit discharge in a Center shall be are continuously maintained free of obstruction.

A. Glass doors and windows at child height shall be marked for safety.

56.4 A licensee shall ensure that glass door panels and windows within thirty-six (36) inches of the floor have safety guards such as rails or mesh or be of safety-grade glass or polymer and equipped with a vision strip.

56.5 A Center licensee shall utilize approved products and procedures to ensure that the Center is protected from insect infestation and the products and procedures do not present a hazard to children.

56.6 A licensee shall ensure that all buildings used by a Center shall be are rodent free.

56.7 A licensee shall ensure that children in care of a Center shall not swim in areas posted as being unsafe. A certified An individual with current water safety instructor training or senior lifesaving training from the American Red Cross or its equivalent shall be on duty when the children in care are swimming. A certified individual is one who has a current water safety instructor certificate or senior lifesaving certificate from the American Red Cross or its equivalent.

56.7.1 On In-grounds pools shall comply with the Division of Public Health requirements concerning swimming and wading pools.

56.7.2 Portable wading pools shall be prohibited.

56.7.3 Permanent or built-in swimming and wading pools that are left filled when not in use shall be inaccessible to children when not being used by the children.

56.8 A licensee shall ensure that stairways, inside and outside, over four (4) steps, shall have railings handrails at a maximum height of thirty-eight (38) inches. Approved safety gates at stairways shall be provided if infants and toddlers are in care.

56.9 A licensee shall ensure that approved safety gates at stairways are provided if infants and toddlers are in care and are placed in the areas where the infants and toddlers are located within the Center.

56.9.1 Gates shall have latching devices that adults, but not children, can open easily in an emergency.

56.9.2. Pressure or accordion gates shall not be used.

56.10 A licensee shall ensure that a Center shall have has child-proof receptacle covers for all electrical outlets not in use and accessible to children or has electrical outlets that are of the child-resistant ground-fault circuit-interrupter (GCFI) type.

## 57.0 Transportation

57.1 A licensee of a Center which provides transportation for children shall ensure that the vehicle and operator of a vehicle used to transport children are in compliance with all applicable Federal, State and local laws.

57.1.1 The driver shall not transport more persons, including children and adults, than the capacity of the vehicle.

57.1.2 A vehicle with a rated capacity, as defined by the manufacturer, to carry more than ten (10) passengers in addition to the driver and was newly purchased or newly leased after July 1, 1998 shall meet State and Federal specifications and safety standards applicable to school buses.

57.2 A licensee shall ensure that each child is secured in an individual safety restraint system appropriate to the age, weight and height of the child at all times while the vehicle, other than a school bus, is in motion. All safety restraints shall be federally approved and so labeled according to the current applicable Federal Motor Vehicle Safety Standard. Child safety restraints shall be installed and used in accordance with the manufacturer's and vehicle's instruction and maintained in a safe working condition and free of any recall.

57.2.1 ~~Licensees may use their own discretion concerning the use of child safety restraint systems on school buses. However, while it is currently not required by law that child safety restraints be used on school buses, the National Highway Traffic Safety Administration, as of February 1999, has recommended that children preschool age or younger be transported in school buses properly equipped for child safety restraints and that the children always be properly secured in a child safety restraint while the school bus is in motion.~~ A child preschool age or younger shall be only transported on a school bus that is properly equipped for child safety restraints unless written permission is received

from the parent(s)/guardian(s) of that child allowing the child to be transported on a school bus unrestrained. The Center shall explain to parent(s)/guardian(s) in the Center's written transportation policy that while child safety restraints on school buses for children preschool age or younger are not currently required by State Law, the National Highway Traffic Safety Administration recommends that children in this age group always be transported in school buses properly equipped for child restraints.]

57.3 A licensee shall develop a written transportation policy that includes:

57.3.1 How and where the children shall be transported;

57.3.2 Safe driver criteria such as needing a valid driver's license and having a safe driving record; and

57.3.3 Physical conditions that would impair the ability to drive wherein a driver shall not operate a vehicle.

57.4 A Center licensee shall inform parents/guardians of the Center's transportation policy and obtain written permission from the parent(s)/guardians for any transportation provided by the Center. This permission shall specify any special need or problem of the a child which might require special attention during transportation. The operator or attendant of the vehicle shall be given a copy of this information with directions on handling any special need or problem. This permission shall also identify who is operating each vehicle.

57.5 A licensee shall ensure that any operator of a vehicle transporting children for a Center is at least twenty-one (21) years of age.

57.5.1 The operator shall have a valid driver's license that authorizes the driver to operate the vehicle being driven.

57.6 A Center licensee shall ensure that a first aid kit an operable phone shall be is in all vehicles regularly transporting children.

57.7 A Center licensee shall ensure that all doors on vehicles are locked whenever the vehicle is in motion.

57.8 A Center licensee shall ensure that children shall are never be left unattended in a vehicle used by the Center to transport children.

57.9 A Center licensee shall not transport children in the open back of a truck.

57.10 A Center licensee shall ensure that children are loaded and unloaded at the curbside of the vehicle or in a protected parking area or driveway.

57.11 A licensee shall ensure that a vehicle used to transport children shall have has an operable heater capable of maintaining a temperature of at least fifty (50) degrees F. in the vehicle.

57.12 A licensee shall ensure that a vehicle is air-conditioned when the vehicle's interior temperature exceeds eighty-five (85) degrees F. and providing fresh air through open windows cannot reduce the temperature.

57.13 A Center licensee shall ensure that each vehicle used to transport children is equipped with an operable dry chemical fire extinguisher approved by the Underwriter's Laboratory.

## **58.0 Field Trips**

58.1 A licensee shall provide staff or adult supervision of children during trips off the Center's premises to ensure safety.

58.1.1 Parents/guardians volunteering to accompany the children shall be allowed to count toward the staff/child ratios for field trip or routine program outing purposes only if not accompanied by other children of any age who are not enrolled at the Center.

58.1.2 Volunteering parents/guardians shall be supervised by a staff member who is at least an Early Childhood Assistant Teacher, Early Childhood Caregiver or School-Age Site Assistant at all times and not be alone with the children at any time including the transportation of children.

58.2 A licensee shall ensure that during routine program outings that do not require the use of vehicles and are in close proximity to the Center, a licensee maintains staff/child ratios in accordance with Rule 29.1 with a minimum of two (2) staff members present at all times.

58.3 A licensee shall ensure that during field trips that require the use of vehicles, the staff/child ratios are according to the table below:

<u>Age of Youngest Child in Group</u>	<u>Maximum Number of Children to be Supervised By At Least One (1) Early Childhood Assistant Teacher, Early Childhood Caregiver or School-Age Site Assistant</u>
---------------------------------------	--

<u>Less than 2 years</u>	<u>2</u>
--------------------------	----------

<u>2 years through 4 years</u>	<u>4</u>
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<u>5 years and older</u>	<u>8</u>
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58.3.1 Staff shall have a list of the children present and check the roll frequently to ensure all children are accounted for at all times.

58.3.2 Staff shall have access to medical consent forms and emergency contact information for all children.

58.3.3 Staff shall have a traveling first aid kit available in accordance with Rule 54.2.

58.3.4 Children shall have tags or other means of providing the Center's telephone number.

58.3.5 Staff shall have a plan for transportation of children in the event of an emergency.

58.3.6 Staff shall document that a roll check was conducted both before departing from the field trip site and again when returning to the Center.

58.4 A licensee shall ensure that staff and/or volunteering parents/guardians comply with **Transportation** Rule 57.0 when transporting children on field trips.

## HEALTH CARE

### 59.0 ~~Health Consultant~~ **Health Consultation**

59.1 ~~.A Center licensee shall have specific arrangements with a Division of Public Health Nurse, Division of Public Health County Health Officer, or a licensed physician health care provider who will agree to provide consultation on both routine and emergency health care for children.~~

59.1.1 ~~The above requirement rule shall be excepted when the Center licensee employs a Registered Nurse licensed in Delaware to provide health services or arrangements have been made with a certified child care health consultant who is also a Registered Nurse licensed in Delaware.~~

### 60.0 **Health Care Plan**

60.1 ~~.A Center licensee shall have a written plan for the routine and emergency health care of children including procedures to be followed in case of illness and plans for accessing emergency services. Each staff member shall receive a copy of this plan and shall be trained in its implementation during staff orientation. Parent(s)/guardians shall be given a copy of this plan at the time of enrollment. The plan shall be approved by the health consultant care provider or certified child care health consultant who is also a Registered Nurse licensed in Delaware and shall include:~~

60.1.1 ~~Procedures to be followed in case of illness or emergency, including method of transportation and notification of parents/guardians;~~

60.1.2 ~~Procedures to be followed in case of illness or emergency, when parent(s)/guardians cannot be reached;~~

60.1.3 ~~The Center's policy regarding the administration of medication; and~~

60.1.4 ~~A plan for the management of communicable disease including the following:~~

60.1.4.1 ~~The list of symptoms of illness for which a child will be excluded from the Center~~

or separated from the group if symptoms occur after the child has been admitted for the day as specified in Requirement Rule 63.1;

60.1.4.2 The list of reportable communicable diseases for which a child will not be admitted to the Center without a written statement from a licensed physician health care provider as specified in Requirement Rule 63.2; and

60.1.4.3 Assurance that each the parent(s)/guardian(s) whose child may have been exposed to a reportable communicable disease shall receive written notice of the outbreak of such disease at the Center;

D. The Center's policy regarding the administration of medication.

## **61.0 Health Appraisal**

61.1 A licensee shall ensure that within one (1) month following admission, the caregiver licensee shall have has on file an age-appropriate health appraisal conducted within the last six (6) twelve (12) months prior to admission for each child enrolled in attendance unless required by Law to be admitted without a health appraisal such as specified in the McKinney-Vento Homeless Assistance Act or any applicable local, State and Federal Laws and regulations. Health appraisals shall be certified by a licensed physician or nurse practitioner health care provider and shall be updated yearly or in accordance with the recommended schedule for routine health supervision of the American Academy of Pediatrics. The health appraisal shall include:

61.1.1 A health history;

61.1.2 A physician physical examination;

61.1.3 Growth and development;

61.1.4 Recommendations regarding required medication, restrictions or modifications of the child's activities, diet or care;

61.1.5 Medical information pertinent to treatment in case of emergency;

61.1.6. Documentation of the results of any recommended or required screening or testing such as for blood-lead or tuberculosis; and

61.1.7. Documentation of the immunization status, with a listing of day, month and year of administration for each immunization, according to the recommendations of required by the Division of Public Health American Academy of Pediatrics and the Immunization Practices Advisory Committee, as specified in the **Appendix, Recommended Childhood and Adolescent Immunization Schedules.** For current information, the licensee shall contact the Division of Public Health or refer to the CDC website – <http://www.cdc.gov/nip/recs/child-schedule.htm>.

61.1.7.1 The Center licensee shall not permit a child to be admitted to the Center without written documentation from a licensed physician or nurse practitioner health care provider or Division of Public Health that the child has received at least one (1) dose of DPT or DT, one (1) dose of TOPV or IPV, the MMR vaccine and Hib conjugate vaccine, if required by the age of child [who] is [not] age-appropriately vaccinated according to the most recent directive from the Division of Public Health unless required by Law to be admitted without immunization(s) such as specified in the McKinney-Vento Homeless Assistance Act or any applicable local, State and Federal Laws and regulations.

61.1.7.2 If a child has not received adequate immunizations as required for the child's age, the Center licensee shall require a written plan for updating the immunizations within a reasonable time frame to be submitted to the Center Early Childhood or School-Age Administrator within fourteen (14) days of the child's admission or as required by Law such as specified in the McKinney-Vento Homeless Assistance Act or any applicable local, State and Federal Laws and regulations.

61.1.7.3 If the additional required immunizations are not completed within the time frame specified in the written plan, the child shall be excluded from the Center until the immunizations have been obtained and written documentation of such has been submitted to the Center Early Childhood or School-Age Administrator.

61.2 In the case of after school care A licensee shall ensure that for school-age children, a copy of the health record appraisal from required by the child's school in the Center's is also on file is sufficient at the Center.

61.3 A licensee shall ensure that a child whose parent(s)/guardian(s) objects to immunizations on a religious basis or whose health care provider certifies that such immunization may be detrimental to the child's health will be exempt from the immunization requirement provided that the parent(s)/guardian(s) submits to the Center Early Childhood or School-Age Administrator a notarized statement to that effect explaining the exemption

is in compliance with State Law.

~~203-~~ A Center shall report the immunization status of each child enrolled in the Center to the Division of Public Health annually.

## 62.0 Health Observation on Arrival

~~67.1~~ A Center licensee shall ensure that each child is observed on arrival by a person staff member capable of trained in recognizing common signs of communicable disease, physical injury or other evidences of ill health.

## 63.0 Health Exclusion

63.1 A Center licensee shall not permit a child who has symptoms of illness specified below to be admitted to the Center or remain at the Center unless written documentation from a licensed physician health care provider, or verbal with written follow-up, states the child has been diagnosed and poses no serious health risk to the child or to other children. The symptoms of illness for possible exclusion shall include, but not be limited to any of the following:

- A. Severe pain or discomfort particularly in joints, abdomen, ears;
- B. Acute diarrhea, characterized as two (2) times the child's usual frequency of bowel movements with a loose consistency within a period of twenty four (24) hours;
- C. Two (2) or more episodes of acute vomiting within a period of twenty four (24) hours;
- D. Severe coughing or sore throat;
- E. Oral or axillary temperature of 101.5 degrees F. or over accompanied by behavior changes and/or other symptoms;
- F. Yellow (jaundiced) skin or yellow eyes;
- G. Red eyes with discharge;
- H. Infected, untreated skin patches or lesions;
- I. Difficult or rapid breathing;
- J. Severe itching of body or scalp;
- K. Skin rashes, excluding diaper rash, lasting more than one (1) day;
- L. Swollen joints;
- M. Visibly enlarged lymph nodes;
- N. Stiff neck;
- O. Blood or pus from ear, skin, urine, stool;
- P. Unusual behavior for the child characterized by no playing, confusion, persistent, unconsolable crying;
- Q. Loss of appetite characterized by refusing all solids; or
- R. Symptoms which indicate any of the following diseases:
  - i. Chicken Pox
  - ii. Impetigo
  - iii. Lice
  - iv. Scabies
  - v. Strep Throat

63.1.1 Temperature: infants four (4) months old and younger, equivalent to 100 degrees or greater even if there has not been a change in behavior;

63.1.2 Temperature: children older than four (4) months, equivalent to 101 degrees or greater; accompanied by behavior changes or other signs or symptoms of illness - until medical evaluation indicates inclusion in the facility. Oral temperature shall not be taken on children younger than four (4) years (or younger than three (3) years if a digital thermometer is used). Rectal temperature shall be taken only by a licensed health care professional;

63.1.3 Symptoms and signs of possible severe illness (such as unusual lethargy, uncontrolled coughing, inexplicable irritability, persistent crying, difficult breathing, wheezing, or other unusual signs) - until medical evaluation allows inclusion;

63.1.4 Uncontrolled diarrhea, that is, increased number of stools, increased stool water, and/or decreased form that is not contained by the diaper - until diarrhea stops;

63.1.5 Blood in stools not explainable by dietary change, medication, or hard stools;

63.1.6 Vomiting illness (two (2) or more episodes of vomiting in the previous twenty-four (24) hours) until vomiting resolves or until a health care provider determines the cause of the vomiting is not contagious and the child is not in danger of dehydration;

63.1.7 Persistent abdominal pain (continues more than two (2) hours) or intermittent pain associated with fever or other signs or symptoms;

63.1.8 Mouth sores with drooling, unless a health care provider determines that condition is noninfectious;

63.1.9 Rash with fever or behavior change, until a health care provider determines that these symptoms do not indicate a communicable disease;

63.1.10 Purulent conjunctivitis (defined as pink or red conjunctiva with white or yellow eye discharge), until after twenty-four (24) hours after antibiotic treatment has been initiated;

63.1.11 Scabies, until twenty-four (24) hours after treatment has been initiated;

63.1.12 Pediculosis (head lice), until twenty-four (24) hours after treatment has been initiated;

63.1.13 Tuberculosis, until a health care provider states that the child is on appropriate therapy and can attend care;

63.1.14 Impetigo, until twenty-four (24) hours after treatment has been initiated;

63.1.15 Strep throat or other streptococcal infection, until twenty-four (24) hours after initial antibiotic treatment and cessation of fever;

63.1.16 Varicella-Zoster (Chicken pox), until all sores have dried and crusted (usually six (6) days);

63.1.17 Shingles, only if sores cannot be covered by clothing or a dressing; if not exclude until sores have crusted and are dry;

63.1.18 Pertussis, until five (5) days of antibiotic treatment;

63.1.19 Mumps, until nine (9) days after onset of parotid gland swelling;

63.1.20 Hepatitis A virus, until one (1) week after onset of illness, jaundice or as directed by the health department when passive immunoprophylaxis (currently, immune serum globulin) has been administered to appropriate children and staff;

63.1.21 Measles, until five (5) days after onset of rash;

63.1.22 Rubella, until six (6) days after onset of rash;

63.1.23 Herpetic gingivostomatitis (cold sores), if the child is too young to have control of oral secretions; or

63.1.24 Unspecified illness if it limits the child's comfortable participation in activities or if it results in a need for greater care than can be provided without comprising the health and safety of other children.

63.2 A licensee shall ensure that the child may return to the Center when the symptoms are no longer present or a licensed physician health care provider indicates the child poses no serious health risk to the child or to other children.

63.3 A Center licensee shall not permit a child with a reportable communicable disease, as specified in by the table below Division of Public Health, to be admitted to or remain at the Center, unless:

63.3.1 Written documentation from the child's licensed physician health care provider states the child has been evaluated and presents no risk to the child or to others; or

63.3.2 The Center licensee has reported the illness to the County Health Officer of the Division of Public Health and has been advised the child presents no health risk to others; or

63.3.3 If there is conflict in the opinions of the physician health care provider and the County Health Officer Division of Public Health regarding the exclusion of a child, the Center licensee shall follow the instructions of the County Health Officer Division of Public Health.

#### **TABLE OF REPORTABLE COMMUNICABLE DISEASES**

##### RESPIRATORY

Diphtheria  
German Measles  
Hemophilus Influenzae Disease  
Measles (rubeola)  
Bacterial (spinal) Meningitis  
Mumps

##### GASTRO-INTESTINAL

Giardiasis  
Hepatitis-A  
Salmonellosis  
Shigellosis

Pertussis (whooping cough)  
Rubella  
Tuberculosis

63.4 ~~The Center~~ A licensee shall report any reportable communicable disease to the ~~County Health Officer of the~~ Division of Public Health in accordance with Division of Public Health procedures. For current information on reportable communicable diseases and reporting procedures, the licensee shall contact the Division of Public Health or refer to the website - <http://www.dhss.delaware.gov/dhss/dph/dpc/rptdisease.html>.

63.5 A licensee shall ensure that when a child has been diagnosed as having a reportable vaccine-preventable communicable disease, all children who have not been immunized against the disease ~~shall be~~ are excluded from the Center in accordance with Division of Public Health procedures.

63.6 A licensee shall ensure that if a child who has already been admitted to a Center manifests any of the illnesses or symptoms specified in ~~Requirements~~ Rules 63.1 and 36.2 above, the ~~Center licensee~~ shall will remove the child from the group of well children to a separate area as specified in ~~Requirement~~ Rule 38.1 until:

63.6.1 The child can be picked up by the parent(s)/guardian(s) or suitably cared for elsewhere; or

63.6.2 ~~A licensed physician health care provider~~ indicates verbally or in writing that the illness/symptoms pose(s) no serious health risk to the child or to other children.

63.7 A licensee shall ensure that while a child is cared for in the separate room/area, ~~a Center shall ensure that~~ the child is supervised and the child's individual needs for rest, comfort, food, drink and ~~appropriate~~ activity are met.

#### **64.0 Administration of Medication**

64.1 A licensee shall ensure that only trained staff members authorized in accordance with State Law, or ~~physicians health care providers~~, nurses or other qualified medical health personnel ~~shall~~ administer medication to children in a Center.

64.2 A licensee shall ensure that medication ~~shall is~~ not be administered to a child by a trained staff member unless the ~~Center licensee~~ has received written permission from the child's parent(s)/guardian(s) for each medication to be administered.

64.3 A licensee shall ensure that the parent(s)/guardian(s) of a child provide the following information for each medication given:

64.3.1 The name of the child;

64.3.2 The child's date of birth;

64.3.3 Medication allergies;

64.3.4 Doctor's name and phone number;

64.3.5 Pharmacy and phone number;

64.3.6 Name of medication;

64.3.7 Dosage (amount given);

64.3.8 Time (when given);

64.3.9 Route of administration (oral; eye, nose or throat drops; topical; or vaginal or rectal suppositories);

64.3.10 Expiration date;

64.3.11 Start date;

64.3.12 End date;

64.3.13 Reason for medication; and

64.3.14 Any special directions.

64.4 A licensee shall ensure that all prescription medication ~~shall be~~ is in its original container, properly labeled, ~~has not expired,~~ and is authorized by the child's health care provider.

64.4.1 Medication shall only be given to the child whose name appears on the prescription.

64.5 A licensee shall ensure that all non-prescription medication ~~shall be~~ is in its original container, properly labeled with directions for its administration, ~~has not expired,~~ and ~~shall be~~ is labeled with the child's name.

64.5.1 Any deviations from the label instructions shall be in writing from the child's health care provider.

64.6 A licensee shall not allow the administration of prescription or non-prescription medication that has expired and will immediately contact the parent/guardian of a child whose medication has expired to inform that

parent/guardian of the situation.

64.7 ~~A licensee shall ensure that~~ all medication in the Center ~~shall be~~ is stored so as to be secure and inaccessible to children.

64.7.1 Medication requiring refrigeration shall be kept in closed containers separate from food.

64.8 ~~A licensee shall ensure that~~ unused medication ~~shall be~~ is returned to the parent(s)/guardian(s) when no longer needed by ~~a~~the child.

64.9 ~~The Center~~ A licensee shall keep a record of the administration of medication to children including medication dosage, time administered, by whom administered, and any adverse effects observed.

64.10 ~~A licensee shall ensure that~~ when a child is receiving medication, the trained staff members ~~shall~~ note in the records of that child and ~~shall~~ advise the parent(s)/guardian(s) of the occurrence of any health problems, such as diarrhea, vomiting, continuous hunger, refusal to eat, nosebleeds, skin rash or high temperature.

## **65.0 Child Accident and Injury**

65.1 ~~A licensee shall ensure that~~ when an accident or injury occurs to a child during the hours of care, a ~~Center~~ that the Center's staff shall take the necessary emergency action to protect the child from further harm and ~~shall~~ notify the child's parent(s)/guardian(s).

65.1.1 ~~The Center~~ licensee shall maintain an injury report for each incident in the child's file or a central log for the Center and ~~shall~~ report to the ~~Department~~ Office of Child Care Licensing an accident or injury which results in death or ~~hospitalization~~ inpatient or outpatient treatment as required in Requirement Rule 15.3.2 and 15.3.3. An injury report or central log entry shall include name of child, date, description of injury, how it occurred and first aid or medical care required.

65.1.2 Whenever an injury report or a central log entry is necessary, the licensee shall notify the child's parent(s)/guardian(s) to report the specifics of each incident. The licensee shall maintain a record of when the parent(s)/guardian(s) was notified or of attempts to notify the parent(s)/guardian(s).

## **66.0 Adult Health**

66.1 ~~The Center~~ A licensee shall ensure that a staff member ~~or volunteer~~ does not provide personal care to or have direct contact with children during normal working activities when that staff member ~~or volunteer~~ is known to have a communicable or other reportable disease which is readily contagious to others ~~during normal working activities~~, whether the person has symptoms or is a carrier of such disease.

66.1.1 A staff member ~~or volunteer~~ shall not be involved in food preparation or serving, if so indicated by the symptoms or illness. The ~~County Health Officer~~ Division of Public Health shall be notified of the reportable communicable disease and consulted to determine the most appropriate action, including exclusion.

## **67.0 Food and Nutrition**

### **67.1 General**

67.1.1 ~~A Center~~ licensee shall have a written policy concerning food service including:

67.1.1.1 A description of all food services provided;

67.1.1.2 Times of snacks and meals;

67.1.1.3 Procedures related to food allergies, religious dietary requirements and

other special needs;

67.1.1.4 If ~~appropriate~~ applicable, nutritional information and guidelines concerning the content of meals to be provided by parents/guardians;

67.1.1.5 If ~~appropriate~~ applicable, procedures to prevent spoilage of food brought from home;

67.1.1.6 If ~~appropriate~~ applicable, a procedure to be followed by ~~the Center~~ staff if food brought from home fails to meet nutritional requirements as specified by Requirements Rules 67.2.1 - 67.2.3; and

67.1.1.7 This policy shall be provided to all parent(s)/guardians at enrollment.

67.1.2 ~~A Center~~ licensee shall ensure that staff responsible for food service has knowledge of nutrition, sanitary food preparation, storage and clean-up and adhere to the Center's policy on food service.

67.1.2.1 Staff responsibilities for food service activities shall not reduce staff/child ratios nor be allowed to interfere in other ways with the Center's program or supervision of children while performing food

service activities.

67.1.3 A licensee shall ensure that the Center shall have has an annual review of a two (2) week menu analysis sample by the Division of Public Health, Office of Nutrition Child Care Licensing. Consultation and technical assistance shall be used as needed to correct any problem(s) identified by this analysis annual review and/or during licensing or complaint investigations.

67.1.4 A Center licensee shall ensure that menus are planned in advance, are dated and are posted in a prominent place. Menus noting actual food served shall be retained by the Center for thirty (30) days. Any changes made in actual food served on a particular date are to shall be documented on the menu for on or before that date.

67.1.4.1 A supply of food and water shall be kept in stock for emergency situations that require an extended stay at the Center or cause a power outage. Non-perishable foods, bottled water and any equipment necessary to serve or prepare foods without the use of electricity shall be included in the supply.

67.1.5 A licensee shall ensure that meals and snacks shall be are provided by a Center except when one (1) of the following circumstances occur:

67.1.5.1 A written statement has been signed by a parent/guardian and kept on file indicating that the parent/guardian has chosen to provide food for the child;

67.1.5.2 The Center licensee makes it known to all parents/guardians at the time of application for enrollment that meals are to be provided by parents/guardians and informs parents/guardians of the importance of sending meals that meet the nutritional requirements as specified in Rules 67.2.1 – 67.2.3 and the Appendix, CACFP Meal Pattern Requirements for Infants and CACFP Meal Pattern Requirement for Children; or

67.1.5.3 The Center has a field trip or a specific activity requiring special meal arrangements.

67.1.6 A licensee shall ensure that nutritional nutritious and appropriately-timed meals and snacks meeting nutritional requirements, shall be are served in accordance with the following schedule which indicates number of hours child is present at the Center:

67.1.6.1 2 hours - 4 hours 1 snack;

67.1.6.2 4 hours - 6 hours 1 meal and 1 snack;

67.1.6.3 7 hours - 11 hours 2 meals and 1 snack/or 2 snacks and 1 meal based

on time of child's arrival; or

67.1.6.4 12 hours or more 3 meals and 2 snacks.

67.1.7 A Center licensee shall ensure that food servings meals and snacks are provided by the Center are portions suitable in accordance with to the Recommended Dietary Allowance (RDA) to the size and age of the children in care, current USDA/Child and Adult Care Food Program meal pattern requirements which are adjusted accordingly by the age of the infant and child as specified in Appendix, Nutrition Standards CACFP Meal Pattern Requirements for Infants and CACFP Meal Pattern Requirement for Children.

67.1.7.1 The Center licensee shall have supplemental foods from all four basic food groups to serve children if meals provided by parents/guardians fail to meet nutritional requirements as specified in Requirements Rules 67.2.1 - 67.2.3.

67.1.8 A licensee shall provide food based on the basic food groups as follows:

67.1.8.1 Milk: fluid pasteurized cow's milk;

67.1.8.1.1 Children one (1) year to two (2) years shall have whole pasteurized cow's milk when not on formula or breast milk;

67.1.8.2 Proteins: meat, fish, poultry, eggs, yogurt, cheese, peanut butter, dried beans, peas, and nuts;

67.1.8.3 Fruits and vegetables: include a variety of fresh vegetables and fruits; and

67.1.8.4 Grains: Whole grain and enriched products such as breads, cereals, pastas, crackers and rice.

67.1.9 A licensee shall ensure that when fruit juice is served, 100%-unsweetened juice shall be is used, and not a fruit drink.

67.1.10 A Center licensee shall ensure that children are encouraged but not forced to eat.

67.1.11 A Center licensee shall provide for the introduction of a variety of food textures and, finger foods and a cup in the training of self-feeding and nutrition education.

67.1.12 A licensee shall ensure that powdered milk shall is not be used as a substitute for fluid

milk for drinking purposes but may be used in cooking.

67.1.13 A licensee shall ensure that special, therapeutic diets shall be are served by the Center staff only upon written instructions by a licensed physician health care provider.

~~234- Special foods provided by a parent shall be served to a child upon parent(s) request.~~

67.1.14 A licensee shall ensure that if the parent(s)/guardian(s) requests any modification of basic meal patterns (see **Appendix, CACFP Meal Pattern Requirements for Infants** and **CACFP Meal Pattern Requirement for Children**) due to a child's medical need(s) such as food allergies or food intolerance, the parent(s)/guardian(s) provide the Center with written documentation from the child's health care provider permitting the modification.

67.1.15 A licensee shall ensure that if the parent(s)/guardian(s) requests any modification of basic meal patterns (see **Appendix, CACFP Meal Pattern Requirements for Infants** and **CACFP Meal Pattern Requirement for Children**) due to a family's food preferences or religious beliefs, the parent(s)/guardian(s) provide the Center with written documentation specifying which foods are unacceptable and the food substitutions allowed within the same food group.

67.1.16 A licensee shall ensure that every effort will be made to accommodate the needs of the child who is being breast-fed, including allowing the mother to breastfeed her child at a designated place at the Center.

67.1.17 A licensee shall ensure that each individual child has his or her own utensils – fork, spoon, knife, dish, cup, or bottle as appropriate to the age of the child to eat with or be feed with. Such equipment shall not be shared with another child during feeding.

## 67.2 Toddlers And Older Children

~~67.2.1 A Center licensee shall ensure that a breakfast served to children of toddler age or older shall have has at least one (1) item each from the dairy products milk (A), fruits and vegetables (C) and grain (D) food groups as described in Rule 67.1.8 of the following four (4) food groups:.~~

~~A. Dairy products: milk, milk products, cheese;~~

~~B. Protein: meat, fish, poultry, eggs, cheese, peanut butter; dried beans, peas, nuts;~~

~~C. Fruits and vegetables: include a variety of vegetables and fruits;~~

~~D. Grain: Whole grain and enriched products such as breads, cereals, pastas, crackers and~~

~~rice.~~

~~67.2.2 A Center licensee shall ensure that a lunch or dinner served to children of toddler age or older shall have has one (1) item from each of the above food groups milk (A), protein (B) and grain (D) food groups and two (2) items from the fruit and vegetable (C) food groups as described in Rule 67.1.8.~~

~~67.2.3 A Center licensee shall ensure that a snack served to children of toddler age and older shall have has at least one (1) item from two (2) of the above food groups as described in Rule 67.1.8~~

~~67.2.3.1 A Center licensee shall, at a minimum, provide a snack(s) meeting nutritional requirements, even if parents/guardians provide meals.~~

~~67.2.3.2 If milk or fruit juice is not included with a snack, water shall also be served with that snack.~~

~~67.2.4 A licensee shall ensure that the use of a bottle is discouraged for children after one (1) year of age, and instead, teach and encourage the use of a cup.~~

## 67.3 Infants

~~67.3.1 A Center licensee shall provide meals for infants according to the following guidelines except as noted following the procedures of Rules 67.1.14 and 67.1.15:~~

~~67.3.1.1 A written statement specifying food including specific formula or type of milk breast milk, and providing a feeding schedule shall be obtained from the parent(s)/guardian(s) for each child infant at least on a monthly basis or as needed;~~

~~67.3.1.1.1 Mixing formula with cereal, fruit juice or any other foods in a bottle shall be considered a modification of a basic meal pattern and require written documentation from an infant's health care provider permitting the modification;~~

~~67.3.1.2 Foods shall be served on demand or during a span of time consistent with the infant's eating habits;~~

~~67.3.1.3. Introduction to all new foods shall be made in consultation only with the parent(s)/guardian(s) permission. New foods shall be introduced one at a time on a gradual basis with the intent~~

of ensuring health and nutritional well being;

67.3.1.4 For infants four (4) to seven (7) months of age, semi-solid foods may be introduced as requested by parent(s)/guardian(s) and shall be required once an infant is eight (8) months of age;

67.3.1.5 Foods for infants shall be of a texture and consistency that promotes safe and optimal consumption;

67.3.1.6 Baby food for each infant shall be served from a dish unless the entire contents of the jar will be served;

67.3.1.7 Bottles and nipples maintained by the Center staff shall be washed and sanitized before use;

67.3.1.8 Formula provided by parents/guardians or by the Center shall come in a factory-sealed container;

67.3.1.9 Each ~~child's~~ infant's bottle shall be individually labeled with the ~~child's~~ infant's name and refrigerated immediately after preparation by the Center staff or upon arrival if prepared by a parent/guardian;

67.3.1.10 Unused bottles shall also be dated as to when prepared if not returned to the parent(s)/guardian(s) at the end of each day;

67.3.1.11 Cow's milk shall not be served to infants;

67.3.1.12 Breast milk shall be fed only to that mother's own infant;

67.3.1.13 Frozen breast milk shall be thawed under running cold water or in the refrigerator;

67.3.1.14 Bottles of formula or breast milk and infant foods shall not be warmed or thawed in a microwave oven;

67.3.1.15 Bottles and infant foods shall be warmed under running warm tap water or by placing them in a container of water that is no warmer than 120 degrees F and not be left in warm water for more than five (5) minutes;

67.3.1.16 Unused portions of formula or breast milk shall be discarded after each feeding that exceeds a period of one (1) hour from beginning of feeding;

67.3.1.17 Refrigerated, unused, prepared formula shall be discarded after forty-eight (48) hours;

67.3.1.18 Expressed breast milk shall be discarded if it is in an unsanitary bottle or has been un-refrigerated for more than one (1) hour;

67.3.1.19 Refrigerated, unused, expressed breast milk that was never frozen shall be discarded after forty-eight (48) hours, or by three (3) months if frozen and stored in a deep freezer at zero (0) degrees F;

67.3.1.20 Unused, frozen breast milk that has been thawed in the refrigerator shall be used within twenty-four (24) hours;

F. Every effort shall be made to accommodate the needs of the child who is being breast fed;

G. Baby food for each child shall be served from a dish unless the whole contents of the jar will be served;

H. The Center shall encourage the use of a cup by toddlers;

67.3.1.21 A ~~child~~ An infant too young to use a feeding chair or other age-appropriate seating apparatus shall be held when fed;

67.1.3.22 The same staff person shall feed a specific infant for most of that infant's feedings;

67.1.3.23 A ~~child~~ An infant who is unable to hold his/her bottle shall be held for bottle-feeding;

67.1.3.24 A staff person shall not bottle feed more than one (1) infant at a time;

67.1.3.25 At no time shall an ~~no~~ infant shall be placed in his or her crib with a bottle for feeding and at no time shall or a bottle be propped for feeding a ~~child~~ an infant;

67.1.3.26 Juices shall not be offered to infants until they are able to drink from a cup in order to develop behaviors that may prevent baby bottle tooth decay;

67.1.3.27 Center staff shall encourage the use of a cup when an infant is developmentally capable of drinking from or holding a cup; and

67.1.3.28 A daily written record of each child's infant's food/formula nutritional intake shall be maintained and provided to the parent(s)/guardian(s) upon request. Any feeding problems experienced by a child an infant shall be discussed with his/her parent(s)/guardian(s) before the child's infant's daily departure from the Center.

## **CHILD EARLY CARE AND EDUCATION**

### **68.0 DISCIPLINE AND GUIDANCE Behavior Management**

68.1 A Center licensee shall ensure that all staff use positive age appropriate methods of discipline and guidance of children which encourage self-control, self-direction, self-esteem and cooperation

A. Praise, rewards and encouragement, rather than punishment, shall be emphasized.  
B. Responses to a child's behavior shall be appropriate to the child's developmental level.  
C. Corporal punishments inflicted in any way on a child's body including shaking, biting, pinching, slapping or spanking shall be prohibited.

D. Children shall not be humiliated, frightened or verbally, physically or sexually abused by staff.

E. Children shall not be deprived of food or toilet use as punishments.

F. Children shall not be tied or placed in mechanical restraints as a punishment.

G. Children shall not be isolated without supervision.

H. Children shall not be punished for not going to sleep, toileting accidents, failure to eat all or part of food or failure to complete a prescribed activity.

68.1.1 A Center shall have a written statement in plain language regarding the discipline and guidance positive behavior management of children. The statement on discipline positive behavior management shall be posted in a prominent place in the Center and routinely provided to parents/guardians and staff, including substitutes and volunteers.

68.2 A licensee shall ensure that all staff use positive developmentally appropriate methods of behavior management of children which encourage self-control, self-direction, positive self-esteem, social responsibility and cooperation.

68.2.1 Prevention of behavioral problems shall be emphasized. Prevention strategies shall include providing appropriate, educationally valuable materials and activities in an organized, stimulating environment, and setting realistic expectations for young children when planning the program.

68.2.2 Staff shall praise and encourage children for positive behavior and redirect or guide inappropriate behavior into more positive actions, rather than relying on punishment.

68.2.3 Responses to a child's behavior shall be appropriate to the child's level of development and understanding.

68.2.4 "Time-out", if used, shall be employed as a supplement to, not a substitute for, other developmentally appropriate, positive methods of behavior management. "Time-out" shall be limited to brief periods – no more than one (1) minute for each year of a child's age. Before using "time-out", the staff member shall discuss the reason for the "time-out" in language appropriate to the child's level of development and understanding.

68.2.4.1 The first step for "time-out" shall be to remove the child from the group but keep the child within eyesight of the group that continues to participate in the activity. If this step is ineffective, the child may be removed from the room so that he/she is unable to participate, observe or hear the activity. A child removed from the group or room shall remain under visual supervision at all times. Children shall never be left unattended behind closed doors.

68.2.4.2 "Time-out" shall be in an area that comfortably accommodates the child. "Time-out" shall be seen as a positive opportunity for the child to regroup and focus on appropriate behavior. Before rejoining the group or returning to the room, staff shall talk to the child about alternatives to the inappropriate behavior in a way that shows faith in the child's ability to make more positive decisions in the future.

68.2.5 Corporal punishment inflicted in any way on a child's body including shaking, hair pulling, biting, pinching, slapping or spanking shall be prohibited.

68.2.6 Children shall not be yelled at, humiliated, frightened or verbally, physically or sexually abused by staff.

68.2.7 Disparaging comments about a child's appearance, ability, ethnicity, family and other

personal characteristics shall be prohibited.

68.2.8 Children shall not be deprived of food or toilet use as a consequence of inappropriate behavior.

68.2.9 Children shall not be tied[, taped, chained or caged] or placed in mechanical restraints as a consequence of inappropriate behavior.

68.2.10 No punitive action shall be taken with children for not going to sleep, toileting accidents, failure to eat all or part of food or failure to complete a prescribed activity.

68.2.11 The Center shall consult with professionals and with the parent(s)/guardian(s) to design effective [positive] behavioral interventions and to adapt behavior management practices for a child who has a special need(s), including a behavioral and/or emotional disability.

68.3 A licensee shall ensure that staff members model positive behavior management techniques and respectful communication interactions when relating to other staff members and parent(s)/guardian(s) while at the Center.

## **69.0 Enrollment**

69.1 A Center licensee shall ensure that the daily population at the Center is in accordance with any size capacity restrictions on the Center's license.

69.2 A licensee shall provide any parent(s)/guardian(s) who is inquiring about or planning to enroll a child into the Center with information detailing his or her right to inspect the active record and complaint files of the Center. As a part of the enrollment or application process, the licensee shall require the parent(s)/guardian(s) to read and sign *The Parents Right to Know Act* form and keep the signed document on file at the Center.

69.2.1 A copy of the signed document shall be given to the parent(s)/guardian(s).

69.2.2 In the event that the parent(s)/guardian(s) do not enroll the child, the signed document shall be kept on file as proof of presenting the information.

69.3 A licensee shall ensure that a child not attends the Center without first obtaining the following information from the parent(s)/guardian(s):

69.3.1 Child's first and last name;

69.3.2 Child's birth date;

69.3.3 Child's home address;

69.3.4 Child's home phone number;

69.3.5 Parent(s)/guardian(s)' name(s);

69.3.6 Parent(s)/guardian(s)' place(s) and hours of employment;

69.3.7 Parent(s)/guardian(s)' work phone number(s);

69.3.8 Name(s) of person(s) other than parent(s)/guardian(s) to be notified in an emergency situation when parent(s)/guardian(s) can not be contacted;

69.3.9 Name(s) of other person(s) other than parent(s)/guardian(s) to whom child may be released;

69.3.10 Permission for child's emergency medical care;

69.3.11 Child's medications, if applicable;

69.3.12 Child's medical or food allergies; and

69.3.13 Name and phone number of the child's health care provider.

69.4 A Center licensee shall make every effort to ensure that admission enrollment procedures involve a meeting with the parent(s)/guardian(s), or parent substitute and the child whenever possible to:

A. Secure necessary information about the child;

69.4.1 Determine if the child can benefit from the day-care Center's program can effectively meet the child's developmental and educational needs, and what accommodations or other planning may be needed to do so; and

C. Provide parent(s) with the Center's policies as required; and

69.1.2 Provide an opportunity for the parent(s)/guardian(s) and child to observe the Center and program.

## **70.0 Transitions**

70.1 A licensee shall ensure that staff work with the parent(s)/guardian(s) to create and utilize a positive transition plan when admitting a new child into the Center using such procedures as the exchange of pertinent

information concerning the child, phased-in entry to the program and the assignment of a primary staff member especially for an infant or toddler.

70.2 A licensee shall ensure that staff create and utilize a positive transition plan when a child is moved from a particular group or room due to a child's age change or reassignment of staff members using such procedures as the exchange of pertinent information concerning the child, and phased-in entry to a new room, group, and/or with a newly assigned staff member(s).

## **71.0 Parents/guardians Communication**

71.1 A Center licensee shall have an organized system of communicating with parent(s)/guardian(s) in a respectful manner that incorporates the use of a written policy regarding parent(s)/guardian(s) communication and involvement including strategies to ensure parent(s)/guardian(s) involvement in the Center including as follows:

71.1.1 Assurances that parent(s)/guardian(s)' visits and parent monitoring of the program are welcomed;

71.1.2 Assurances of nondiscrimination and respect for each child's family and culture;

71.1.3 Assurances that parent(s)/guardian(s) are of primary importance in children's development

71.1.4 Procedures for learning about parent(s)/guardians preferences and goals and any concerns or special circumstances that may influence the child's development and learning;

71.1.5 Procedures for ensuring that parent(s)/guardian(s) are kept regularly informed concerning the program and their children's developmental and educational progress;

71.1.6 Information about procedures used by the Center to assess children's accomplishments and needs and, when there are concerns, to refer parent(s)/guardian(s) for additional help in the community;

71.1.7 Multiple opportunities for involvement of all parent(s)/guardian(s) that includes an awareness of the diversity of families enrolled especially concerning cultural and language differences in the Center and the ability for parent(s)/guardian(s) to participate communicating in their native language whenever possible;

71.1.8 Specific strategies to encourage the involvement of parent(s)/guardian(s) that have the tendency not to be involved with the Center;

71.1.9 A procedure for informing parent(s)/guardians of the identities of the governing body members;

71.1.10 Procedures for a minimum of one (1) conference annually between Center staff and parent(s)/guardian(s);

71.1.11 A procedure encouraging parent(s)/guardian(s) to review current licensing requirements rules made available at the Center;

71.1.12 A clear procedure for making and handling parental complaints from parent(s)/guardian(s) regarding the Center;

71.1.13 A statement of the Center's developmental and educational goals for all children;

71.1.14 A typical daily overall schedule of the Center's programs and activities; and

71.1.15 A written explanation of the Center's policy on positive behavior management;

71.1.16 A copy of the Center's policy on nutrition and food service;

71.1.17 A written explanation of the Center's policy on safety and sanitation;

71.1.18 A written explanation of the Center's policy on transporting children, if applicable;

71.1.19 Procedures related to release of children;

71.1.20 A copy of the Center's routine and emergency health care plan including health exclusions and administration of medication;

71.1.21 Procedures to regularly report any accidents or critical incidents involving the child and any other important information relating to the child;

71.1.22 A written explanation of the mandatory reporting of child abuse and neglect; and

71.1.23 Written notice of an outbreak of a communicable disease.

71.2 A licensee shall ensure that this policy shall be is provided to parent(s)/guardian(s) upon at enrollment.

71.3 A Center licensee shall ensure that parent(s)/guardian(s) shall have access to the Center to observe their children in care at any time without prior approval of the Center.

71.4 A licensee shall not disclose or permit the use of any information pertaining to an individual child or

family gained through the Center's records, files, videotaping, tape recording, photographing, assessments or any type of documentation unless a parent/guardian has granted written permission to do so, except in the course of performance of official duties and to employees or representatives of the Office of Child Care Licensing, Division of Family Services or other entities with statutory responsibilities for issues relating to the health, safety and protection of children.

## **72.0 ACTIVITIES Program Goals and Planning**

72.1 A licensee shall develop written goals for children's development and education. Goals shall include areas of physical, social, emotional, language/literacy, and cognitive development and be appropriate to the ages and developmental levels of the children in attendance at the Center. The goals shall reflect what the Center hopes to accomplish through its program of activities.

72.2 A Center shall have a program of varied activities and sufficient equipment and supplies to implement that program. A licensee shall have a written plan of developmentally appropriate activities designed to help all children reach the goals described in Rule 72.1. The activity plan shall be current and accessible to parents/guardians and staff. The activity plan shall include at least one (1) daily activity for each goal specified in Rule 72.1. Activities that allow children to choose to participate with the whole group, part of the group, or independently shall be identified. The plan shall reflect that the children have the choice to participate in at least four (4) activities each day. The time allotted for such activities shall constitute at least one-third (1/3) of the time the child is in attendance for a particular day.

72.2.1 The Center Activities shall be have a program of varied, developmentally appropriate, may be related to themes, culturally meaningful and educationally valuable and activities designed to promote the development of language, literacy, reasoning and problem-solving skills, understanding of numbers and other mathematical and scientific concepts and thinking skills, large and small muscles skills, social skills, understanding and self-regulation of emotions, self-esteem and positive self-image, as appropriate to the ages and functioning developmental levels of children in care. Adaptations of activities shall be made for children with disabilities to enable them to reach goals described in IEPs[, and] IFSPs[, and Section 504 plans].

72.2.2 The program shall ensure that children do not spend excessive units of time sitting or confined to cribs or playpens. Activity plans shall also be based on best practices and accepted research in the field of early care and education and in alignment with principles of foundations of learning and development as set forth by the Delaware and/or United States Department of Education.

72.2.3 Delaware Early Learning Foundations for School Success regarding preschoolers is on the Delaware Department of Education website at [http://www.doe.k12.de.us/early\\_childhood/Standards/preschool.htm](http://www.doe.k12.de.us/early_childhood/Standards/preschool.htm)

72.2.4 Delaware Infant and Toddler Early Learning Foundations: A Curriculum Framework regarding infants and toddlers is on the Delaware Department of Education website at [http://www.doe.k12.de.us/early\\_childhood/Standards/InfantToddlerFoundationStandards.pdf](http://www.doe.k12.de.us/early_childhood/Standards/InfantToddlerFoundationStandards.pdf)

72.3 A licensee shall ensure that activities and materials reflect children's cultures, and communities, including both familiar and new materials, pictures, and experiences. Staff shall consult with parents/guardians about care practices specific to their children's culture and community, and provide as much consistency as possible in their direct child care practices especially concerning infants and toddlers.

72.4 A licensee shall ensure that adaptations and accommodations be made in activities, adult-child interactions, teaching strategies, and materials or equipment when needed to support the positive development of all children including those with disabilities.

72.5 A licensee shall ensure that the program in a Center shall provide provides physical care routines appropriate to each child's developmental needs, including a supervised rest period after the noon meal.

72.5.1 A Center licensee shall provide opportunities for rest/sleep for each child in attendance according to the child's individual physical needs.

72.5.2 An alternative quiet activity shall be provided for those children who have rested or slept for thirty (30) minutes and do not appear to need or want additional rest or sleep.

72.5.3 The rest area(s) shall be adequately lighted enough to allow for visual supervision at all times.

247. The program shall include indoor and outdoor time periods with:

- A. Alternating active and quiet activities;
- B. Opportunity for individual and group activities;

- C. Outdoor time each day that weather permits; and
- D. Opportunities for children to choose materials freely.

248. A Center shall develop and keep on file a written plan of daily activities appropriate to the developmental levels of children and the type of program offered.

72.6 A licensee shall develop and follow a schedule for each group of children posted for easy reference by parents/guardians and staff. The schedule shall show blocks of time usually assigned to types of activities and include periods for both active play and quiet play or rest. Blocks of time shall show activities that are scheduled for indoor and outdoor areas. The schedule shall reflect daily opportunities for both free-choice and staff-directed activities.

72.7 A licensee shall ensure that for toddlers and older, indoor physical space is organized into activity areas. An activity area shall be an identifiable space that is accessible to children and where related equipment and materials are kept in an orderly fashion. Activity areas shall include the following and involve activities available on a daily basis:

72.7.1 Language and literacy area (including books and writing materials);

72.7.2 Dramatic play area;

72.7.3 Construction/block area (unit blocks and accessories);

72.7.4 Creative arts area (drawing materials, clay or play dough); and

72.7.5 Manipulative/mathematics/problem solving area (including puzzles, small construction toys, objects to sort).

72.8 A licensee shall ensure that for toddlers and older, other activity areas include the following and involve activities available at least once a week:

72.8.1 Cooking or food exploration;

72.8.2 Science and nature investigation;

72.8.3 Music and rhythm; and

72.8.4 Multi-sensory play tables using materials such as water, sand, rice or beans.

72.9. A licensee shall ensure that each child, according to his or her ability, is provided the opportunity for a minimum of twenty (20) minutes of moderate to vigorous physical activity indoors and/or outdoors, for every three (3) hours the child is in attendance between the hours of 7:00 am to 7:00 pm.

72.10. A licensee shall ensure that television, digital video display (DVD), and video cassette viewing shall be as follows:

72.10.1 Prohibited for children younger than two (2) years of age;

72.10.2 Not permitted without the written approval of each child's parent/guardian;

72.10.3 Limited to programs which are age-appropriate and educational; and

72.10.4 Not to exceed one (1) hour daily per child or group of children.

72.10.4.1 Viewing time periods may be extended for specific special events or occasions such as a current event, holiday or birthday celebration. Written documentation shall justify the reason(s) for extending the time period beyond one (1) hour daily.

72.11. A licensee shall ensure that the use of the computer shall be as follows:

72.11.1 Prohibited for children younger than two (2) years of age;

72.11.2 Not permitted without the written approval of each child's parent/guardian;

72.11.3 Limited to programs, games and websites which are age-appropriate and educational;

72.11.4 Provides protections from exposure to inappropriate websites such as those that are sexually explicit, violent, or use inappropriate language;

72.11.5. Supervised by a staff member; and

72.11.6 Not to exceed one (1) hour daily per child or group of children.

72.11.6.1 Usage time periods may be extended for special projects such as homework, researching topics, or special events or interests of a child or group of children. Written documentation shall justify the reason(s) for extending the usage period.

### **73.0 Documenting Children's Progress**

73.1 A licensee shall have an organized system for documenting the progress of individual children preschool-age and younger in relation to appropriate developmental and educational goals. This documentation shall be done annually and used to identify possible concerns, and activities and experiences that may benefit the child.

73.2 A licensee shall ensure that information gathered to document a child's progress is kept in the child's file and shared with the parent(s)/guardian(s) at a conference. With the parent(s)/guardian(s)' permission, information may also be shared with other professionals when referring the child for special services.

#### **74.0 INFANT AND TODDLER CARE (~~Under two (2) years of age~~)**

~~74.1 A Center licensee shall care for infants and toddlers in rooms and outdoor play areas separate from older children (unless 11 twelve (12) or fewer children in total are present).~~

~~74.2 A caregiver licensee shall ensure that a staff member who at least shall is an Early Childhood Assistant Teacher or Early Childhood Caregiver is always be in the room with the infants and toddlers.~~

74.3 A licensee shall ensure that infants are placed on their backs when putting them down to sleep.

74.3.1 If an exception to this rule is necessary due to a child's physical or medical condition, the licensee shall have documentation from the child's health care provider stipulating the appropriate sleeping position for that child.

~~251.— A Center shall allow each infant to spend time outside the crib or playpen each morning and afternoon in a sanitary area protected from foot traffic.~~

~~252. A Center shall ensure that infants, while awake, remain in their cribs for no longer than one hour as long as they stay content and responsive.~~

~~74.4 A Center licensee shall provide low chairs and tables or infant seats with trays for table play and mealtime for children no longer being held for feeding. High chairs or feeding tables with attached seats, if used, shall have a wide base and a T-shaped safety strap(s).~~

~~74.5 A Center licensee shall provide a rocking chair or other comfortable adult-size seating for at least one-half (1/2) of the caregivers staff members on duty in the infant area.~~

~~255. A Center shall provide a minimum of three (3) different age appropriate daily activities from the following:~~

- ~~A. Sensory stimulation activities;~~
- ~~B. Language stimulation;~~
- ~~C. Activities designed to encourage coordination and fine motor skills;~~
- ~~D. Building activities;~~
- ~~E. Activities designed to encourage social interaction;~~
- ~~F. Large muscle activities;~~
- ~~G. Activities designed to encourage problem solving and intellectual development; and~~
- ~~H. Musical activities.~~

~~256. A Center shall maintain a record of each child's daily activities to be shared with the parent daily when the child is picked up.~~

#### **75.0 PROGRAM FOR INFANTS**

75.1 A licensee shall ensure that with the approval of the Early Childhood Administrator or Early Childhood Curriculum Coordinator, individual plans are developed for each infant in care. The plan shall include age and individually appropriate goals and describe specific activities and experiences to be provided by staff in support of these goals. Staff shall record these and note developmental milestones, accomplishments, and concerns. Plans shall be reviewed at least three (3) times over a one (1) year period. This information shall be shared with the infant's parent(s)/guardian(s).

75.2 A licensee shall ensure that staff keep daily records of an infant's feeding, sleeping, and other routine activities and share these with the infant's parent(s)/guardian(s) at the end of each day.

75.3 A licensee shall ensure that staff interacts with infants providing the following opportunities throughout the day:

75.3.1 Offering frequent face to face interaction with infants when they are awake;

75.3.2 Being held and carried;

75.3.3 Limiting time spent, while awake, in any confining equipment such as a crib, infant seat, swing, high chair or play pen to less than one-half (1/2) hour immediately after which opportunities for freedom of movement in a sanitary area protected from foot traffic are provided;

75.3.4 Talking with infants during play, feeding and routine care;

75.3.5 Reading to and looking at books with infants while holding or sitting close to them;

75.3.6 Providing varied materials, sights, sounds and other experiences for infants to explore

with their senses;

75.3.7 Responding to infants' actions, sounds and beginning language;

75.3.8 Giving names to objects and experiences in the infants' environment;

75.3.9 Providing space and equipment to support infants' developing physical skills such as rolling over, sitting, scooting, crawling and standing; and

75.3.10 Providing materials and encouragement for infants' beginning pretend play alone, with other children and with staff.

## **76.0 Program for Toddlers**

76.1 A licensee shall ensure that with the approval of the Early Childhood Administrator or Early Childhood Curriculum Coordinator, individual plans are developed for each toddler in care. The plan shall include age and individually appropriate goals and describe specific activities and experiences to be provided by staff in support of these goals. Staff shall record these and note developmental milestones, accomplishments, and concerns. Plans shall be reviewed at least three (3) times over a one (1) year period. This information shall be shared with the toddler's parent(s)/guardian(s).

76.2 A licensee shall ensure that staff interact with toddlers at their eye level, and whenever appropriate, sitting on the floor with the toddlers, providing the following opportunities throughout the day:

76.2.1 Offering frequent face to face interactions with the toddlers;

76.2.2 Having conversations with toddlers during play, feeding, and routine care;

76.2.3 Reading to and looking at books with toddlers individually and in small groups;

76.2.4 Encouraging children to play with one another with adult help;

76.2.5 Providing materials and encouragement for pretend play alone and with other children and adults;

76.2.6 Providing varied materials, sights, sounds, and other experiences for toddlers to explore with all their senses;

76.2.7 Providing opportunities for children to walk, run, climb, stack, balance, scribble, draw, and develop fine and large motor skills;

76.2.8 Responding to toddlers' words and actions with interest and encouragement;

76.2.9 Giving names to objects and experiences in the toddlers' environment; and

76.2.10 Supporting toddlers' development of independence and mastery of feeding, dressing, and other skills.

## **77.0 Program For Preschool-Age Children Over Two (2) Years Of Age**

257. A Center shall provide a minimum of five (5) different age appropriate daily activities from the following:

A Art activities;

B. Large muscle activities;

C. Manipulative activities;

D. Musical activities;

E. Dramatic play;

F. Science activities;

G. Water, sand or other sensory activities;

H. Cooking activities; and

I. Language arts activities.

77.1 A licensee shall ensure that staff interact with preschool-age children at their eye level, and whenever appropriate, sitting on the floor with the children, providing the following opportunities throughout the day:

77.1.1 Offering frequent face to face interactions with children;

77.1.2 Having conversations with children during play, meals and routine care;

77.1.3 Reading to and looking at books with children individually and in groups;

77.1.4 Using rhymes, songs, and other ways to help children connect sounds and letters and develop other literacy skills;

77.1.5 Helping children develop mathematical and scientific concepts through play, projects, and investigations of the Center's environment;

77.1.6 Supporting the development of social competence through play and cooperative work with other children;

77.1.7 Providing materials and encouragement for more extended and complex pretend play alone and with other children and staff;

77.1.8 Providing varied materials, sights, sounds, and other experiences for children to investigate and talk about;

77.1.9 Providing opportunities for children to walk, run, climb, stack, balance, scribble, draw, write, and refine fine and large motor skills;

77.1.10 Responding to children's words and actions with interest and encouragement;

77.1.11 Giving names to objects and experiences in the children's environment; and

77.1.12 Supporting children's development of independence and mastery of skills.

## **78.0 Care of School-Age Children**

78.1 A licensee shall ensure that when ten (10) or more school-age children are in attendance, the school-age children are cared for in an area physically separated from younger children.

78.2 A licensee shall ensure that the outdoor play area for school-age children is physically separated or used at separate times from that provided for children younger than school-age.

## **79.0 Program for School-Age Children**

79.1 A licensee shall ensure that staff interacts with school-age children providing opportunities, materials, and equipment as described in Rule 91.1 of Part III, School-Age Center rules.

## **80.0 Equipment**

80.1 A licensee shall provide developmentally appropriate equipment and materials for a variety of indoor and outdoor activities. Materials and equipment shall promote a variety of experiences that support children's social, emotional, language/literacy, intellectual, and physical development.

80.2 A licensee shall ensure that materials and equipment be available in a quantity to allow all children to benefit from their use and to allow a range of choices with, at least, duplicates of the most popular materials.

80.3 A licensee shall ensure that for infants and toddlers under eighteen (18) months, the following supplies and/or equipment in each of the following categories are provided in quantities as described in Rule 80.2:

80.3.1 Sensory supplies and equipment: crib mobiles, teething toys, busy boxes, baby mirrors, rattles, melody chimes, squeeze toys; or other comparable supplies or equipment;

80.3.2 Language/dramatic play supplies and equipment: picture books, toy telephones, tapes or CD's, hand puppets, washable stuffed animals and dolls, photographs, or other comparable supplies or equipment;

80.3.3 Manipulative supplies and equipment: squeeze and grip toys, boxes, sorting and stacking toys, three (3) or four (4) piece wooden inlay puzzles, puzzle blocks, simple threading toys, mobile pull toys, balls, or other comparable supplies or equipment;

80.3.4 Building supplies and equipment: soft lightweight blocks, toy cars, trains and/or boats, figures of animals and people, stacking rings and/or cups, nesting toys, or other comparable supplies or equipment;

80.3.5 Large muscle supplies and equipment: low climbers, slides, riding/rocking toys, foam or soft plastic balls, gym mats, play tunnels, or other comparable supplies and equipment; and

80.3.6 Music supplies and equipment: rhythm instruments, tape or CD player and CDs and tapes; toys with musical tones, musical mobiles and/or busy boxes, drums, xylophones and/or pianos, or other comparable supplies or equipment.

80.4 A licensee shall ensure that for children over eighteen (18) months, the following supplies and/or equipment in each of the following categories are provided in quantities as described in Rule 80.2:

80.4.1 Language/literacy supplies and equipment: books, flannel board, upper and lower case letters, pictures for discussion, materials for recognition, identification, and/or classification, poetry, puppets, audio-visual materials, show and tell items, or other comparable supplies or equipment;

80.4.2 Science and math supplies and equipment: plants and gardening equipment, aquarium

with fish and/or other appropriate live animals, water table with supplies, sand table and supplies, cooking supplies, weather chart and/or thermometer, counting equipment, balance scale, or other comparable supplies or equipment;

80.4.3 Manipulative supplies and equipment: puzzles, pegs and pegboards, lacing boards, building toys, stencils, dominoes, pounding bench, lotto games, or other comparable supplies and equipment;

80.4.4 Large muscle equipment: rocking boat, wheel toys, climbers, slides, balance beam, barrels and/or large cartons, parachute, balls and beanbags, outdoor play equipment, gym mats, or other comparable supplies and equipment;

80.4.5 Building activities: unit blocks (minimum of four (4) sizes), transportation toys, farm animals and/or play people, work bench and tools, building toys, building logs, or other comparable supplies and equipment;

80.4.6 Art supplies and equipment: crayons, tempera paint, large brushes and newsprint, finger paint and finger paint paper, construction paper in assorted colors, paste or glue, blunt scissors, collage materials, non-toxic felt tip markers, easels, clay or play dough, or other comparable supplies and equipment;

80.4.7 Music supplies and equipment: tape/CD player, tapes or CDs, piano and/or organ, guitar, rhythm sticks, drums, cymbals and bells, tape recorder, or other comparable supplies and equipment; and

80.4.8 Dramatic play supplies and equipment: toy dishes, ironing board, telephones, occupational props and/or uniforms, dress-up clothes, housekeeping area (stove, sink, refrigerator), cradle or doll bed, doll carriage and dolls, puppets, play grocery store, post office or hospital, or other comparable supplies and equipment.

80.5 A Center licensee shall ensure that toys, play equipment and other equipment used by the children shall be are of substantial sturdy and safe construction and free from hazards such as causing entrapment, and having rough edges, sharp corners, pinch and crush points, splinters, and exposed bolts, small lose pieces and are free from recall.

80.5.1 For information on the recall of children's toys and equipment, please refer to the U.S. Consumer Product Safety Commission website at [www.cpsc.gov](http://www.cpsc.gov).

80.6 A licensee shall ensure that furniture is durable and child-sized or adapted to children's use. Tables shall be at waist height of the intended child-user and the child's feet are able to reach a firm surface while the child is seated.

~~259. A Center shall provide play equipment and materials that are varied and appropriate to the developmental needs and ages of children.~~

~~A. There shall be a sufficient amount of play equipment and materials so that there is not excessive competition and long waits.~~

80.7 A licensee shall ensure that equipment and materials are selected or adapted to allow all children, including those with disabilities and other special needs, to benefit from the program.

80.8 A licensee shall ensure that equipment and supplies are relevant to the cultural background and community of all children and foster awareness of other cultures and communities.

80.9 A Center licensee shall prohibit toys that explode or fire projectiles.

80.10 A Center licensee shall ensure that infants and toddlers do not have access to plastic bags, styrofoam objects or toys, and objects with a diameter of less than one (1) inch.

### **Field Trips**

~~262. A Center shall provide adequate staff supervision of children during trips off the Center's premises to ensure safety.~~

~~263. During routine program outings in close proximity to the Center, a Center shall have a minimum of two (2) caregivers or other adults with staff/child ratios maintained in accordance with Requirement 92.~~

~~264. During field trips, the staff/child ratios shall be according to the chart below:~~

<u>Age of Youngest Child in Group</u>	<u>Maximum Number of Children to be Supervised by One Adult</u>
<del>0-23 months _____</del>	<del>2</del>
<del>2 years _____</del>	<del>6</del>
<del>3 years _____</del>	<del>8</del>
<del>4 years _____</del>	<del>9</del>

5 years \_\_\_\_\_ 11  
6 years and older \_\_\_\_\_ 15

- A. Staff shall have a list of the children present and shall check the roll frequently.
- B. Staff shall have access to medical consent forms and emergency contact information for all children.
- C. Staff must have first aid supplies available.
- D. Children shall have tags or other means of providing a contact telephone number.
- E. Staff shall have a plan for transportation of children in the event of an emergency.

### 81.0 Smoking[, Alcohol and Drug Use] Prohibited

81.1 A Center licensee shall ~~[ensure inform staff members]~~ that ~~[no person smokes in the presence of children at on the Center's premises either indoors or outdoors or shows signs of alcohol or drug use while at the Center]~~ smoking is prohibited at all times anywhere inside the Center, in the outdoor play area, while transporting children, and in the presence of children during field trips or routine program outings sponsored by the Center].

### 82.0 Release of Children

82.1 A Center licensee shall have and use written policy and procedures for the release of children including:

82.1.1 Procedures ensuring documentation of the release of the child from the responsibility of Center staff to an authorized person;

82.1.2 Procedures for emergency release of children as individually requested by parents/guardians;

82.1.3 Procedures regarding the release of the child to any person not known to Center staff; and;

82.1.4 Procedures to be followed when a person not authorized to receive a child, or a person showing clear signs of drug or alcohol use who appears to be intoxicated or otherwise incapable of bringing the child home safely, requests release of a child;

82.1.5 Procedures for handling situations in which a non-custodial parent attempts to claim the child without the consent of the custodial parent/guardian; and

82.1.6 This release policy shall be provided to all parents/guardians of the children in attendance, staff members and volunteers.

82.2 A Center licensee shall ensure that a child is released only to a parent/guardian or a person authorized by the parent/guardian to receive the child.

82.3 A Center licensee shall have a procedure to verify the identity of any person receiving a child prior to releasing the child when that person is not known to Center staff and shall keep written documentation of such verification for at least twenty-four (24) hours.

82.4 A licensee shall ensure that when a parent/guardian calls the Center requesting emergency release of a child, the Center staff member shall verify verifies the identity of the parent/guardian prior to releasing the child.

## PART II DROPPED IN CARE GENERAL REQUIREMENTS

270. Drop in Care may be provided by a Center licensed to provide only Drop in Care or as a component of a licensed Center.

## HUMAN RESOURCES

### NUMBER OF STAFF

271. A Center providing Drop in Care shall have sufficient staff available to efficiently handle the admission procedure, irregular check in and check out hours and communication with parents.

## CHILD CARE

### NUTRITION

272. A Center providing Drop in Care shall, on admission, inform parents of the menu of any meals or snacks served by the program.

273. A Center providing Drop in Care shall ensure that each child in care shall, at a minimum, be provided a snack meeting nutritional requirements.

### HEALTH CARE

274 A Center providing Drop in Care shall either comply with Requirement 200 or shall obtain a statement from the child's parents indicating that the child's immunizations are up to date and that the child's general health is satisfactory and describing any health problem, handicap or allergy of the child. The statement shall include any special needs or requirements of the child and attest that the child is free from communicable disease.

## PART III II NIGHT CARE

### 83.1 General Requirements Rules

83.1 Night Care may be provided by a Center licensed to provide only Night Care or as a component of a licensed Center.

83.2 A Center licensed to provide only Night Care shall be exempt from the following requirements rules in Part I, GENERAL PROVISIONS:

83.2.1 Requirements Rules 29.7 and 29.9 (Number of Staff); and

83.2.2 Requirements Rules 33.1 - 33.15 (Outdoor Area).

### 84.0 Physical Environment And Safety

#### 84.1 Security

84.1.1 A licensee Center providing Night Care shall show evidence of a security program to ensure that access to children is limited to authorized persons.

84.1.2 A licensee Center providing Night Care shall ensure that the exterior of the building is illuminated in accordance with Requirement Rule 48.2.

#### 84.2 Sleeping Arrangements

84.2.1 A licensee Center providing Night Care shall have ensure that sleeping arrangements such are structured so that children who are awake may be are cared for in a separate area from sleeping children and in a manner such that sleeping children are not disturbed.

84.2.3 licensee Center providing Night Care shall ensure that children over the age of seven (7) years do not share a dressing area with persons of the opposite sex.

84.2.3 A licensee Center providing Night Care shall ensure that each child shall be is provided with sleeping equipment as specified in Requirements Rules 37.1 - 37.6.

84.2.3.1 For children sleeping four (4) or more hours at the Center during the evening or are sleeping overnight, a licensee shall provide, as appropriate to their age, a crib or individual bed with a mattress that is covered with sheets and a seasonably-appropriate blanket.

84.2.3.2 The licensee shall also provide a pillow with a pillowcase for a child in a bed.

84.2.4 A licensee Center providing Night Care shall ensure that each child shall have has individual, clean, and comfortable sleeping garments.

#### 84.3 Bathing Facilities

84.3.1 A licensee Center providing Night Care shall follow parental the parent(s)/guardian(s) preference regarding bathing for each the child as discussed with the parent(s)/guardian(s) and noted in the child's record.

84.3.1.1 If bathtubs and showers are used, they shall be equipped to prevent slipping.

84.3.1.2 Infants shall be bathed in age-appropriate bathing facilities.

84.3.1.3 Portable bathing facilities are shall be acceptable for bathing children before bedtime.

84.3.1.4 Under no circumstances shall a child be bathed in a sink utilized for cleaning dishes and/or utensils.

84.3.1.5 Each child shall be bathed in a bathtub, shower or portable bathing equipment that has been cleaned and sanitized before each use.

84.3.1.6 Children shall be bathed individually and not be placed together in a bathtub or shower.

84.3.1.7 Water temperature shall be checked to prevent burns or scalding, or for water that is too cold.

84.3.1.8 Individual towels and washcloths shall be provided for each child.

84.3.2 ~~A licensee Center providing Night Care shall ensure that no child under eight (8) years of age shall be is~~ left unsupervised while in a bathtub or shower.

**[84.3.2.1 A child capable of bathing alone shall be allowed to bathe in private with written permission from parent(s)/guardian(s). A staff member shall respect that child's privacy but be immediately available to ensure the child's safety and to offer assistance when requested by the child.]**

84.3.3 ~~A licensee Center providing Night Care shall ensure that there shall be is~~ a nightlight in the bathroom, hallway and sleeping areas as dictated by the individual needs of the children.

## 85.0 Grooming Aids

A ~~licensee Center providing Night Care~~ shall ensure that combs, toothbrushes, brushes and other such personal items are marked with the owner's name and stored separately and used only by that child.

## 86.0 Human Resources

### 86.1 Awake Staff

86.1.1 ~~A licensee shall ensure that~~ staff members of a ~~Center providing Night Care shall be are~~ awake at all times and ~~shall~~ monitor sleeping children.

### 86.2 Number Of Staff

86.2.1 A ~~licensee Center providing Night Care~~ shall ensure that when all children one (1) year and older are sleeping at least one-half (1/2) of the required staff complement ~~shall be are~~ physically present with the children and directly observing the children.

86.2.2 ~~.A licensee Center providing Night Care shall have ensure that~~ at least two (2) staff are present and with the children at all times when four (4) or more children one (1) year and older are present.

86.2.2.1 When only one (1) staff member is present with the children, the ~~Center licensee~~ shall have emergency procedures providing immediate access to emergency service and additional staff available at the Center within one (1) minute of being contacted.

86.2.2.2 When only one (1) staff member is present with the children, the staff member shall have no other responsibilities than caregiving direct child care during that time.

## 87.0 Child Care

### 87.1 Activities

87.1.1 A ~~licensee Center providing Night Care shall have ensure that~~ a program of appropriate activities is provided for to children before bedtime.

A. ~~In a Center licensed to provide only Night Care, there shall be a written plan for outdoor play, approved by the Department, to ensure the safety of children.~~

87.1.2 A ~~licensee Center providing Night Care shall provide ensure that~~ each child is given with individual attention at bedtime and upon awakening.

87.1.2.1 The ~~Center licensee~~ shall discuss with the parent(s)/guardian(s) any special preferences or habits of each the child regarding bedtime and awakening and share this information with the staff member in charge of the child's caregiver.

## **PART IV III SCHOOL-AGE CARE CENTER**

### **88.0 General Requirements Rules**

88.1 ~~School-Age Care may be provided by a School-Age Center licensed only to provide School-age Care or as a component of a licensed Center that exclusively offers care, education, protection, supervision or guidance for school-age children before and/or after school; during school holidays; and/or summer months.~~

88.2 A School-Age Center licensed to provide only School-age Care shall be exempt from the following requirements rules in Part I, GENERAL PROVISIONS:

88.2.1 Requirements Rules 39.2 - 39.5 (Number of Toilets);

88.2.2 Rule 56.2 (General Safety Practices – Outlet Covers);

~~G. Requirements 247, 249-256, 257 (Activities);~~

88.2.3 Requirement Rules 67.1.16, 67.2.4 and 67.3.1 (Infant and Toddler Food and Nutrition);

88.2.4 Rules 73.1 and 73.2 (Documenting Children's Progress);

88.2.5 Rules 74.1 - 74.5 (Infant And Toddler Care);

88.2.6 Rules 75.1 - 75.3 (Program For Infants);

88.2.7 Rules 76.1 and 76.2 (Program For Toddlers);

88.2.8 Rule 77.1 (Program for Preschool-Age Children); and

88.2.9 Requirement Rule 80.10 (Equipment).

### **89.0 Human Resources**

89.1 Staff Qualifications

~~294. A Center providing School-age Care shall have staff qualified to work with the age group served by the Center.~~

~~A. In relation to 83 and 85, credit hours in recreation, physical education or elementary education shall be accepted as meeting the educational credit hour requirements.~~

~~B. Other qualifying experience and training appropriate to school-age children shall be accepted as approved by the Department.~~

89.1.1 For a School-Age Center licensed before the effective date of these rules, the licensee shall ensure a staff member who is already in a particular position or a new hire at that Center:

89.1.1.1 Has four (4) calendar years from the effective date or no later than January 1, 2011 to meet the qualifications of a School-Age Administrator or School-Age Site Coordinator

89.1.1.2 Has two (2) calendar years from the effective date or no later than January 1, 2009 to meet the qualifications of a School-Age Site Assistant or School-Age Intern.

89.1.1.3 Is eligible for the time-limited periods to qualify for a particular position provided that person remains at that School-Age Center or transfers only to a School-Age Center licensed before the effective date of these rules and is directly affiliated with the original School-Age Center. A School-Age Center directly affiliated with the original School-Age Center shall mean that the staff member is still employed by the same parent organization/company and at least retains all years of service when transferred.

89.1.1.4 Has a written professional development plan kept in that staff member's personnel file that documents the particular position desired, the goals to achieve that position, the progress made toward the position at least on a yearly basis, and the target date for goal completion when working toward qualifying for a particular position during the time-limited period.

89.1.2 A licensee shall ensure that each staff member at a School-Age Center submits written documentation to the Office of Child Care Licensing that shows how a staff member is fully qualified for a particular position. The documentation shall consist of copies of training certificates, transcripts, diploma(s), or staff training records. Upon approval from the Office of Child Care Licensing, the licensee shall ensure that the letter of approval for each qualified staff member is filed in that staff member's personnel file.

89.1.3 A licensee shall ensure that a staff member qualifying for a particular position in a School-Age Center may, when applicable, use college/university credits based on specific topic areas/titles, substitutions for college/university credits, or other training that is demonstrated to be equivalent to a particular qualification in these rules all as approved by the Office of Child Care Licensing.

89.1.4 A licensee shall ensure that a person appointed to a position at a School-Age Center that becomes newly licensed subsequent to the effective date shall meet the qualifications of these rules for that position.

## 89.2 School-Age Administrator

89.2.1 A licensee shall ensure that a School-Age Administrator meets the same qualifications as an Early Childhood Administrator in relation to Rules 24.5.1, 24.6 and 24.9.2 with the following additional options:

89.2.1.1 In relation to experience, working with school-age children in a group setting;

89.2.1.2 In relation to Bachelor or Associate degrees, college/university credits directly related to the needs of the school-age children served; and

89.2.1.3 In relation to Associate degree, in a field related to recreation, elementary education, school-age care or school-age care administration.

~~89.2.2 A licensee shall ensure that a School-Age Administrator has three (3) college/university credits, which may be included in the fifteen (15) college/university credits required for the position, or forty five (45) clock hours of training in school-age care administration, early childhood administration, or business administration that is directly related to operating a School-Age Center.~~

## 89.3 School-Age Site Coordinator

89.3.1 A licensee shall ensure that the School-Age Site Coordinator is at least twenty (20) years of age and meets the following qualifications:

89.3.1.1 At least successful completion of twelve (12) college/university credits **[directly]** related to the needs of the school-age children served and three (3) years experience working with children school age or younger in a group setting, or

89.3.1.2 At least successful completion of sixty (60) college/university credits including twelve (12) college/university credits **[directly]** related to the needs of the school-age children served and two (2) years of experience working with children school-age or younger in a group setting.

89.3.2. A licensee shall ensure that the School-Age Site Coordinator has successfully completed at least three (3) college/university credits or forty-five (45) clock hours of training in curriculum development for elementary education or school-age care which may be included in the ~~twelve (12)~~ total number of college/university credits required for this position, if assigned the responsibility of the development, evaluation or monitoring of the School-Age Center's curriculum.

## 89.4 School-Age Site Assistant

89.4.1 A licensee shall ensure that the School-Age Site Assistant is at least eighteen (18) years of age and meets one (1) of the following qualifications:

89.4.1.1 At least successful completion of three (3) college/university credits or sixty (60) clock hours of training directly related to the needs of the school-age children served and 400 hours experience working with children school age or younger in a group setting;

89.4.1.1.1 400 hours experience shall be equivalent to one (1) year of part time employment providing care to children during a school year (September to June) or full time employment providing care to children during the majority of one (1) summer season (June through August); or

89.4.1.2 At least successful completion of *Delaware First's* "Introduction to Child Care" or "Child Development" completed within twelve (12) months of employment and 800 hours of experience working with children school age or younger in a group setting;

89.4.1.2.1 800 hours experience shall be equivalent to two (2) years of part time employment providing care to children during two (2) school years (September to June) or full time employment providing care to children during the majority of two (2) summer seasons (June through August).

## 89.5 School-Age Intern

89.5.1 A licensee shall ensure that the School-Age Intern is at least sixteen (16) years of age and meets one (1) the following qualifications:

89.5.1.1 At least successful completion of *Delaware First's* "Introduction to Child Care" or "Child Development" completed within twelve (12) months of employment.

89.5.2 A licensee shall ensure that a School-Age Intern under the age of eighteen (18) does not provide direct child care to children who are close in age. Such a School-Age Intern shall be at least four (4) years older than any child in his or her direct care.

## 89.6 Staffing

89.6.1 A licensee shall ensure that a School-Age Center has at least one (1) staff member who meets the qualifications for the position of School-Age Administrator.

89.6.2 A licensee shall ensure that when a School-Age Administrator is responsible for more than one (1) Center, the School-Age Administrator is required to make, at a minimum, a continuous thirty (30) minute

visit per week at each School-Age Center.

89.6.3 A licensee shall ensure that a School-Age Center has at least one (1) staff member who meets the qualifications for the position of School-Age Site Coordinator when the School-Age Administrator is responsible for more than one (1) School-Age Center.

89.6.4 A licensee shall ensure that a staff member with the qualifications of at least a School-Age Administrator or School-Age Site Coordinator is present at least fifty (50) percent of the hours of operation.

89.6.5 A licensee shall ensure that a School-Age Site Coordinator is responsible for no more than two (2) School-Age Centers.

89.6.6 A licensee shall ensure that a School-Age Center has at least one (1) staff member who at least meets the qualifications for the position of School-Age Site Assistant.

89.6.7 A licensee shall ensure that when a School-Age Administrator or School-Age Site Coordinator is not present at the School-Age Center, an assigned staff member that at least meets the qualification of School-Age Site Assistant as stated in Rule 89.4.4.1 is present

89.6.7.1 This staff member shall be specifically designated as responsible for the School-Age Center in the absence of the School-Age Administrator or School-Age Site Coordinator and have documented training in the day to day operations of the Center with an emphasis in the supervision of children and staff.

## **90.0 Physical Environment And Safety**

### **GENERAL**

~~295. When ten (10) or more school age children are present, a Center providing School Age Care as a component of a licensed Center shall care for any children in the first grade and beyond in an area physically separated from younger children.~~

~~296. A Center providing School age Care shall provide a space for quiet work or study.~~

### **90.1 Outdoor Play Area**

~~90.1.1 A Center providing School age Care licensee shall have plans approved by the Department Office of Child Care Licensing for a suitable and safe outdoor play area.~~

~~90.1.1.1 A Center licensee shall provide either safe open outdoor spaces for running and games or supervised excursions to public and private playgrounds.~~

~~B. The outdoor play area for school age children shall be physically separated or used at separate times from that provided for children younger than school age.~~

~~90.1.2 A licensee operating a School-Age Center at a public or private school shall be able to use that school's playground as the outdoor play area upon approval by the Office of Child Care Licensing.~~

### **90.2 Toilet Facilities**

~~90.2.1 A Center providing School age Care licensee shall have ensure that the School-Age Center has one (1) toilet and sink for every twenty-five (25) school-age children, based on licensed capacity.~~

~~90.2.1.1 Urinals shall be counted as one-half (1/2) of a toilet for the purposes of this calculation provided that the population served includes a significant number of males and that a minimum of two (2) flush toilets are available and accessible to both males and females.~~

~~90.2.1.2 Children shall be given privacy in toilet use unless assistance is required.~~

### **90.3 Transportation**

~~A Center providing School age Care licensee shall document arrangements with parents/guardians and the their children's schools regarding any transportation provided by the Center licensee to and from the School-Age Center, as appropriate.~~

## **91.0 Health Care**

### **91.1 Food and Nutrition**

91.1.1 A licensee shall ensure that a nutritious snack comprising one (1) item from two (2) of the four (4) food groups as described in Rule 67.1.8 is served to each child in after school care.

91.1.1.1 If breakfast is not served at the School-Age Center, a nutritious snack shall be served to each child who is in before school care for more than two (2) hours.

91.1.1.2 If milk or fruit juice is not included with a snack, water shall also be served with that snack.

## **92.0 Child Care**

## 92.1 Activities

92.2.1 A Center providing School-age-Care licensee shall ~~have ensure that~~ a program of indoor and outdoor activities ~~and supplies and equipment is provided suitable for~~ based on the ages and developmental levels of school-age children served.

92.2.1.1 Children shall be given daily opportunities for active physical play such as active games, sports, dancing, running, jumping, climbing or exploring the environment, sports appropriate to age, relaxation and, whenever possible, outdoor activity immediately after school.

92.2.1.2 Children shall have daily outdoor activities after school. If weather conditions do not permit outdoor play, children shall be given opportunities for active physical play indoors.

92.2.1.3 Children shall have daily opportunities for socialization, conversation, relaxation, and quiet activities such as board or card games, reading, homework and studying.

92.2.1.4 Children shall have monthly opportunities to participate in projects that require an extended time period to complete in such topics as science, math, social studies, language arts, cooking, drama, creative arts or, music.

92.2.1.5 As described in Rule 80.4, supplies and equipment shall be adapted to suit the different ages and interests of the school-age children and include books for all reading abilities.

92.2.1.6 The quantity of materials and equipment available to school-age children shall be sufficient to allow children the opportunity to freely choose activities or materials. There shall be a system of sharing items such as computers that are in high demand but cannot be supplied to all children.

B. A nutritious snack shall be provided to each child upon arrival at the Center from school.

92.2.1.7 Children shall have the opportunity to take responsibility consistent with their ages for choosing, planning, carrying out and evaluating their own activities.

92.2.1.8 Children shall be given opportunities to experience a diversity of activities within the Center, the Center neighborhood, and the total community that reflect the various communities, languages and cultures of the children in attendance.

## **PART V SPECIALIZED DAY CARE**

### **GENERAL REQUIREMENTS**

#### **LEVELS OF SPECIALIZED DAY CARE**

301. Specialized Day Care may be provided by a Center licensed only to provide Specialized Day Care or as a component of a licensed Center.

302. The level of regulation for Specialized Day Care shall be determined by the number of children with special needs in attendance at a Center.

#### **Level One**

303. Level One shall apply when the number of children with special needs in attendance at a Center meets one (1) or more of the following criteria:

The number does not exceed four (4) children;

The number does not exceed 10% of the Center's total population in attendance;

The number does not exceed one (1) child per age group.

304. When a Center is at Level One, the staffing needs for each child with special needs shall be determined by the child's Special Needs Activity Plan. Requirements 307-326 shall apply to the Center, except for 315, 316 and 321.

#### **Level Two**

305. Level Two shall apply when the number of children with special needs in attendance at a Center meets one (1) or more of the following criteria:

The number exceed four (4) children;

The number exceed 10% of the Center's total population in attendance;

The number exceeds one (1) per child age group.

306. When a Center is at Level Two, Requirements 307-326 shall apply.

#### **ENROLLMENT**

307. A Center providing Specialized Day Care shall have admission procedures for a child with special needs which shall include:

A. A written referral relevant to the placement in day care from a licensed physician, psychologist or specialist certified in the field of the child's special needs.

B. A written plan for communicating with family and professionals serving the child's special needs for the duration of the child's enrollment.

C. A trial attendance period for each child not to exceed six weeks to evaluate the appropriateness of the program, adequacy of the physical site and compatibility of the child with program.

#### **SPECIAL NEEDS ACTIVITY PLAN**

308. For each child with special needs in care, a Center providing Specialized Day Care shall develop a written plan of the child's special needs.

309. A Center providing Specialized Day Care shall ensure that the plan shall be developed by a team which includes day care staff who will be responsible for working with the child on a daily basis, the child's parent(s) and specialist(s) working with the child or referring agency.

310. A Center providing Specialized Day Care shall ensure that the plan shall identify the special needs of the child, in the following areas, as appropriate:

Physical therapy;

Occupational therapy;

Speech and language therapy;

Psychological or psychiatric services;

Educational services;

Social services;

Nutrition services;

Special equipment.

311. A Center providing Specialized Day Care shall ensure that the plan shall include the following:

Staffing needs for the child, specifying the staff/child ratio.

An outline of any special activities, to be carried out by the day care staff in the daily management of the child, as specified by specialists working with the child or the referring agency.

312. A Center providing Specialized Day Care shall ensure that a copy of the Special Needs Activity Plan shall be located within the area of the child's daily care.

#### **COMMUNICATING WITH STAFF**

313. A Center providing Specialized Day Care shall ensure that, for each child with special needs, all staff working with that child shall be given briefings on the child's special needs and daily activities, as specified in the child's Special Needs Activity Plan.

A. The Center shall conduct an initial briefing for involved staff upon each child's enrollment.

B. The Center shall ensure periodic briefings for involved staff at least monthly to update on changes in the child's plan.

- C. The staff briefings shall be documented in writing.

## **HUMAN RESOURCES STAFF QUALIFICATIONS**

314. A Center providing Specialized Day Care at Level One shall have specific arrangements with an individual certified in special education or early childhood special education who will agree to provide ongoing consultation on policy, procedures and program related to Specialized Day Care.

315. A Center providing Specialized Day Care at Level Two shall ensure that the staff member responsible for supervising the direct care provided to children with special needs other than those provided only school age care shall comply with Requirement 85 of **Part I, GENERAL PROVISIONS**, with 60 clock hours of training in early childhood special education plus one (1) year experience working with children.

316. A Center licensed primarily to provide Specialized Day Care shall have a Program Director whose qualifications as specified in Requirement 83 of **Part I, GENERAL PROVISIONS**, include fifteen (15) credit hours of training in special education and early childhood special education and one (1) year experience working with children with special needs, of which at least three (3) months shall be supervised experience.

## **ORIENTATION AND TRAINING**

317. A Center providing Specialized Day Care shall document that the orientation training, as required by Requirement 89, for each new staff member assigned to children with special needs includes training in early childhood special education.

318. A Center providing Specialized Day Care shall document that annual training, as specified in Requirement 91, for all staff members assigned to children with special needs, includes training in early childhood special education.

## **NUMBER OF STAFF**

319. A Center providing Specialized Day Care shall document that it has sufficient staff to perform immediate and safe emergency evacuation of all children and to provide care to children appropriate to their age, developmental levels and degree of dependency.

320. A Center providing Specialized Day Care at Level One shall provide staffing for each child as specified in the child's Special Needs Activity Plan:

The Special Needs Activity Plan for each child shall be the primary determinant of the child's staffing needs.

321. A Center providing Specialized Day Care at Level Two shall provide at least one (1) Caregiver or Assistant Caregiver for every four (4) children with special needs or any fraction thereof, unless staffing needs are otherwise specified in the Special Needs Activity Plan for children in attendance.

A. The Special Needs Activity Plan for each child shall be the primary determinant of the child's staffing needs.

## **PHYSICAL ENVIRONMENT AND SAFETY ACCESSIBILITY—PHYSICAL SITE**

322. A Center providing Specialized Day Care shall ensure that toilet facilities are architecturally accessible to the children served.

323. A Center providing Specialized Day Care serving non-ambulatory children shall have doors, walkways, ramps and landings which permit the use of wheelchairs, braces, walkers and other such equipment and devices.

## TRANSPORTATION

~~324. When a Center providing Specialized Day Care serving non-ambulatory children transports children in a vehicle which is equipped with a ramp or hydraulic lift to allow entry and exit, the following shall apply:~~

- ~~A. Wheelchairs shall be securely fastened to the floor when used to seat children in a vehicle and shall be equipped with seat belts;~~
- ~~B. Arrangements of wheelchairs in a vehicle shall not impede access to exits.~~

## CHILD CARE ACTIVITIES

~~325. A Center providing Specialized Day Care shall have a program appropriate to the age, developmental levels and special needs of children served, in accordance with Requirements 249-261 in **Part I, GENERAL PROVISIONS.**~~

- ~~A. The program shall include activities as specified in the Special Needs Activity Plan for each child.~~

## EQUIPMENT

~~326. A Center providing Specialized Day Care shall have available sufficient equipment to implement this program:~~

- ~~A. Appropriate play equipment shall be available to implement the Special Needs Activity Plan for each child.~~

## SPECIALIZED DAY CARE

### FAMILY AND GROUP DAY CARE HOMES

~~A Day Care Home providing Specialized Day Care shall comply with all requirements of Delaware: Requirements for Family Day Care Homes or Licensing and Approving Group Day Care Homes, as applicable.~~

#### Level One

~~Level One shall apply when the home provides care for one (1) child with special needs. The staffing needs of the child shall be determined by the child's Special Needs Activity Plan.~~

~~In addition, the home shall comply with the following requirements:~~

- ~~A. 301 (Enrollment)~~
- ~~B. 302—306 (Special Needs Activity Plan)~~
- ~~C. 308 (Records)~~
- ~~D. 309 (Consultation)~~
- ~~E. 312—313 (Orientation and Training)~~
- ~~F. 320—321 (Activities)~~

#### Level Two

~~Level Two shall apply when the home provides Specialized Day Care to more than one (1) child with Special Needs.~~

~~Special approval shall be obtained from the Department prior to the care of more than one (1) child. The Department shall take into consideration the following in granting such approval:~~

- ~~A. Number of children with special needs.~~
- ~~B. Type of special needs.~~
- ~~C. Type of services required by the child(ren).~~
- ~~D. Number of children who could be safely evacuated.~~

~~In addition the home shall comply with following requirements:~~

- ~~A. 301 (Enrollment)~~
- ~~B. 302—306 (Special Needs Activity Plan)~~
- ~~C. 308 (Records)~~

- D. 309 (Consultation)
- E. 312—313 (Orientation and Training)
- F. 320—321 (Activities)