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# Delaware Register of Regulations

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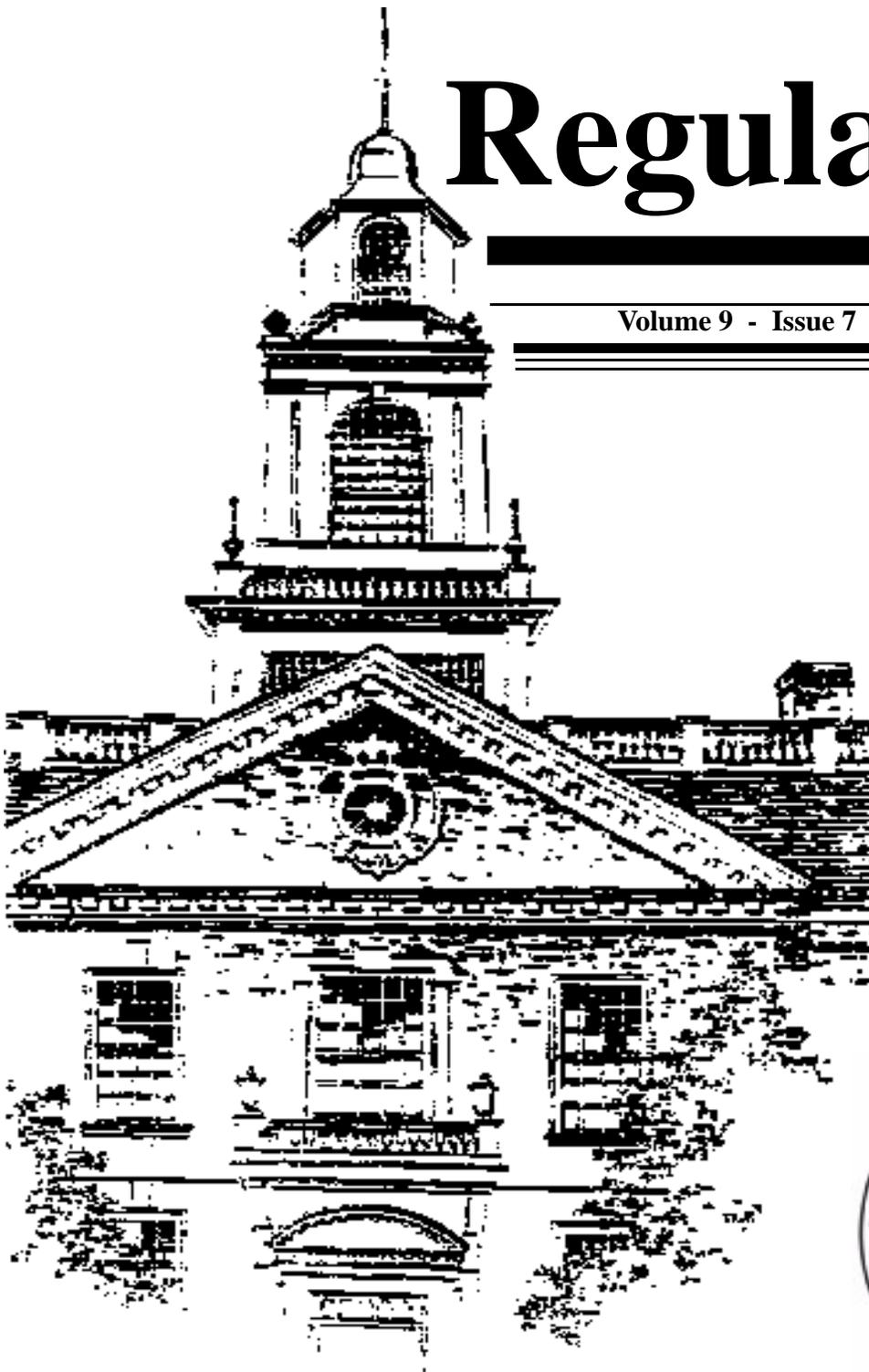
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Proposed

Final

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 December 15, 2005.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

9 **DE Reg.** 415-420 (09/01/05)

Refers to Volume 9, pages 415-420 of the *Delaware Register* issued on September 1, 2005.

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### SUBSCRIPTION INFORMATION

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

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

## INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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*.

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
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 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.

#### DIVISION OF RESEARCH STAFF:

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

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

**Proposed Regulations**

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

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10000 (3 **Del.C.** §10000)  
3 **DE Admin. Code** 501

**PUBLIC NOTICE****501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to amend rule 8.9.15.2.1 to clarify that the Commission will retest the primary sample drawn if the initial test comes up high, not redraw a second blood sample from the horse. The Commission will hold a public hearing on the proposed rule change on January 17, 2006. Written comments should be sent to Hugh Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

**8.0 Veterinary Practices, Equine Health Medication***(Break in Continuity of Sections)*

8.9 Prerace Testing by Blood Gas Analyzer or Similar Equipment

8.9.1 Notwithstanding any other provisions of these Rules to the contrary, the Commission may conduct prerace and postrace testing with the use of any accepted,

reliable testing instrument, including but not limited to a blood gas analyzer for measuring excess carbon dioxide in blood samples.

8.9.2 The Presiding Judge shall announce the selected races or horses for testing and the appropriate time and location.

8.9.3 All horses shall be brought to the paddock or other secure, designated area for the prerace testing before its first warm up, based on the Commission published paddock times.

8.9.4 Each horse entered to compete in the racing program shall be present in his or her designated paddock stall with a groom for the purpose of having a blood sample drawn by the Commission Veterinarian.

8.9.5 The order and number of horses which shall have blood drawn for prerace testing shall be at the discretion of the Commission and the presiding judge.

8.9.6 The Commission Veterinarian will be responsible to verify with the testing machine technician that the blood gas analyzer test is completed for the specific horse in question. The Commission Veterinarian or his designee will inform the trainer or groom if their horse will be retested or can be given permission to leave the paddock.

8.9.7 *Refusal*-Failure or refusal by a licensee to present a selected horse under his care, custody, or control for blood gas analyzer testing, or who refuses in any other way, shall result in an automatic scratch of the horse from the racing program, and any other appropriate disciplinary action in the discretion of the judges. The Commission Veterinarian shall document the name of the trainer or person

who refuses to have blood drawn from the horse, and shall file a report with the Commission.

8.9.8 *Exercise Prior to Testing*-In the event that the horse has exercised prior to testing and the horse tests below the Commission standard for a high blood gas test, the horse can be retested upon the discretion of the Commission Veterinarian or presiding judge, or tested post race.

8.9.10 *Post Race Testing*-The blood gas analyzer machine or similar testing equipment may be used for the post-race blood gas testing on selected horses. The collection of samples will be pursuant to Rule 8.4.3 and testing of split samples will be pursuant to Rule 8.4.3.5.10.

8.9.11 The Commission Veterinarian will provide documentation reflecting the tattoo or name of the horse from which the blood was drawn, the date and time the blood was drawn, and any other identifying information.

8.9.12 *Trainer Observation of Testing*-The trainer or other designated representative is permitted to observe the testing procedure, but not to question the technician or otherwise disrupt the testing.

8.9.13 The Presiding Judge, Commission Veterinarian, and blood gas technician will ensure that the blood gas analyzer or other testing equipment is calibrated in compliance with the recommended calibration and maintenance procedures for the machine, and that the testing machine is in proper working order.

8.9.14 In addition to the provisions of Rule 8.3 and unless otherwise permitted by these Rules, no foreign substance shall be carried in the body of a horse when the horse is on the grounds of the licensed racetrack; it shall be a violation of this rule for a horse to test positive in a pre-race test result using a blood gas analyzer or other testing equipment.

8.9.15 The penalties for post-race positive tests contained in Rule 8.3.2, may apply to pre-race test samples that are positive for a prohibited substance.

8.9.15.1 A positive test result from a pre-race sample tested on the blood gas analyzer machine is subject to the recommended penalty in Rules 8.3.2 and 8.3.3.3. For pre-race testing the Commission may use a testing machine that uses the Commission standard in Rule 8.3.3.3--substances present in a horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules.

8.9.15.2 The Commission may alternatively use a testing machine that measures carbon dioxide levels in pre-race samples using a Base Excess testing protocol.

8.9.15.2.1 Under this alternative protocol, the prohibitive Base Excess concentrations are as follows: Base Excess level of 10.0 mmol/l (mEq/l) or higher or non-furosemide (Lasix) treated horses and Base Excess (BE) level of 12.0 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse. The level of uncertainty will be included before it is considered a violation of these Rules. The level of uncertainty is 0.4 mmol/l (mEq/l) and a positive test report must include this level of uncertainty. A horse must show a Base Excess (BE) level of 10.4 mmol/l (mEq/l) or higher for a non-furosemide (Lasix) treated horse and Base Excess (BE) level of 12.4 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse, in order for a violation to be reported under this Rule.

A commission representative will notify the trainer or licensed designee and the primary blood sample of the horse in question shall be immediately retested. In the event that a second blood gas analyzer test is necessary, the Commission Veterinarian or his designee will take a rectal temperature of said horse. The horse's temperature will be recorded on the veterinarian's control sheet.

8.9.16 With respect to a finding of a prohibited level of carbon dioxide in a blood sample obtained from a prerace blood gas analyzer test result, there shall be no right to testing of the "secondary sample" by the licensee, provided that a "secondary sample" shall be transported to the designated Commission laboratory on an anonymous basis for confirmatory testing. In the event that the initial blood gas analyzer test result is confirmed by the test result of the official Commission laboratory, such test results shall be *prima facie* evidence that the prohibited drug was present in the horse at the time it was scheduled to participate in a race and is *prima facie* evidence.

**\*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 Delaware Harness Racing Commission is available at: <http://www.state.de.us/research/AdminCode/title3/500/501/index.shtml>**

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

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

**PUBLIC NOTICE****Delaware's Temporary Assistance for Needy Families  
3006 Employment and Training**

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 Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding changes to Delaware's Temporary Assistance for Needy Families (TANF) Employment and Training policies.

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 Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by January 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****Citation**

Senate Bill 101, 140<sup>th</sup> General Assembly: Delaware Welfare Reform Education and Training Assistance Act

**Background**

Senate Bill 101, effective July 2, 1999, allows participants in Delaware's Temporary Assistance for Needy Families (TANF) program to engage in secondary education, post-secondary education, and vocational training as part of the work activity requirement. The participants in this program must be enrolled as full-time students, must be students in good standing, and will be required to have a combination of credit hours and work hours equaling at least 20 hours per week while they are in school. Participants must attend accredited or approved programs and will

receive the same support services while in school, such as child care and transportation, as do other TANF participants. By enabling TANF participants to pursue secondary education, post-secondary education, and vocational training, Delaware will create a workforce that is more financially stable and less likely to need public assistance again, while at the same time increasing its tax revenue as these same people earn higher wages.

**Summary of Proposal**

DSSM 3006.4, *TANF Employment and Training Activities Which Constitute Participation Under TANF* is updated to include 1.5 hours of study time for each credit hour in the calculation of participation for students who are attending education or training classes and do *not* meet the Blevins Bill requirements in section 3006.6. This change will help TANF E&T students meet their required participation.

**DSS PROPOSED REGULATION #05-77****REVISIONS:****3006.4 TANF Employment and Training Activities  
Which Constitute Participation Under TANF**

The following ~~are~~ employment-related activities count as participation:

- Education, training and job search activities. Eligibility will be determined by the employment contractors.
- Pay-after-performance work experience, with the hours determined by dividing the benefits by the minimum wage, plus up to 10 hours of job search weekly;
- Regular school attendance or appropriate alternative activity (e.g., training or employment) for dependent children and minor parents;
- Job search may be required for applicants and recipients.
- Participation in Vocational Rehabilitation program for eligible recipients.
- Nursing or nursing assistant activities performed without pay are considered work experience.
- Other work-related activities that assist in obtaining or maintaining employment or improving work performance.

Education and Training

Students who do not meet the Blevins Bill requirements in section 3006.6 can receive 1.5 hours of study time for

each credit hour if the education or training class requires homework and study time to be completed outside of class time. A 3-credit course would equal 7.5 hours of participation.  $(3 + (3 \times 1.5) = 7.5$ .

If a recipient is attending training or a program that does not have a designated credit hour, a determination of the amount of study time required for this training will have to be determined independently. This will be reported on the General Activity Screen in the DCIS II Employment and Training sub-system. A question will ask if this activity requires study time, if it is answered yes, then a mandatory screen will appear to enter the amount of weekly study hours. The amount of study hours necessary will be determined by the contractor.

The student must be in good standing as it relates to attendance and achievement as defined by the program the student is attending.

Example: A participant who is working 15 hours a week and taking 2 three-credit classes will have a participation rate of 30 hours.  $(15 \text{ hours of work} + 6 \text{ credit hours of class} + 9 \text{ hours of study time}$ .

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Delaware's Temporary Assistance for Needy Families 4002 Resources

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 Social Services (DSS) is proposing to amend the rules in the Division of Social Services Manual (DSSM) used to determine eligibility for cash assistance as it relates to the special Education and Business Investment Accounts (EBIAs).

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 Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by January 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

#### Citation

Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996

#### Background

In addition to the current resource limit, families are allowed to establish special Education and Business Investment Accounts (EBIAs) of up to \$5,000.00, including interest. Families contribute directly to their EBIAs. Funds in such accounts are not considered as a resource. Withdrawals from such accounts must be for approved purposes, as defined in TANF. If funds are withdrawn for non-approved purposes, the money will be counted as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include, but are not limited to, dependent care expenses, security deposit for an apartment or house, or vehicle repair costs.

#### Summary of Proposal

DSSM 4002.2, *Available Resources* and DSSM 4002.5, *Excluded Resources*: Language is revised and new language is added:

- To reiterate that EBIA's up to \$5000.00 are excluded for TANF;
- To clarify that Saving for Education, Entrepreneurship and Downpayment (SEED) accounts are considered EBIA's; and,
- To clarify that SEED accounts are excluded as a resource for TANF, GA, or Food Stamps.

#### DSS PROPOSED REGULATION #05-76

#### REVISIONS:

##### 4002.2 Available Resources

Any income or resource which a client actually has on hand for immediate use is an available resource. Examples are, ~~C~~cash on hand, checking accounts, any form of savings or bank accounts, State and Federal Income Tax Refunds.

Savings:

~~Note: In addition to the current resource limit, Temporary Assistance for Needy Families (TANF) families will be allowed to establish Special Educational and Business Investment Accounts of up to \$5000.00, including interest.~~

~~Do not consider funds in such accounts as a resource for TANF or Food Stamp purposes. Withdrawals from such accounts must be for approved purposes. If funds are withdrawn for non-approved purposes, count the money as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include, education expenses, employment start-up needs, entrepreneurship, and fulfill life-improvement initiatives.~~

~~The special Education and Business Investment Accounts are not counted as available resources unless withdrawals are made for non-approved purposes. See DSSM 4002.5 #14.~~

~~A family budget group is not eligible for cash assistance if its available resources exceed \$1,000.00.~~

~~Available resources must be documented in the case record.~~

*(Break in Continuity of Sections)*

#### **4002.5 Excluded Resources**

The equity value of real and personal property owned by a family budget group cannot exceed \$1,000.00. Resources excluded from the \$1,000.00 resource limitation are:

1. The home which is the usual residence of the family budget group.

#### **FOR DELAWARE'S TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM**

2. Exclude the equity value of a primary automobile, up to the annually adjusted Food Stamp program's fair market value of vehicles which is excluded in determining the household resources. The excluded amount effective October 1996 is \$4,650. The equity value is the difference between the automobile's fair market value and the amount still owed for it. The equity value in excess of \$4,650.00 is counted towards the \$1,000.00 resource limitation. The entire equity value of other automobiles owned by the individual is counted as a resource.

NOTE: The fair market value of an automobile is determined by finding the car's trade in value in the NADA Used Car Guide. If the client disagrees with this valuation, he/she may obtain a statement of the car's value from a automobile dealer.

#### **FOR GENERAL ASSISTANCE**

One automobile, the equity value of which does not exceed \$1,500.00. The equity value is the difference between the automobile's fair market value and the amount still owed on it. The equity value in excess of \$1,500.00 is counted towards the \$1,000.00 resource limitation. The entire equity value of other automobiles owned by the individual is counted as a resource.

The increased value of a motor vehicle specially equipped with devices for the handicapped is not counted. Farm vehicles that are used to produce income are excluded from consideration as a resource.

3. One burial plot for each member of the assistance unit.

4. Bona fide funeral agreements (e.g., pre paid burial contracts) up to a total of \$1,500.00 for each member of the budget group.

NOTE: If a funeral agreement valued in excess of \$1,500.00 includes both prepaid burial expenses and a burial plot, the worker will require that the client provide an itemized statement of the estimated value of the plot and the expenses. The value of the burial plot is an excluded resource and will be considered separately from the value of the prepaid expenses.

5. Basic maintenance items essential for day-to-day living such as clothes, furniture, and other similarly essential items.

6. For a period not to exceed six months, real property that is not used as a residence (see DSSM 4002.6).

7. Tools and equipment necessary to produce income in a self employment enterprise, even if the owner is not engaged in business currently, but plans to continue it at a future date.

8. Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100 707.

"**Emergency**" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"**Major Disaster**" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of

available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

9. Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I- of P.L. 100-383.

10. Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100 383.

11. Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

12. Earned Income Tax Credits (EITC), including Advance EITC.

**Applicants:**

Disregard as a resource EITC payments received in the month of application or in the month preceding the month of application. Any remaining EITC amounts received before this period are a resource.

**Recipients:**

Disregard as a resource for the month in which the EITC is received and the following month. After this period, any remaining amounts are a resource.

13. Cash Value of Life Insurance Policies

14. The designated Education and Business Investment Account (EBIA) is excluded up to the \$500,000 maximum. In addition to the current resource limit, Delaware's Temporary Assistance For Needy Families Program (TANF" and General Assistance (GA) Program families will be allowed to establish special Education and Business Investment Accounts (EBIA) of up to \$5000.00, including interest.

Do not consider funds in such accounts as a resource for TANF, GA or Food Stamp purposes. Withdrawals from such accounts must be for approved purposes. If funds are withdrawn for non-approved purposes, count the money as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include education expenses, employment start-up needs, entrepreneurship, and to purchase a vehicle or home. If staff are unsure if the withdrawal meets an approved purpose, contact the policy unit for clarification.

Furthermore, a Saving for Education, Entrepreneurship and Downpayment (SEED) accounts is considered an EBIA account and is excluded up to the \$5000.00 limit.

**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION**

1100 Board of Dental Examiners  
Statutory Authority: 24 Delaware Code,  
Section 1106(a)(1) (24 **Del.C.** §1106(a)(1)  
24 **DE. Admin. Code** 1100

**PUBLIC NOTICE**

The Delaware Board of Dental Examiners in accordance with 24 **Del.C.** §1106(a)(1) has proposed changes to its rules and regulations regarding continuing professional education. Specifically, the proposal amends the cardiopulmonary resuscitation (CPR) continuing education requirements for dentists and dental hygienists found in regulations 6.0 and 6.9 to provide that acceptable CPR courses must include hands on clinical participation. The proposal also adds a new subsection 6.6.9 under regulation 6.6 to require continuing education on an Anesthesia topic for holders of Unrestricted Permits and Restricted I Permits.

A public hearing will be held on March 9, 2006 at 6:15 p.m. in the first floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Dental Examiners, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**Proposed Rules and Regulations**

**6.0 Continuing Professional Education - Dentists**

All persons licensed to practice dentistry in the State of Delaware shall be required to acquire 50 hours of continuing professional education (CPE) credit and to successfully complete a current course in cardiopulmonary resuscitation (CPR) every two (2) years. The CPR course must encompass hands on clinical participation. On-line courses will not be accepted to satisfy the CPR requirement. Examples of acceptable courses include, but are not limited to, courses offered by the American Red Cross and the American Heart Association. All dentists, upon initial licensure in Delaware and prior to registration renewal, shall be given a written notice of these CPE requirements.

6.1 Proof of successful completion of the requisite CPE credits is required for registration renewal every two years.

6.2 Said CPE requirements shall become effective May 1, 1988. Proof of CPE credits must be submitted by March 1 of every two (2) even years.

6.3 It shall be the responsibility of the candidate for re-licensure to submit to the Board of Dental Examiners, evidence of his/her compliance with these requirements. The Division of Professional Regulation shall notify the candidate at least 30 days in advance of the need to renew his/her license, and shall request that the candidate submit evidence of compliance with the CPE requirements stated herein, along with other fees and documents required. However, failure to be notified by such agency shall not relieve the licensee of this obligation.

6.4 Not more than ten (10) hours of the fifty (50) hour biennial CPE requirement may be satisfied by self-study without testing from sources approved by the Board which shall include but not be limited to:

6.4.1 Reading dental textbooks

6.4.2 Reading dental tape journals

6.4.3 Viewing and listening to dental audio-visual materials.

6.5 CPE credits may be granted upon proof of successful completion of:

6.5.1 Scientific CPE programs or courses and/or the scientific sessions of meetings sponsored or approved by:

6.5.1.1 American Dental Association, its constituents and components

6.5.1.2 American Dental Hygienists' Association, its constituents and components

6.5.1.3 American Dental Assisting Association, its constituents and components

6.5.1.4 Recognized national, regional, state and local dental and dental hygiene specialty organizations

6.5.1.5 Recognized dental and dental hygiene study clubs

6.5.1.6 Accredited dental and dental hygiene CPE programs offered by dental and dental hygiene schools.

6.5.1.7 Approved hospital programs.

6.5.1.8 Such other organizations and associations as may be approved by the Board.

6.5.2 In addition to the maximum of ten (10) hours of the CPE requirement which may be satisfied by self-study without testing and certification, a maximum of twenty (20) hours of the total CPE requirements may be fulfilled by self-study with test and certificate of completion from bona fide dental educational sources including but not limited to:

6.5.2.1 Dental journals

6.5.2.2 Dental textbooks

6.5.2.3 Dental video and audio tape presentations

6.5.2.4 Dental mail-in courses

6.5.2.5 Dental courses presented on the Internet

6.5.2.6 Dental lectures and courses presented via electronic media including computer disks where CPE credits are not specified, one (1) hour of credit will be given for each hour of scientific session attended.

#### 6.6 Special Provisions

6.6.1 A dentist, employed as a faculty member in a recognized school of dentistry, dental hygiene, dental assisting or any dentally-related field will be allowed not more than ten (10) hours credit for teaching per year.

6.6.2 A dentist presenting a CPE course shall be allowed the hours involved in preparation and presentation on a one-time-per-course basis for a maximum of ten (10) hours for the two-year period.

6.6.3 Table Clinics will be allowed, one (1) hour of credit per hour of presentation for a maximum of two (2) hours.

6.6.4 Twelve (12) hours of credit shall be allowed for a scientific article published in a component or state society journal. 25 hours of credit shall be allowed for a scientific article published in a national journal or for a published scientific textbook or a chapter therein.

6.6.5 Any public health dentally-related presentation will be allowed one (1) hour of credit per hour of participation for a maximum of two (2) hours for the two year period.

6.6.6 Practice management or personal self-improvement courses shall be limited to a total of ten (10) hours for the two (2) year period.

6.6.7 The Board reserves the right to approve any and all activities deemed appropriate for CPE credit. The Board also reserves the right and is the final word to disapprove any activities submitted for credit which it deems inappropriate.

6.6.8 All dentists licensed to practice in Delaware shall be given written notice of these CPE requirements when receiving their initial license.

6.6.9 For existing holders of an Unrestricted Permit for anesthesia, at least twelve (12) hours of the required CPE credits must be taken on an Anesthesia topic by the end of the six (6) year re-evaluation period (i.e. by the end of the third biennial licensure renewal period).

For existing holders of a Restricted I Permit, at least six (6) hours of the required CPE credits must be taken on an Anesthesia topic by the end of the six (6) year re-evaluation period (i.e. by the end of the third biennial license renewal period).

## 6.7 Exceptions

6.7.1 An exception will be granted to any dentist who can demonstrate to the Board an acceptable cause as to why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness, extended absence from the country, or the like.

6.7.2 An individual initially licensed by the Board within the last 2 years shall meet the following schedule of reporting CPE credits for license renewal:

6.7.2.1 If, as of March 1st of the year for license renewal, the licensee has been licensed for less than 1 year, zero hours of CPE is required for license renewal; for licensees who are 1 or more but less than 2 years from their initial licensure, one-half of the required CPE must be presented; for individuals 2 years or more from their initial licensure, the full CPE requirement must be presented for renewal.

## 6.8 Failure to Comply

When the Board deems someone to be deficient in CPE requirements, the following procedure shall be followed:

6.8.1 The licensee for renewal shall be notified by the Division of Professional Regulation ("Division") by certified mail that a deficiency exists. The deficiency shall be specifically described by the Division.

6.8.2 The licensee's registration will not be renewed until he/she submits proof that the described deficiency has been corrected. Upon submission of satisfactory proof of correction of said deficiency, the licensee shall be eligible for registration renewal.

## 6.9 Continuing Professional Education (CPE) - Dental Hygienists

All persons licensed to practice dental hygiene in the State of Delaware shall be required to acquire twenty-four (24) hours of CPE credit and successfully complete a current course in cardiopulmonary resuscitation (CPR) every two (2) years. The CPR course must encompass hands on clinical participation. On-line courses will not be accepted to satisfy the CPR requirement. Examples of acceptable courses include, but are not limited to, courses offered by the American Red Cross and the American Heart Association. All Dental hygienists, upon initial licensure and prior to registration renewal, shall be given written notice of these CPE requirements.

6.9.1 Proof of successful completion of the requisite CPE credits is required for registration renewal every two (2) years.

6.9.2 Said CPE requirements shall become effective May 1, 1988. Proof of CPE credits must be submitted by March 1st of every two (2) even years.

6.9.3 It shall be the responsibility of the candidate for re-licensure to submit to the Board of Dental Examiners, evidence of his/her compliance with these requirements. The Division of Professional Regulation shall notify the candidate at least 30 days in advance of the need to renew his/her license, and shall request that the candidate submit evidence of compliance with the CPE requirements state herein, along with other fees and documents required. However, failure to be notified by such agency shall not relieve the licensee of this obligation.

6.9.4 CPE credits may be granted upon proof of successful completion of programs including, but not limited to, the following categories:

6.9.4.1 Scientific CPE programs or courses and/or scientific sessions of meetings sponsored or approved by:

6.9.4.1.1 American Dental Hygienists Association, its constituents and components

6.9.4.1.2 American Dental Association, its constituents and components

6.9.4.1.3 American Dental Assisting Association, its constituents, and components

6.9.4.1.4 Recognized national, regional, state, and local dental and dental hygiene specialty societies

6.9.4.1.5 Recognized dental and dental hygiene study clubs

6.9.4.1.6 Accredited dental and dental hygiene schools

6.9.4.1.7 Approved hospital programs

6.9.4.1.8 Such other organizations and associations as may be approved by the Board

6.9.4.2 A maximum of five (5) hours of the total twenty-four (24) hour requirement may be satisfied by self-study without testing from sources approved by the Board which shall include but not be limited to:

6.9.4.2.1 Reading of dental or dental hygiene journals

6.9.4.2.2 Reading dental or dental hygiene textbooks

6.9.4.2.3 Viewing and listening to dental or dental hygiene audio-visual materials

6.9.4.3 In addition to the maximum of five (5) hours which may be satisfied by self-study without testing, a maximum of ten (10) hours of the total twenty-four (24) hour

requirement may be fulfilled by self-study with test and certificate of completion from bona fide dental hygiene educational sources including but not limited to:

- 6.9.4.3.1 Dental or dental hygiene journals
- 6.9.4.3.2 Dental or dental hygiene textbooks
- 6.9.4.3.3 Dental or dental hygiene video and audio tape presentations
- 6.9.4.3.4 Dental or dental hygiene mail-in courses
- 6.9.4.3.5 Dental or dental hygiene courses presented on the Internet
- 6.9.4.3.6 Dental or dental hygiene lectures and courses presented via electronic media including computer disks

Where CPE credits are not specified, one (1) hour of CPE credit will be given for each hour of scientific session attended.

The final approval of acceptable dental hygiene CPE credits shall be made by the Board of Dental Examiners in consultation with the Dental Hygiene Advisory Committee.

#### 6.10 Special Provisions

6.10.1 A dental hygienist, employed as a faculty member in a recognized school of dentistry, dental hygiene or dental assisting, will be allowed not more than five (5) hours credit for teaching per year.

6.10.2 A dental hygienist presenting a CPE course shall be allowed the hours involved in preparation and presentation on a one-time-per-course basis for a maximum of five (5) credits for the two-year period.

6.10.3 Table clinics will be allowed one (1) hour of credit per hour of presentation for a maximum of two (2) hours.

6.10.4 Twelve (12) hours of credit shall be granted for a scientific article published in a component or state society journal. Twelve (12) hours of credit shall be allowed for a scientific article published in a national journal or for a published scientific textbook or a chapter therein.

6.10.5 A dental hygienist giving public education instruction in a school will receive credit up to one (1) hour per year.

6.10.6 Practice management or personal self-improvement courses shall be limited to five (5) hours for the two (2) year period.

6.10.6.1 Practice management, personal self-improvement and computer courses shall be limited to 2.5 hours a year for a total of five(5) hours for the two year period.

6.10.7 The Board reserves the right to approve any and all activities deemed appropriate for CPE credit. The Board also reserves the right and is the final word to disapprove any activities submitted for credit which it deems inappropriate.

6.10.8 All dental hygienists licensed to practice in Delaware shall be given written notice of these CPE requirements when receiving their initial license.

#### 6.11 Exceptions

6.11.1 An exception will be granted to any dental hygienist who can demonstrate to the Board an acceptable cause as to why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness, extended absence from the country, or the like.

6.11.2 An individual initially licensed by the Board within the last 2 years shall meet the following schedule of reporting CPE credits for license renewal:

6.11.2.1 If, as of March 1st of the year for license renewal, the licensee has been licensed for less than 1 year, zero hours of CPE is required for license renewal; for licensees who are 1 or more but less than 2 years from their initial licensure, one-half of the required CPE must be presented; for individuals 2 years or more from their initial licensure, the full CPE requirement must be presented for renewal.

#### 6.12 Failure to Comply

When the Board deems someone to be deficient in CPE requirements, the following procedure shall be followed:

6.12.1 The licensee for registration renewal shall be notified by the Division by certified mail that a deficiency exists. The deficiency shall be specifically described by the Division.

6.12.2 The licensee's registration will not be renewed until he/she submits proof that the described deficiency has been corrected. Upon submission of satisfactory proof of correcting said deficiency, a licensee shall be eligible for registration renewal.

#### 5 DE Reg. 1251 (12/01/01)

**\*Please Note: As the rest of the sections were not amended, they are not being published. The complete regulation is available at:**

**<http://www.state.de.us/research/AdminCode/title24/1100%20Board%20of%20Dental%20Examiners.shtml#TopOfPage>**

## DIVISION OF PROFESSIONAL REGULATION

2930 Council on Real Estate Appraisers  
Statutory Authority: 24 Delaware Code,  
Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))

### PUBLIC NOTICE

The Delaware Council on Real Estate Appraisers in accordance with 24 **Del.C.** §4006(a)(1) & (b) has proposed changes to its rules to implement HB 73 of the 143<sup>rd</sup> General Assembly. The qualifications for licensure specifically identify the criteria established by the Appraisal Qualifications Board of the Appraiser Subcommittee. Provisions are made for late renewal of license or certificate and for inactive status. The Council identified crimes substantially related to the practice of real estate appraisal.

A public hearing will be held at 10:00 a.m. on February 21, 2006 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from the Delaware Council on Real Estate Appraisers, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

The Council will consider promulgating the proposed rules at its regularly scheduled meeting following the public hearing.

### 1.0 Application for Appraiser License or Certificate

#### 1.1 Application

A person who wishes to file an application for a real property appraiser license or certificate may obtain the required form upon request to the Council. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, places of residence and employment, experience, education, and other information as may be necessary to identify the applicant and review the applicant's qualifications for licensure or certification.

#### 1.2 Filing and Fees

1.2.1 Properly completed applications together with the appropriate fee(s) must be received in the Council's office prior to scheduling the examination.

1.2.2 A processing fee set by the Division of Professional Regulation will be charged for the following:

1.2.2.1 Initial application and licensure for appraiser trainee license

1.2.2.2 Initial application and licensure for licensed real property appraiser license

1.2.2.3 Initial application and certification for certified residential real property appraiser certificate

1.2.2.4 Initial application and certification for certified general real property appraiser certificate

1.2.2.5 Renewal fee

1.2.2.6 Duplicate license and certificate fee

1.2.2.7 Roster fee

1.2.2.8 Federal Appraiser Registry fee

1.2.2.9 Letter of Good Standing

~~1.2.2.10 Copies of the Uniform Standards of Professional Appraisal Practice~~

1.2.3 Fees shall be made payable to the "State of Delaware," and mailed to the Delaware Council on Real Estate Appraisers, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. For further information, please contact the Administrative Assistant to the Council at (302) ~~739-4522~~ 744-4500.

**4 DE Reg. 1504 (3/1/01)**

### 2.0 Appraiser Licensing and Certification

2.1 Qualifications for Appraiser Licensure and Certification

~~2.1.1 Applicants for certification as a state certified general or residential real property appraiser shall satisfy the qualification requirements stated in 24 **Del.C.** §2936, which adopts by reference "Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, and any subsequent amendments thereto or any regulations promulgated thereunder" and "qualification criteria established by the Appraiser Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto." A summary of the criteria set by the Appraiser Qualification Board (AOB) is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from the AOB whose address and website are provided on the Supplement. The qualifications for licensure or certification shall be the criteria established by the Appraisal Qualifications Board (AOB) of The Appraisal Foundation for:~~

2.1.1.1 certified general real property appraiser;

2.1.1.2 certified residential real property appraiser;

2.1.1.3 licensed real property appraiser; and

2.1.1.4 trainee real property appraiser.

~~2.1.2 Applicants for licensure as a State licensed real property appraiser shall satisfy the qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto. A summary of the criteria set by the Appraiser Qualification Board (AOB) is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from the AOB whose address and website are provided on the Supplement.~~

~~2.1.3 Applicants for licensure as a state licensed appraiser trainee shall satisfy the qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto. A summary of the criteria set by the Appraiser Qualification Board (AOB) is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from the AOB whose address and website are provided on the Supplement~~

2.1.2 A summary of the criteria set by the AOB is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from The Appraisal Foundation, 1029 Vermont Avenue, NW, Suite 900 Washington, DE 20005-3517 or at [www.appraisalfoundation.org](http://www.appraisalfoundation.org).

2.1.3 Effective January 1, 2008 all applicants for certification or licensure must meet the 2008 qualifications criteria established by the AOB.

## 2.2 License and Certificate Renewal

2.2.1 In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensees and certificate holders. Certificates and licenses will expire on October 31st of each odd numbered year.

2.2.2 As a condition of renewal, all licensees and certificate holders, either resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.3 of this Section.

2.2.3 A licensee or certificate holder shall not perform appraisals after a license has expired. A licensee or certificate holder may renew a certificate or license within 12 months of its expiration. After 12 months, the individual must reapply as a new applicant.

2.2.4 A licensee or certificate holder may apply for inactive status for a period not to exceed 6 years if he or she is not performing appraisals in Delaware.

2.2.4.1 Persons with in an inactive license or certificate must complete the same continuing education requirement as active licensees or certificate holders. Evidence of completion is due at renewal as provide in Rule 2.3.

2.2.4.2 An inactive license or certificate can be reactivated by notifying the Council in writing.

## 2.3 Continuing Education

2.3.1 As a prerequisite to renewal, all licensees and certificate holders are required to present evidence of continuing education satisfactory to the Council according to the following schedule:

2.3.1.1 no continuing education is required for fewer than 12 months of licensure required;

2.3.1.2 fourteen (14) hours of continuing education are required after at least 12 months but fewer than 24 months of licensure; and

2.3.1.3 twenty-eight (28) hours of continuing education are required after 24 months of licensure.

2.3.2 ~~As a prerequisite to renewal of all licensees and certificate holders, a seminar dealing with updating of Uniform Standards of Professional Appraisal Practice (USPAP) or a seminar dealing with USPAP shall be required in each license period. A minimum of four (4) hours will be required. The seminars must be approved by the Council. This provision will be superseded by the 7-hour National SUSPAP Update Course which will be required for any renewal after October 31, 2003. All licensees and certificate holders, except as provided in 2.3.1.1, must complete as a condition of each renewal:~~

2.3.2.1 the seven (7) hour National USPAP Update Course and

2.3.2.2 a two (2) hour course on Delaware Law, Rules and Regulations

2.3.3 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:

2.3.3.1 Influences on real estate value

2.3.3.2 Legal consideration of appraisal

2.3.3.3 Types of value

2.3.3.4 Real estate markets and analysis

2.3.3.5 Valuation process

2.3.3.6 Property description

2.3.3.7 Highest and best use

2.3.3.8 Appraisal math & statistics

2.3.3.9 Sales comparison approach

2.3.3.10 Site value

2.3.3.11 Cost approach

2.3.3.12 Income approach

expenses

2.3.3.12.1 Estimation of income and

2.3.3.12.2 Operating statement ratios

2.3.3.12.3 Direct capitalization

2.3.3.12.4 Cash flow estimates

2.3.3.12.5 Measures of cash flow

2.3.3.12.6 Discounted cash flow

analysis

2.3.3.12.7 Gross rent multiplier

analysis

2.3.3.13 Valuation of partial interests

2.3.3.14 Appraisal standards and ethics

2.3.3.15 Narrative report writing

2.3.3.16 Appraisal Statistical concepts

2.3.3.17 Ad valorem taxation

2.3.3.18 Arbitration

2.3.3.19 Business courses related to real

estate appraisal

2.3.3.20 Development cost estimating

2.3.3.21 Ethics and standards of

professional practice

2.3.3.22 Land use planning, zoning and

taxation

2.3.3.23 Management, leasing, brokerage,

timesharing

2.3.3.24 Property development

2.3.3.25 Real estate appraisal (valuations/

evaluations)

2.3.3.26 Real estate financing and

investment

2.3.3.27 Real estate law

2.3.3.28 Real estate litigation

2.3.3.29 Real estate appraisal related

computer applications

2.3.3.30 Real estate securities and

syndication

2.3.3.31 Real property exchange

2.3.3.32 Delaware law and regulations

2.3.4 Continuing education credit, up to 14 hours per licensure cycle, may also be granted for participation, other than as a student, in:

2.3.4.1 Teaching, including preparation time up to the number of hours spent teaching, for example, a 3 hour class can be submitted for 6 hours if the preparation time was at least 3 hours.

2.3.4.2 Program development

2.3.4.3 Authorship of textbooks

2.3.5 Field trips, conferences, and trade association meetings, excluding travel time, that relate to real estate appraisal may qualify but for no more than either (8) hours per licensure period.

2.3.6 A creditable hour is defined as fifty minutes out of each sixty minute segment. The educational offering must be at least two hours.

2.3.7 Distance learning courses may be approved by Council for content as long as the provider fulfils one of the following requirements:

2.3.7.1 The course is presented in an instructional setting with a person qualified to answer questions, provide information, and monitor attendance; or

2.3.7.2 The course is offered by an accredited college or university that offers distance learning in other disciplines or by an institution approved by the American Council on Education's program on Non-collegiate Sponsored Instruction. The student must successfully complete a written examination. If the examination is not required for accreditation, the student must complete the course mechanisms that demonstrate mastery and fluency; or

2.3.7.3 The course has been certified for delivery and design by the International Distance Educations Certification Center (IDEC).

2.3.8 Educational offerings that have documented approval by the AQB or another state are automatically approved when they are submitted to the Council with a certificate of attendance. In cases where the educational offering has not been approved by the AQB or another state, either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.

#### 2.4 Duplicate License or Certificate Fee

2.4.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. ~~An official certified~~ copy (notarized) of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.

#### 2.5 Federal Appraiser Registry

Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid biennially by the license or certificate holder to the State of Delaware.

**4 DE Reg. 1504 (3/1/01)**

**6 DE Reg. 1668 (6/1/03)**

**3.0 Examination****3.1 Examination**

3.1.1 The Council shall review each application to determine whether the applicant is qualified under 24 Del.C. §4008 to sit for the examination. ~~Such review shall consider the applicant's education and whether the applicant has been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application. If the applicant meets the education requirement for the license or certificate applied for and has not been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application, the applicant shall be entitled to take the appropriate examination.~~

3.1.2 Applicants for licensure as a state licensed real property appraiser and for certification as a state certified residential or general real property appraiser shall successfully complete the examination as endorsed by the AQB and approved by the Council on Real Estate Appraisers. ~~The prerequisites to sit for the applicable examination are completion of the education/classroom hour requirement and not having been convicted of a felony, substance abuse or fraud within the five years preceding the date of the application.~~

3.1.3 The passing scores on the examinations shall be the scores recommended as passing by Assessment Systems, Inc., the successor agency or company then contracted by the Division of Professional Regulation for administering the examination as endorsed by the Council on Real Estate Appraisers.

**4 DE Reg. 1504 (3/1/01)****4.0 General Appraisal Practice****4.1 Administrative Responsibilities**

4.1.1 A State licensed real property appraiser shall utilize the term "State licensed real property appraiser"; a State certified residential real property appraiser shall utilize the term "State certified residential real property appraiser"; and a State certified general real property appraiser shall utilize the term "State certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A State licensed appraiser trainee shall use the term "State licensed appraiser trainee" or "appraiser trainee" and shall only co-sign appraisals along with a State licensed or State certified real property appraiser. Approved abbreviations are as follows:

DE Cert Gen followed by the certification number,

DE Cert Res followed by the certification number,

DE Lic Appr followed by the license number,

DE Appr Trainee followed by the license number.

4.1.2 The real property appraiser license or certificate of a State licensed or State certified real property appraiser shall be prominently displayed at the appraiser's place of business.

4.1.3 The biennial license or certificate renewal pocket card issued by the Council to each State licensed or State certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

4.1.4 When advertising or otherwise holding himself/herself out as a real property appraiser, a State licensed real property appraiser shall identify himself/herself as a "State licensed real property appraiser." A State certified residential real property appraiser shall identify himself/herself as a "State certified residential real property appraiser". A State certified general real property appraiser shall identify himself/herself as a "State certified general real property appraiser." A State licensed real estate appraisal trainee shall identify himself/herself as a "State licensed real estate appraiser trainee."

4.1.5 Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity. ~~A State licensed or State certified real property appraiser doing business as a partnership, association, corporation, or other business entity shall not represent in any manner to the public that the partnership, association, corporation, or other business entity is either licensed or certified by the State of Delaware to engage in the business of real estate appraising.~~

4.1.6 All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, or trade name within ten (10) days of said change. The address shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder.

4.1.7 Each written appraisal report prepared by or under the direction of a State licensed or State certified real property appraiser shall bear the signature of the State licensed or State certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the appropriate title such as ~~"State licensed appraiser trainee"~~ (as co-signer only), "State licensed real property appraiser," "State certified residential real property appraiser," or the designation "State certified general real property appraiser," or the approved abbreviations as specified in Rule 4.1.1. Said certified or licensed appraiser shall be fully responsible for the content of the report prepared under his or her direction. Where

applicable, each appraisal report shall also indicate whether or not the State licensed or State certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

4.1.8 Each State certified or State licensed appraiser shall be responsible for the proper maintenance and retention of the appraisal records.

#### 4.2 Responsibilities of Supervisors of State Licensed Trainees

4.2.1 A state licensed appraiser trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that he/she is actively and personally supervised by a state certified or licensed real property appraiser, provided that the appraisal report is reviewed and signed by the state certified or licensed real property appraiser, and provided that the licensed or certified appraiser accepts total responsibility for the appraisal report. An appraiser trainee is permitted to have more than one supervising appraiser.

4.2.2 A state licensed or state certified real property appraiser may employ a person(s) as a state licensed appraiser trainee(s) to assist in the performance of real estate appraisals, provided that the state licensed or state certified real property appraiser:

4.2.2.1 Provides direct supervision of the state licensed appraiser trainee as defined in the Uniform Standards of Professional Appraisal Practice (USPAP); "Direct Supervision" means to:

4.2.2.1.1 personally inspect with the trainee the interior and exterior of each property appraised;

4.2.2.1.2 personally review each appraisal report prepared by the trainee;

4.2.2.1.3 accept full responsibility for the report;

4.2.2.1.4 assign work to the trainee only if the trainee is competent to perform such work; and

4.2.2.1.5 approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements;

4.2.2.2 Reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a state licensed appraiser trainee is utilized;

4.2.2.3 Complies with all provisions of 4.1.7 regarding appraisal reports;

4.2.2.4 Reviews and approves ~~an~~ a trainee's experience log maintained pursuant to 4.3.2.2. The supervisor shall make available to the trainee a copy of any appraisal report that the trainee signed assisted in preparing that is requested for review by the Council;

4.2.2.5 Supervises no more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.2.3. Beginning January 1, 2008, a supervising appraiser shall not supervise more than three trainees at one time regardless of their status concerning exemption;

4.2.2.6 Signs an affidavit affirming that he/she is a State licensed or certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers; and

4.2.2.7 Immediately advises the Council in writing when the certified or licensed appraiser is no longer supervising the trainee. The writing shall include the last known address of the appraiser trainee along with a copy of the letter from the supervisor to the trainee advising the trainee that his/her employment has been terminated or the letter of resignation from the trainee to the supervisor, whichever is applicable.

4.2.3 After the trainee ~~successfully completes seventy-five (75) hours of education on real estate matters satisfactory to the Council, and~~ has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule 4.2.2.1.1, provided the trainee is competent to perform the inspection.

4.2.4 Beginning January 1, 2008, any person who has been subject to disciplinary action within the preceding two years that affects the supervisor's legal eligibility to engage in appraisal practice shall not be eligible to supervise trainees.

#### 4.3 Responsibilities of State Licensed Appraiser Trainees

4.3.1 All appraiser trainees must be licensed as required under 24 ~~Del.C. Ch. 29~~ 40.

4.3.2 A State licensed trainee may assist in the performance of real estate appraisals provided that:

4.3.2.1 The trainee shall only work under the direct supervision of one or more State licensed or state certified real property appraiser(s); an individual who is no longer supervised shall not engage in the act of appraising until a new license is issued showing a new supervisor;

4.3.2.2 The trainee shall maintain an appraisal experience log on a form provided by the Council and certified by the supervising appraiser;

4.3.2.3 The trainee shall inspect the property and participate in the appraisal process in order to ~~sign the~~

appraisal and to receive experience credit for the hours spent. The appraisal shall be signed by the trainee as follows:

Assisted by: \_\_\_\_\_, Trainee  
Name: \_\_\_\_\_  
License Number: \_\_\_\_\_

The trainee shall place on the "other" line in the signature section of the appraisal forms, his or her license # and the title "appraiser Trainee" in the appropriate places. For example:

"or other (describe) **Appraiser Trainee** State# **X4-xxx**"

4.3.2.4 The trainee shall ensure that the log is available at all times for inspection by the Council; and

4.3.2.5 When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.

**4 DE Reg. 1504 (3/1/01)**

## **5.0 Temporary Practice and Reciprocity**

### 5.1 Temporary Practice

The ~~Council~~ Division of Professional Regulation may grant temporary licensing or certification privileges to an appraiser licensed or certified in another state in accordance with ~~24 Del.C. §2935(a)~~ 24 Del.C. §4010.

### 5.2 Reciprocity

The Council may grant a reciprocal license in accordance with ~~24 Del.C. §2935(b)~~ §4011 to applicants certified or licensed in another state whose requirements for certification or licensure are substantially equivalent similar to the State of Delaware ~~without being registered with and duly licensed or certified by the Council on Real Estate Appraisers~~.

## **6.0 Guidelines for Qualifying Mass Appraisal Experience**

### 6.1 Qualifying Mass Appraisal Experience

6.1.1 ~~The Delaware Council on Real Estate Appraisers ("Council") has developed an application for ad valorem tax assessors to apply mass appraisal experience toward licensure or certification. The application is different from the application for independent fee appraisers, and, therefore, the Council has prepared this document as supplemental explanation of the mass appraisal experience guidelines set forth in the Tax Assessor's Application for Real Estate Appraiser License or Certificate. The State of Delaware under 24 Del.C. §2934(e), sets forth specifically:~~

~~"(e) The Council on Real Estate Appraisers is required to include in its regulations educational experience and testing requirements for licensure and certification of real estate appraisers that ensure protection of the public interest. Educational experience and testing requirements for certified and licensed appraisers must specifically meet the criteria established under Title XI of the Financial Institutions Reform Recovery Act of 1989, public Law 101-73, and any subsequent amendments thereto or any regulations promulgated thereunder. (67 Del. Laws, C. 381 ss1; 68 Del. Laws, c. 140, ss 5-7, 15.)"~~

~~6.1.2 Further, The Appraiser Qualifications Board of the Appraisal Foundation has issued as additional explanation "Interpretations/Clarifications" to accompany the qualifying criteria for appraiser licensure and certification, which specifically sets forth:~~

~~"Experience credit should be awarded to ad valorem appraisers who demonstrate that they (1) use techniques similar to those used by appraisers to value properties and (2) effectively use the appraisal process."~~

~~Qualifying mass appraisal experience must conform to USPAP Standard 6. Credit will be given for experience that demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.~~

~~6.1.3 2 Components of the mass appraisal process that should be given credit are highest and best use analysis, model specification (developing the model), and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, shall not be eligible for experience credit.~~

~~6.1.4 3 Mass appraisals shall be performed in accordance with USPAP Standard 6." In order to evaluate the experience qualifications of ad valorem tax assessors with mass appraisal experience, the Council will review such applications considering the above - mentioned criteria, and shall review work samples for compliance with USPAP Standard 6. It is important to note that any individual appraisal reports prepared in conformity with USPAP Standards 1 and 2 are fully creditable as appraisal experience using the hourly scheme set forth in the category for Full Appraisals in the Real Property Tax Assessor's Application for Real Estate Appraiser License or Certificate. Such reports are often prepared by ad valorem appraisers for defense of value work. Ad valorem appraisers are encouraged to apply for experience credit for full appraisals as well as for mass appraisal experience. An hour of experience is defined as actual verifiable time spent performing tasks in accordance with the Council Rules and Regulations. USPAP Standard 6 sets forth in detail the required work and the reporting of that work for ad valorem~~

tax purposes. Unlike the fee appraiser who prepares and signs a report for each value estimate, the ad valorem appraiser typically prepares analyses and reports that support the appraisals for groups of properties. These efforts are focused on the specification and calibration of models (validation schedules) for these groups of properties.

~~6.1.5 Mass appraisal experience hours are awarded for completing appraisals pursuant to the USPAP Standard 6. Currently, a minimum of 2,000 hours is required for all applicants for licensure, a minimum of 2,500 hours is required for all applicants for certified residential, and a minimum of 3,000 hours is required for all applicants for certified general, of which a minimum of 1,000 hours must be obtained in non-residential valuation if applying for the General Certification. The State of Delaware has the same qualification criteria as published by the Appraiser Qualifications Board of the Appraisal Foundation.~~

~~6.1.6.4 As stated in the Real Property Tax Assessor's Application for Real Estate Appraiser License or Certificate, a~~ Applicants seeking mass appraisal experience credit must demonstrate their experience using one of the following options:

~~6.1.6.4.1~~ Develop the mass appraisal system (model specification and calibration that includes highest and best use analysis) or;

~~6.1.6.2 4.2~~ Adjust an existing mass appraisal system to local market conditions (model calibration that includes highest and best use analysis).

6.1.7.5 Data collection for purposes of mass appraisal, defined as the on-site collection of property characteristics, is not by itself creditable as appraisal experience. However, as part of mass appraisal model specification and/or calibration, the applicant accepts responsibility for the accuracy of market (sales) data used to develop and/or calibrate the models. Therefore, it is important that the applicant have a working familiarity with the range of properties in the sales sample and thus creditable experience is allowed for sales verification work in conjunction with the mass appraisal model specification/calibration process.

6.1.8.6 The applicant must have a documented data collection manual that specifies how each property characteristic was measured. For each property characteristic that influences the final value for any property, a complete specification of the variable must be available in the mass appraisal model (schedule) documentation. This documentation must detail how each property characteristic influences value and it must provide a basis in terms of market evidence for using these characteristics.

6.1.9.7 If the applicant is using an existing mass appraisal system, either mass appraisal vendor supplied or a

commercial cost service, documentation must exist which supports how the valuation system was calibrated to local market conditions. If the cost approach is used, documentation must exist which illustrates the extraction of depreciation schedules from local market analysis.

6.1.408 If the applicant develops the mass appraisal model (schedule) specification, evidence derived directly from the local market must be available that supports the use of each property characteristic. For property characteristics included in the model that have a marginal influence on value (items generally included for public relations purposes), such items should be specifically identified and their contribution to value detailed.

6.2 Mass Appraisal Experience Log

6.2.1 Applicants seeking mass appraisal experience credit must complete the Mass Appraisal Experience Log on a form approved by the Council.

**4 DE Reg. 1504 (3/1/01)**

## 7.0 Standards of Appraisal Practice

7.1 Appraisal Standards

7.1.1 In performing the acts and services of a state licensed or state certified real property appraiser, every appraiser trainee, state licensed and state certified real property appraiser shall comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" (USPAP) and any subsequent amendments thereto, promulgated by the Appraisal Standards Board of the Appraisal Foundation or its successor organization, which standards are hereby adopted by reference.

7.1.2 Copies of the "Uniform Standards of Professional Appraisal Practice" are available ~~upon request to The Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900 Washington, D.C. 20005-3517 and are made available by the Council from time to time.~~ from The Appraisal Foundation, Distribution Center, P.O. Box 381, Annapolis Junction, MD 20701-09381. An electronic version is available from the Foundation Store at the website of The Appraisal Foundation at [www.Appraisalfoundation.org](http://www.Appraisalfoundation.org).

## 8.0 Complaints and Hearing Procedures

8.1 Complaints

The Council incorporates by reference the procedures for investigation of complaints by the Division of Professional Regulation as set forth in 29 **Del.C.** §8807.

8.2 Hearing Procedures

8.2.1 All hearings shall be in accordance with the Administrative Procedures Act, 29 **Del.C.** §§10121-10129.

**4 DE Reg. 1504 (3/1/01)****9.0 Public Disclosure**

## 9.1 Public Notice

9.1.1 All meetings shall be convened in compliance with the Freedom of Information Act (FOIA) in 29 **Del.C.** Ch. 100.

## 9.2 Meeting Minutes

Minutes shall be kept of all meetings in accordance with the Freedom of Information Act.

9.2.1 Said minutes shall include a record of those present.

9.2.2 The minutes shall also include a record by individual members, on each vote taken, as well as any action agreed upon.

9.2.3 It shall be the responsibility of the Council's Administrative Assistant to prepare said minutes and keep a copy on file with the Division of Professional Regulation.

## 9.3 Council Records

9.3.1 It shall be the responsibility of the Council's Administrative Assistant Division of Professional Regulation to maintain the Council's records and to make then accessible to the general public.

9.3.2 ~~No citizen of the State of Delaware person~~ shall be denied reasonable access to the public records of the Council. Copies of records may be obtained from the Administrative Assistant at a cost per page as established by the Division.

9.3.3 ~~The Council shall not be obligated to disclose to the general public any matter which intrudes upon an individual's personal or private affairs which is not a public record in which the public has not legitimate interest. Records will be open to the public in reference to as provided in the Freedom of Information Act.~~

**4 DE Reg. 1504 (3/1/01)****10.0 Change and Modification to Rules and Regulations**

10.1 The Council may, change or modify these Rules and Regulations as provided in 29 **Del.C.** §§10111-10119.

**4 DE Reg. 1504 (3/1/01)****11.0 Severability**

~~11.1 If any part of these rules and regulations is held invalid, unconstitutional or otherwise contrary to law, then it shall be severable and the remaining portions hereof shall remain and continue in full force and effect.~~

~~**4 DE Reg. 1504 (3/1/01)**~~**Crimes Substantially Related to the Practice of Real Estate Appraisal.**

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of real estate appraisal in the State of Delaware without regard to the place of conviction:

11.1.1 Murder in the second degree; class A felony. 11 **Del.C.** §635

11.1.2 Murder in the first degree; class A felony. 11 **Del.C.** §636

11.1.3 Unlawful sexual contact in the third degree; class A misdemeanor. 11 **Del.C.** §767

11.1.4 Unlawful sexual contact in the second degree; class G felony. 11 **Del.C.** §768

11.1.5 Unlawful sexual contact in the first degree; class F Felony. 11 **Del.C.** §769

11.1.6 Rape in the fourth degree; class C felony. 11 **Del.C.** §770

11.1.7 Rape in the third degree; class B felony. 11 **Del.C.** §771

11.1.8 Rape in the second degree; class B felony. 11 **Del.C.** §772

11.1.9 Rape in the first degree; class A felony. 11 **Del.C.** §773

11.1.10 Continuous sexual abuse of a child; class B felony. 11 **Del.C.** §778

11.1.11 Dangerous crimes against a child. 11 **Del.C.** §779

11.1.12 Burglary in the third degree; class F felony. 11 **Del.C.** §824

11.1.13 Burglary in the second degree; class D felony. 11 **Del.C.** §825

11.1.14 Burglary in the first degree; class C felony. 11 **Del.C.** §826

11.1.15 Robbery in the second degree; class E felony. 11 **Del.C.** §831

11.1.16 Robbery in the first degree. 11 **Del.C.** §832

11.1.17 Theft; class G felony; class A misdemeanor. 11 **Del.C.** §841

11.1.18 Theft; lost or mislaid property; mistaken delivery. 11 **Del.C.** §842

11.1.19 Theft; false pretense. 11 **Del.C.** §843

11.1.20 Theft; false promise. 11 **Del.C.** §844

11.1.21 Theft of services. 11 **Del.C.** §845

11.1.22 Identity theft; class E felony; class D felony. 11 **Del.C.** §854

11.1.23 Endangering the welfare of a child; class E or G felony. 11 **Del.C.** §1102

11.1.24 Sexual exploitation of a child; class B felony. 11 Del.C. §1108

11.1.25 Unlawfully dealing in child pornography; class D felony. 11 Del.C. §1109

11.1.26 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112

11.1.27 Sexual solicitation of a child; class C felony. 11 Del.C. §1112A

11.1.28 Bribery; class E felony. 11 Del.C. §1201

11.1.29 Receiving a bribe; class E felony. 11 Del.C. §1203

11.1.30 Perjury in the second degree; class F felony. 11 Del.C. §1222

11.1.31 Perjury in the first degree; class D felony. 11 Del.C. §1223

11.1.32 Making a false written statement; class A misdemeanor. 11 Del.C. §1233

11.1.33 Possession of a deadly weapon during commission of a felony; class B felony. 11 Del.C. §1447

11.1.34 Possession of a firearm during commission of a felony; class B felony. 11 Del.C. §1447A

11.2 Crimes substantially related to the practice of appraisal shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

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

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

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

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

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

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

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

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

12.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Council or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Council or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such

person making such report will not be liable when such reports are made in good faith and without malice.

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

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

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

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

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

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

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

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

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

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

**4 DE Reg. 1504 (3/1/01)**

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**PUBLIC SERVICE COMMISSION**

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

**NOTICE OF PROPOSED RULE-MAKING AND  
PUBLIC HEARING CONCERNING RENEWABLE  
ENERGY PORTFOLIO STANDARDS**

IN THE MATTER OF THE	
ADOPTION OF THE RULES	
TO IMPLEMENT THE	PSC
RENEWABLE ENERGY	REGULATION
PORTFOLIO STANDARDS ACT, 26	DOCKET NO. 56
REGULATION DOCKET NO. 56	
DEL.C. §§ 351 - 363, AS APPLIED	
TO RETAIL ELECTRICITY	
SUPPLIERS (OPENED	
AUGUST 23, 2005)	

On July 12, 2005, the Delaware General Assembly enacted legislation finding that "the benefit of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers share an obligation to develop a minimum level of [renewable energy] resources in the electric supply portfolio of [Delaware]." The General Assembly further stated that its purpose in enacting this legislation is to establish a market in

Delaware for electricity from renewable resources, and to lower the cost of such electricity to Delaware consumers. To this end, the General Assembly directed the Delaware Public Service Commission (the "Commission") to adopt rules and regulations governing the implementation of Renewable Energy Portfolio Standards, and further directed the Commission to promulgate such rules and regulations by July 31, 2006.

In connection with the authority given to it, the Commission now proposed to adopt new rules and regulations to govern the Renewable Energy Portfolio Standards obligations of electric suppliers. The text of the Rules proposed to be adopted is set forth as Exhibit "B" to PSC Order No. 6793 (Dec. 6, 2005). Such proposed Rules will be published in the January 2006 volume of the *Delaware Register of Regulations*. In summary form:

The first section of the Rules contains definitions of the terms used in the regulations.

The second section addresses the purpose and scope of the regulations, and identifies the entities which will be subject to the regulations. That section further identifies the steps that must be taken for certain entities to be exempt from the regulations.

The third section sets forth proposed regulations regarding the Commission's administration of the standards including, certifying eligible energy resources; ensuring compliance with the renewable energy standards (beginning with a cumulative minimum percentage of electricity generated by renewable energy resources of 1% in 2007 and reaching a 10% cumulative level in 2019); and verifying compliance with the renewable energy standards.

The fourth section of the regulations addresses an electricity supplier's recovery of costs incurred in complying with the renewable energy standards.

The final section of the regulation addresses the Freedom of Information Act, the persons who may file a complaint, and the penalties for failure to comply with the rules and regulations.

The Commission has authority to promulgate such regulations pursuant to 26 **Del.C.** §§353 and 362.

The Commission hereby solicits written comments, suggestions, compilations of data, briefs or other written materials concerning the proposed rules and regulations. Anyone desiring to submit written comments, suggestions, data compilations, briefs or other written materials shall file ten (10) copies of such materials with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904. **All such materials shall be filed with the Commission on or before February 2, 2006.** Persons who wish to participate in the proceedings but who do not wish to submit written materials are asked to

send a letter to the Commission informing the Commission of their intention to participate on or before **February 2, 2006.**

In addition, the Commission will conduct a public hearing concerning the proposed rules and regulations on **February 14, 2006, beginning at 10:00 A.M. at the Commission's Dover office, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904.** Interested persons may present comments, evidence, testimony and other materials at that public hearing.

The proposed rules and regulations and all materials submitted in connection with this docket will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The proposed rules and regulations may also be reviewed at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4<sup>th</sup> Floor, 820 N. French Street, Wilmington, DE 19801, during normal business hours by appointment. Finally, the proposed rules and regulations will be available for review on the Commission's website located at [www.state.de.us/delpsc](http://www.state.de.us/delpsc).

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing, by telephone or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries may also be sent via Internet e-mail to [david.bloom@state.de.us](mailto:david.bloom@state.de.us).

## ORDER NO. 6793

**AND NOW**, this 6<sup>th</sup> day of December, A.D., 2005;

**WHEREAS**, on July 12, 2005, the General Assembly of the State of Delaware amended Chapter 1, Title 26 of the **Delaware Code** (the "Public Utilities Act") to add a new subchapter III-A titled "Renewable Energy Portfolio Standards," in which the General Assembly found that:

The benefits of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electricity supply portfolio of [Delaware].

...

**WHEREAS**, the General Assembly stated its purpose in amending the Public Utilities Act was “to establish a market for electricity from [renewable energy resources] in Delaware, and to lower the cost to consumers of electricity from these resources;” and

**WHEREAS**, the amended Public Utilities Act directs each retail supplier of energy in Delaware to demonstrate annually that it has accumulated a certain level of “renewable energy credits” keyed to a percentage of each supplier’s adjusted retail load, which percentage increases each year; and

**WHEREAS**, the General Assembly invested this Commission with the authority to “determine, verify and assure compliance with” Renewable Energy Portfolio Standards established pursuant to Subchapter III-A; and

**WHEREAS**, the General Assembly further directed this Commission to “adopt rules and regulations necessary to implement the provisions of this Act no later than July 31, 2006;” and

**WHEREAS**, by PSC Order No. 6697 (Aug. 23, 2005), the Commission opened Regulation Docket No. 56, and directed its Staff to conduct informal public workshops in which Staff would obtain interested parties’ views on the meaning of the amended Public Utilities Act and be informed of possible scenarios for efficient implementation of the various requirements of the amended Public Utilities Act; and

**WHEREAS**, pursuant to Order No. 6697, a Notice of Initiation of Docket and Proceedings to Implement the Renewable Energy Standards Act was published, in which potential participants were instructed on how to notify the Commission of their desire to receive notice of the workshops; and

**WHEREAS**, in compliance with that Order, Commission Staff conducted several workshops in September and October 2005 to discuss the Renewable Energy Portfolio Standards regime; and

**WHEREAS**, as a result of those workshops and after consideration of all input from the various interested parties, and in compliance with Order No. 6697, Staff has produced a final draft of the proposed rules and regulations for consideration by the Commission, a copy of which is attached as “Exhibit B” hereto; and

**WHEREAS**, the Commission believes that the proposed revised rules and regulations should be published in the *Delaware Register of Regulations* providing public notice of the revised rulemaking to develop final rules and regulations and to appoint a Hearing Examiner to oversee the process;

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

1. Pursuant to 26 **Del.C.** §§353 & 362, the Commission proposes to promulgate the *Rules and Procedures to Implement the Renewable Energy Portfolio Standard* (“Rules”), attached hereto as Exhibit “B.”

2. That the Secretary shall transmit to the Registrar of Regulations for publication in the next issue of the *Delaware Register* a copy of this Order with the proposed Rules attached hereto as Exhibit “B” and the Public Notice attached as Exhibit “A.”

3. That the Secretary of the Commission shall cause the notice attached hereto as Exhibit “A” to be published in *The News Journal* and *Delaware State News* newspapers on or before January 2, 2005. The Secretary shall also mail a copy of this Order with the proposed Rules to: all persons who participated in prior workshops in this matter; and (b) all persons or entities who have made a written request for advance notice of the Commission’s rule-making proceedings.

4. Pursuant to 26 **Del.C.** §502 and 29 **Del.C.** §10116, William F. O’Brien is designated as Hearing Examiner in this matter and is authorized to organize, classify, and summarize all materials, evidence, and testimony filed in this docket, to conduct the public hearing contemplated under the attached notice, and to therefore file a Report with proposed findings and recommendations concerning the proposed Rules on the basis of the materials, evidence, and testimony submitted. Hearing Examiner O’Brien is specifically authorized, in his discretion, to solicit additional comment and to conduct, on due notice, such additional public hearing(s) as may be required to develop further materials and evidence concerning the proposed Rules or any suggested amendments thereto.

5. That James McC. Geddes, Esquire, will continue as Rate Counsel in this matter.

6. That electric suppliers are notified that they may be charged for the cost of this proceeding pursuant to the provisions of 26 **Del.C.** §§ 14 and 1012(c)(2).

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair  
Joann T. Conaway, Commissioner  
Jeffrey J. Clark, Commissioner  
Jaymes B. Lester, Commissioner  
Dallas Winslow, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

## EXHIBIT "B"

**Delaware Public Service Commission Rules and  
Procedures to Implement the Renewable Energy  
Portfolio Standard**

Effective: \_\_\_\_\_

**1.0 Definitions**

1.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

**"Alternative Compliance Payment"** ("ACP") means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Section 3.3.4 of this Regulation.

**"DNREC"** means Delaware Department of Natural Resources and Environmental Control.

**"Commission"** means the Delaware Public Service Commission.

**"Compliance Year"** means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this Regulation.

**"Customer-Sited Generation"** means a Generation Unit that is interconnected on the End-Use Customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the End-Use Customer.

**"Eligible Energy Resources"** means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

- Solar energy technologies that employ solar radiation to produce electricity;
- Electricity derived from wind energy;
- Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;
- Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;
- Electricity generated by a fuel cell powered by Renewable Fuels;
- Electricity generated by the combustion of gas from the anaerobic digestion of organic material;
- Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet

appropriate environmental standards as determined by DNREC (see DNREC Regulation \_\_\_\_\_);

- Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation \_\_\_\_\_);
- Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:
- Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;
- Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and
- Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

**"End-Use Customer"** means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

**"Fund"** means the Delaware Green Energy Fund.

**"GATS"** means the Generation Attribute Tracking System developed by PJM-Environmental Information Services, Inc. (PJM-EIS).

**"Generation Attribute"** means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.

**"Generation Unit"** means a facility that converts a fuel or an energy resource into electrical energy.

**"Industrial Customer"** means an End-Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

**"Municipal Electric Company"** means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the **Delaware Code** and the electric utilities that are municipally owned within the State of Delaware.

**“New Renewable Generation Resources”** means Eligible Energy Resources first going into commercial operation after December 31, 1997.

**“Peak Demand”** shall have the same meaning as and be determined consistently with how such term or a similar term is defined and determined in the applicable utility's tariff then in effect and approved by the Commission. For customers with more than one account, the peak demands shall be aggregated for all accounts. The calculation will be applied in the current year based on the Peak Demand, as defined above, in the prior year.

**“PJM” or “PJM Interconnection”** means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

**“PJM region”** means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.

**“Renewable Energy Credit” (“REC”)** means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

**“Renewable fuel”** means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

**“RPS” and “Renewable Energy Portfolio Standard”** means the percentage of electricity sales at retail in the State that is to be derived from Eligible Energy Resources.

**“Retail Electricity Product”** means an electrical energy offering that is distinguished by its Generation Attributes and that is offered for sale by a Retail Electricity Supplier to End-Use Customers.

**“Retail Electricity Supplier”** means a person or entity that sells electrical energy to End-Use Customers in Delaware, including, but not limited to, non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End-Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this Regulation.

**“Rural Electric Cooperative”** means a non-stock, non-profit, membership corporation organized pursuant to the Federal “Rural Electrification Act of 1936” and operated under the cooperative form of ownership.

**“Total Retail Sales”** means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

## **2.0 Purpose and Scope**

**2.1** The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electric supply portfolio of the State. The purpose of this Regulation, in support of 26 Del.C., §351 – 363, is to set forth the rules for governing the RPS.

**2.2** This regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

**2.2.1** An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have their load exempt from this Regulation provided that they meet the definitions found in Section 1.1 and:

**2.2.1.1** submit a notice to the Commission's Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code and load for each account to the Commission Staff and;

**2.2.1.2** submit the same notice referenced in Section 2.2.1.1 of this Regulation to their Retail Electric Supplier.

**2.2.2** For an End-Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility's service territory and served by a single Retail Electricity Supplier, to have their load exempt, the aggregate of their accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and they follow the procedure found in Section 2.2.1.

**2.3** Any Rural Electric Cooperative that is opted-out of Commission regulation by its membership pursuant to 26 Del.C. §223 of the Delaware Code shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.

**2.4** A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation provided that, on or before June 1, 2006, they:

**2.4.1** submit a written notice to the Delaware General Assembly;

**2.4.2** submit a written notice to the Commission;

## PROPOSED REGULATIONS

2.4.3 alert their End-Use Customers with notices inserted in two (2) consecutive electricity bills;

2.4.4 offer their End-Use Customers a voluntary program for purchasing renewable energy under competitive rates; and

2.4.5 either contribute to the Delaware Green Energy Fund at levels commensurate with other Retail Electricity Suppliers or create an independent fund separate from the Delaware Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which they make payments of \$0.178 for each megawatt-hour they sell, transmit, or distribute in the State.

### **3.0 Administration of RPS**

#### 3.1 Certifying Eligible Energy Resources:

3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.

3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.

3.1.3 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in their Application within 30 days of receipt. The applicant will have the opportunity to revise their submission, if appropriate.

3.1.4 If Commission Staff finds the Generation Unit to be in compliance with Sections 1.0 and 3.0 of this Regulation, as well as any other applicable Delaware statute; Commission Staff will issue a State of Delaware Certification Number.

3.1.5 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.

3.1.6 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) Renewable Energy Credit (REC) for each mega-watt hour of energy derived from Eligible Energy Resources. RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.

3.1.6.1 However, if in the future, the Commission finds that PJM-EIS's GATS is not applicable or

not suited to meet the needs or requirements of the RPS, the Commission may establish or participate in another renewable energy tracking system.

3.1.7 RECs created by Eligible Energy Resources on or after June 1, 2006 shall be valid to meet retail electricity supplier requirements, subject to Section 3.2.3 of this Regulation.

3.1.8 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include, but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time the Generation Unit shall submit a revised Application, which shall be subject to the process laid out in Section 3.1 of this Regulation.

3.1.9 RECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.3 and Section 3.3.3 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.

#### 3.2 Compliance with RPS

3.2.1 The Total Retail Sales of each Retail Electricity Product sold to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources as shown in Schedule 1.

<b>SCHEDULE 1</b>	
<b>Compliance Year</b>	<b>Cumulative Minimum Percentage</b>
2007	1%
2008	1.5%
2009	2%
2010	2.75%
2011	3.5%
2012	4.25%
2013	5%
2014	5.75%
2015	6.5%
2016	7.25%
2017	8%
2018	9%
2019	10%

3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers and subject to Section 3.2.3 and, where appropriate, Commission

regulations<sup>1</sup>. Such RECs shall be filed annually with the Commission within ninety (90) days following the completion of the Compliance Year.

3.2.3 Each Retail Electricity Supplier can provide no more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Section 3.2.1 of this Regulation must come from New Renewable Generation resources. In Compliance Year 2020 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.

3.2.4 A Retail Electricity Supplier shall not use RECs used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs not required to meet this regulation.

3.2.5 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs for the purposes of calculating compliance with the RPS.

3.2.6 Aggregate generation from small Eligible Energy Resources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule 1, provided that the generators or their agents, on an annual basis, document the level of generation, as recorded by appropriate metering as defined in the applicable utility's tariff then in effect and approved by the Commission.

3.2.7 A Retail Electricity Supplier shall receive 300% credit toward meeting the RPS for energy derived from the following sources installed on or before December 31, 2014:

3.2.7.1 Solar electric; or

3.2.7.2 Renewable fuel that is used in a fuel cell.

3.2.8 A Retail Electricity Supplier shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.

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1. The Commission understands the legislation to mean that the Total Retail Sales of *each* Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage of RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1. The Commission shall, in another proceeding, further define how RECs from Green Power products, as that term is defined in Commission Docket Number 49, are to be tracked and utilized for compliance in the RPS.

3.2.9 A Retail Electricity Supplier shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels.

3.2.10 Cumulative minimum percentage requirements of Eligible Energy Resources shall be established by Commission rules for Compliance Year 2020 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2019 in Schedule 1. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.

3.2.11 Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule 1 and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 10%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.

3.2.12 Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 10%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP for three (3) consecutive years, despite adequate planning by the Retail Electricity Suppliers. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.

3.3 Verification of Compliance with the RPS

3.3.1 Within ninety (90) days of the end of a compliance year, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of RECs required for that Compliance Year according to

Schedule 1 and the Total Retail Sales of each Retail Electricity Product.

3.3.2 RECs must have been created by PJM-EIS's GATS, or its successor at law or pursuant to Section 3.1.6.1 of this Regulation.

3.3.3 RECs, submitted for compliance with this Regulation, may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.

3.3.4 In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund an ACP of \$25 for each megawatt-hour deficiency between the RECs used by a Retail Electricity Supplier in a given compliance year and the RECs necessary for such Retail Electricity Supplier to meet the year's Cumulative Minimum Percentage. In subsequent years, the ACP for any Retail Electricity Supplier shall increase as follows:

3.3.4.1 If a Retail Electricity Supplier has paid an ACP of \$25 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$35 for each megawatt-hour.

3.3.4.2 If a Retail Electricity Supplier has paid an ACP of \$35 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$45 for each megawatt-hour.

3.3.4.3 If a Retail Electricity Supplier has paid an ACP of \$45 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$50 for each megawatt-hour.

3.3.4.4 If a Retail Electricity Supplier has paid an ACP of \$50 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$50 for each megawatt-hour.

3.3.4.5 ACPs shall not be more than \$50 for each megawatt-hour.

3.3.5 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 135 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electric Supplier shall be required to pay the appropriate ACP, according to Section 3.3.4 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.

3.3.6 All compliance payments, made by the Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.

#### **4.0 Recovery of Costs**

4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge on its supply portion of the bill,

actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to Section 3.3.4 and its subsections of these Rules and Regulation shall be recoverable only to the extent authorized by Section 4.3 of these Rules and Regulation.

4.2 A Retail Electricity Supplier may recover any ACP if the payment of an ACP is the least cost measure to ratepayers as compared to the purchase of Renewable Energy Credits to comply with the RPS; or if there are insufficient Renewable Energy Credits available for the Retail Electric Supplier to comply with the RPS.

4.3 Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.

#### **5.0 Other General Rules**

5.1 Under Delaware's Freedom of Information Act, 29 Del.C. ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 Del.C. §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.

5.2 Any End-Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource or other interested party to which these Rules and Regulations may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.

5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 Del.C. §205(a), §217, and §1019.

**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

**Final Regulations**

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

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**DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY**

Statutory Authority: 3 Delaware Code,  
Sections 101 and 302 (3 Del.C. §§101 & 302)

**ORDER****Regulations Governing On-Farm Home Processing of  
Non-Potentially Hazardous Foods.**

The Delaware Department of Agriculture (“the Department”) held a properly noticed public hearing on August 1, 2005 to receive comment on proposed additions to the Department’s Regulations. One member of the public, Nancy Aydelotte, of West Farms, attended. The written comments received by the Department included a July 18, 2005 e-mail from Susan Newark, of Triple M Farms, and an August 1, 2005 comment and supporting documentation from John Gargani (JG), of Newark, Delaware.

Based upon the evidence received, the Department finds the following facts to be supported by the evidence:

Questions and concerns raised during the public hearing on the proposed regulations were addressed and no recommended changes were requested by the public at the hearing.

The Department made changes to rectify the omission of necessary verbiage found by the Department.

“The e-mail received stated that “bread” was omitted from the list of non-potentially hazardous foods (5.0 Definitions) that can be prepared in an on-farm home processing operation. The Department revised the proposed regulations to include “bread” in the list of non-potentially hazardous foods (5.0 definitions) that can be prepared in an on-farm home processing operation.

The comment received from John Gargani (JG) requested the following:

- **JG** - I have received many calls from people that want to bake pies or cakes in their homes. I do not believe that these people have farms. They have been told that they have to have a commercial kitchen (a second kitchen in their homes. Some of these people have started by cooking in their homes until they rented space in kitchens of caterers. Kim’s Cakes, 15 Germay Drive, Wilmington, DE started her business in her home until she rented space at Piane Caterers. She now has her own bakery.
- (See Exhibit 1 article The News Journal, July 14, 2005.)
- It is possible that a person could be cooking at home and had to stop operations by the Delaware Department of Health. They then became aware of this regulation and did not live on a farm and therefore did not qualify for a license. They could sue

the State. This regulation exempts a certain segment of society of the regulations and does not benefit all.

The Department submits that these issues are beyond the intended scope of the proposed regulations and subject to another State agency's oversight.

- **Under 5.0 Definitions:**

- **JG – Certified** should include a Serve Safe Certification Course. **JG** stated, "This course is available through Dr. Sue Snyder, University of Delaware, Cooperative Extension Service."

- The Department declined to accept this request because the proposed regulations state that the on-farm home food processor "shall have adequate knowledge of safe food handling practices and shall have successfully completed a course offered through the Cooperative Extension Program prior to applying for a permit. The course shall be approved by DDA and provide a minimum of 8 hours of training in:

- 8.1.2.1 Sanitation;
- 8.1.2.2 Cross-contamination controls;  
and
- 8.1.2.3 Food security/defense."

- **JG – Farmers' market** should include "for sale only in the State of Delaware (intrastate).
- The Department declined to accept this request because other states' regulations will determine whether non-potentially hazardous foods produced by an on-farm home food processor may be legally sold in the other states' jurisdictions.

- **Under 9.0 Labeling:**

- **9.1.4 Scale:** **JG** – Request the addition of language to include a scale that is certified "to have the consumer get accurate weights." Following discussion with the Department's Weights and Measures Administrator, the Department declined to accept this request because items offered for sale will be inspected for accuracy by Weights and Measures staff at the point of purchase.

- **9.1.6:** **JG** – Request the addition of a Sell by and/or Use by dates

- The Department declined this request

because the on-farm home processor is only allowed to produce non-potentially hazardous food. The **9.1.6** requirement that the label must state the date the product was processed is adequate.

- **Under 12.4: Water Supply,**  
**JG** – Request to have private wells tested twice a year.

After contacting the Delaware Department of Health and Social Services (DHSS) Office of Food Protection, the Department declined to accept this request because DHSS Environmental Health Field Units monitor private well water samples regarding restaurants (Food Establishments) and traditionally take a sample once a year.

- **JG** – Request for a rule and/or definition that should state that the main food item be generated from Delaware Farm Products.

The Department declined to accept this comment as being beyond the intended scope of the proposed regulations.

- **JG** – Request for a rule or regulation that requires records to be kept of transactions for the local, state, and federal taxes of the profit from sale of the goods up to the \$40,000 dollar limit and that said records will be available to governing authorities involved.

The Department declined to accept this comment as being beyond the intended scope of the proposed regulations and subject to other State agencies' oversight authorities.

- **JG** – Request rules or regulations that state:

- The production dates and hours of operation will be available for the inspection of the kitchen due to sanitary conditions.

The Department declined to accept this request because the language present in the proposed regulations provides necessary access without notification to determine regulatory compliance.

- The inspector should have access to the premise during times when the kitchen is in operation for the license."

The Department declined to accept this request because the language present in the proposed regulations provides necessary access without notification to determine regulatory compliance.

- "No appointments will be required to inspect

on-farm home processing operations after the initial inspection for compliance.”

The Department declined to accept this request because the language present in the proposed regulations provides on-going access without notification to determine regulatory compliance.

- **JG** – Request for provisions for a recall of product that is deemed unhealthy or unsuitable due to unsanitary conditions. “Operator should have an approved Recall Procedure submitted to the DDA for approval...”

The Department declined to accept this request as being beyond the scope of the proposed regulations, which concern non-potentially hazardous foods.

#### **The Law**

The Department’s rulemaking authority is provided by 3 Del.C. §§101 and 302.

#### **Decision**

The Department hereby adopts the Regulations as proposed with the alterations and classifications noted in this Order, and a copy of the Regulations as adopted is attached to this Order.

**IT IS SO ORDERED** this 1<sup>st</sup> day of January, 2006

Michael T. Scuse, Secretary of Agriculture

### **101 On-Farm Home Processing of Non-Potentially Hazardous Foods**

#### **1.0 Authority**

This regulation is written under the authority of Title 3, Chapters 1 and 3, and Sections 101 and 302 of the Delaware Code.

#### **2.0 Purpose**

This regulatory foundation establishes standards of practice for on-farm home food processing operations that safeguard public health and provide consumers with food that is safe, unadulterated, and honestly presented.

#### **3.0 Scope**

This regulatory foundation sets forth definitions, describes operator qualifications, establishes operational

food safety and physical facility requirements, and provides the regulatory authority with procedures to ensure compliance with this foundation.

#### **4.0 Construction**

4.1 This regulatory foundation shall be construed and interpreted to ensure the maximum protection of the public health and to reduce the risk of foodborne illness, while exempting certain small food processors, who process and produce specified non-potentially hazardous products on-farm utilizing domestic kitchens, from the statutory requirements of Title 16 Delaware Code, Chapter 1, §122 and §134, and from the regulatory requirements of State of Delaware Food Code; and the program will ensure protection of the public health through processor compliance with regulatory requirements of the On-farm Home Food Processing Program.

4.2 Where a conflict with local custom or usage arises, the regulatory authority will enforce this foundation in a manner that applies sound scientific principles in a consistent and impartial manner.

#### **5.0 Definitions**

The following words and terms when used in these regulations mean:

“Acid foods” or “acidified foods” means foods that have an equilibrium pH of 4.6 or below.

“Approved” means acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

“Certified” means any on-farm home-based processor who has met the requirements of the Delaware Cooperative Extension Service’s eight (8) hours of training in sanitation, cross-contamination controls, and food security.

“Consumer” means a person who is a member of the public, takes possession of FOOD, is not functioning as an operator of a food establishment or food processing plant, and does not offer the FOOD for resale.

“DDA” means the Delaware Department of Agriculture

“Drinking water” means water that meets 40 CFR 141 National Primary Drinking Water Regulations; and is traditionally known as “potable water.”

“Dry storage area” means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

“Easily cleanable” means a characteristic of a surface that allows effective removal of soil by normal cleaning methods; and is dependent on the material, design, construction, and installation of the surface; and varies with

the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

**“Easily movable”** means portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

**“Equipment”** means an article that is used in a food processing operation such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

**“Exclude”** means to prevent a person from working as a food employee or entering a food establishment, except for those areas open to the general public.

**“Farm”** means a place where agricultural commodities are grown, raised, or harvested for commercial purposes. “Farm” includes a place where, for commercial purposes crops are grown and harvested; fruit, nuts, or other agricultural commodities are harvested from trees; or animals are raised, fed, and managed for meat or other agricultural commodities.

**“Farmers’ market”** means a physical location listed with the Delaware Department of Agriculture for the direct-to-consumer marketing of limited Delaware/Delmarva grown and produced food products.

**“Food”** means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

**“Food-contact surface”** means a surface of equipment or a utensil with which food normally comes in contact; or a surface of equipment or a utensil from which food may drain, dip, or splash into a food, or onto a surface normally in contact with food.

**“Hazard”** means a biological, chemical, or physical property that may cause an unacceptable CONSUMER health risk.

**“Home”** means a primary residence occupied by the processor, that contains only two (2) ranges, ovens, or double-ovens, and no more than three (3) refrigerators used for cold storage. This equipment shall have been designed for home use and not for commercial use, and shall be operated in the kitchen within the residence

**“Home-based processor”** means a farmer who, in the farmer’s home, produces or processes whole fruit and vegetables, baked cakes, muffins, or cookies with a water activity of .85 or less, candy (non-chocolate), containerized fruit preparations consisting of jellies, jams, preserves,

marmalades, and fruit butters, fruit pies with an equilibrated pH of 4.6 or less, herbs in vinegar with an equilibrated pH of 4.6 or less, honey and herb mixtures, dried fruit and vegetables, spices or herbs, maple syrup and sorghum, snack items such as popcorn, caramel corn, and peanut brittle, and roasted nuts.

**“Imminent health hazard”** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

**“Label”** means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of 3 Del.C. §§101 and 302 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper.

**“Law”** means applicable local, state, and federal statutes, regulations, and ordinances.

**“On-farm home food processing operation”** means a person who, on the person’s farm, produces food items that are not potentially hazardous foods, which are limited to:

- Baked [breads], cakes, muffins, or cookies with a water activity of .85 or less
- Candy (non-chocolate)
- Containerized fruit preparations consisting of jellies, jams, preserves, marmalades, and fruit butters [with an equilibrated pH of 4.6 or less or a water activity of 0.85 or less;]
- Fruit pies with an equilibrated pH of 4.6 or less;
- Herbs in vinegar with an equilibrated pH of 4.6 or less;
- Honey and herb mixtures; and
- Dried fruit and vegetables;
- Spices or herbs
- Maple syrup and sorghum
- Snack items such as popcorn, caramel corn, and peanut brittle
- Roasted nuts

**“On-farm market”**, also known as farm stands, means a site on the farm where the farmer sells agricultural and value added products from his farm directly to consumers at a stand or kiosk located on or near his farm or along a road near the farm.

**“Packaged”** means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

**“Permit”** means the document issued by the regulatory authority that authorizes a person to conduct an on-farm food processing operation.

**“Permit holder”** means the entity that is legally responsible for the processing operation such as the owner or other person; and possesses a valid permit to conduct on-farm food processing operation.

**“Person”** means an association, corporation, individual, partnership, or other legal entity.

**“pH”** means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

**“Plumbing fixture”** means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

**“Plumbing system”** means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

**“Potentially hazardous food (PHF)”**

- PHF means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms; or the growth and toxin production of *Clostridium botulinum*; or in raw shell eggs, the growth of *Salmonella Enteritidis*.
- "Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures.
- Also included as potentially hazardous foods are low acid canned foods (vegetable, fish, meat, etc.) and acidified foods (pickled vegetables, fish, meat, eggs, etc.)
- "Potentially hazardous food" does not include an air-cooled hard-boiled egg with shell intact; a food with an  $a_w$  value of 0.85 or less; a food with a pH level of 4.6 or below when measured at 24°C (75°F); a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility

under conditions of nonrefrigerated storage and distribution; a food for which laboratory evidence demonstrates that the rapid and progressive growth of combination of barriers that inhibit the growth of microorganisms; or a food that does not support the growth of microorganisms as specified above in this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

**“Premises”** means the physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the land or property not described above in this definition, if its facilities and contents are under the control of the permit holder and may impact food operation, personnel, facilities, or operations, and a food operation is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

**“Ready-to-eat food”** means food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. "Ready-to-eat food" includes potentially hazardous food that is unpackaged and cooked to the temperature and time required; and raw, washed, cut fruits and vegetables; whole, raw fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

**“Regulatory Authority”** means the local, state, or federal enforcement body or authorized representative having jurisdiction over the food operation.

**“Sanitization”** means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance; and to adequately treat food-contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

**“Sewage”** means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

**“Utensil”** means a food-contact implement or container used in the storage, preparation, transportation, dispensing,

sale, or service of food, such as kitchenware or tableware that is multi-use, single-service, or single-use; gloves used in contact with food; food temperature measuring devices; and probe-type price or identification tags used in contact with food.

“Value-added” means any activity or process that allows farmers to retain ownership and that alters the original agricultural product or commodity for the purpose of gaining a marketing advantage. Value-added may include bagging, packaging, bundling, pre-cutting, etc.

“Waste water system” means that portion of a plumbing system that normally conveys liquid waste and sewage away from the fixtures and equipment of the premises of the food operation.

“Water activity ( $A_w$ )” means a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

## **6.0 Registration**

6.1 In order to be able to inspect and license on-farm home food processing operation facilities that produce non-potentially hazardous foods for commercial sale, DDA will require the registration of all on-farm premises in Delaware where non-potentially hazardous foods are processed for commercial sale. This will allow facility inspection, safeguard public health, and provide consumers with food that is safe, unadulterated, and honestly presented.

6.2 The registration form, available from DDA, shall include at a minimum the following information:

6.2.1 Name.

6.2.2 Address.

6.2.3 Telephone number of owner/processor.

6.2.4 Type of Non-potentially hazardous foods being processed.

6.2.5 the geo-reference coordinates (latitude/longitude state plane coordinates NAD 83) of the home kitchen; (if not available, DDA will provide)

## **7.0 License and Permits**

7.1 The Delaware Department of Agriculture may issue an on-farm home food processing operation license to an individual who owns a farm to process non-potentially hazardous food in a home or domestic kitchen located on the individual's farm as set forth in this regulation.

7.2 All on-farm home food processing facilities that manufacture, process, pack or hold for introduction into commerce must obtain and maintain a current license (known as an On-Farm Home Food Processing License) from the Delaware Department of Agriculture Food Products

Inspection Section in accordance with 3 Del.C. §§101 and 302.

## **8.0 Operator qualifications**

The below framework provides for the operator to possess the knowledge and demonstrate the abilities needed to safely perform production under the on-farm home food processing program.

### 8.1 Education and training.

8.1.1 Persons responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean and safe food. Food handlers should receive appropriate training in proper food handling techniques and food protection principles, and should be informed of the dangers of poor personal hygiene and unsanitary practices.

8.1.2 An individual who wishes to process non-potentially hazardous foods in a domestic kitchen shall have adequate knowledge of safe food handling practices and shall have successfully completed a course offered through the Cooperative Extension Program prior to applying for a permit. The course shall be approved by DDA and provide a minimum of 8 hours of training in:

8.1.2.1 Sanitation;

8.1.2.2 Cross-contamination controls; and

8.1.2.3 Food security/defense.

### 8.2 Disease control:

8.2.1 Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination by which there is a reasonable possibility of food, food-contact surfaces, or food-packaging materials becoming contaminated, shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected. Personnel shall be instructed to report such health conditions to the regulatory authority.

### 8.3 Cleanliness:

8.3.1 All persons working in direct contact with food, food-contact surfaces, and food-packaging materials shall conform to hygienic practices while on duty to the extent necessary to protect against contamination of food. The methods for maintaining cleanliness include, but are not limited to:

- Wearing outer garments suitable to the operation in a manner that protects against the contamination of food, food-contact surfaces, or food-packaging materials;

- Maintaining adequate personal cleanliness:
- Washing hands thoroughly (and sanitizing if necessary to protect against contamination with undesirable microorganisms) in an adequate hand washing facility before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.
- Removing all unsecured jewelry and other objects that might fall into food, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which food is manipulated by hand. If such hand jewelry cannot be removed, it may be covered by material which can be maintained in an intact, clean, and sanitary condition and which effectively protects against the contamination by these objects of the food, food-contact surfaces, or food-packaging materials:
- Maintaining gloves, if they are used in food handling, in an intact, clean, and sanitary condition. The gloves should be of an impermeable material:
- Wearing, where appropriate, in an effective manner, hair nets, headbands, caps, beard covers, or other effective hair restraints:
- Storing clothing or other personal belongings in areas other than where food is exposed or where equipment or utensils are washed:
- Confining the following to areas other than where food may be exposed or where equipment or utensils are washed: eating food, chewing gum, drinking beverages, or using tobacco.
- Taking any other necessary precautions to protect against contamination of food, food-contact surfaces, or food-packaging materials with microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.
- No animals or fowls shall be kept in or permitted to enter the premises of any on-farm food operations.

8.4 While operating with a license issued in accordance with this regulation, the person-in-charge shall manufacture and process only non-potentially hazardous foods such as:

- Baked [breads], cakes, muffins, or cookies with a water activity of .85 or less
- Candy (non-chocolate)
- Containerized fruit preparations consisting of

jellies, jams, preserves, marmalades, and fruit butters [with an equilibrated pH of 4.6 or less or a water activity of 0.85 or less;]

- Fruit pies with an equilibrated pH of 4.6 or less or a water activity of 0.85 or less;
- Herbs in vinegar with an equilibrated pH of 4.6 or less;
- Honey and herb mixtures; and
- Dried fruit and vegetables;
- Spices or herbs
- Maple syrup and sorghum
- Snack items such as popcorn, caramel corn, and peanut brittle
- Roasted nuts

8.5 While operating with a license issued in accordance with this regulation, the person-in-charge shall **not** process potentially hazardous foods for commercial sale such as:

- Low-acid canned foods, such as home-canned or jarred fruits, vegetables, pickled products, sauces, relishes.
- Cream, custard, pumpkin, meat, or other single-crust pies or cream or cheese-filled baked goods
- Cured or fermented foods;
- Seafood;
- Apple cider or other juices;

8.6 While operating with a license issued in accordance with this regulation, the person-in-charge shall limit processed food production to:

8.6.1 An amount of food that can safely be produced in the domestic kitchen as evidenced by sanitation and process and cross-contamination control;

8.6.2 \$40,000 of sales of on-farm home processed foods.

8.7 While operating with a license issued in accordance with this regulation, the person-in-charge shall process commercially only during times when the kitchen is not being used for domestic purposes:

8.8 While operating with a license issued in accordance with this regulation immediately before and after processing commercially, the person-in-charge shall clean and sanitize all food contact surfaces, equipment, and utensils;

While operating with a license issued in accordance with this regulation while processing commercially, the person-in-charge shall:

8.9.1 Use only building areas, equipment, and utensils that DDA has reviewed or inspected and approved;

8.9.2 Shall store ingredients for commercial manufacturing and finished manufactured food in a separate area from foods used domestically.

**9.0 Labeling**

9.1 Products must be properly labeled as follows:

9.1.1 Name of product

9.1.2 Name and address of manufacturer

9.1.3 Ingredients listed in decreasing order by weight

9.1.4 Net weight or unit count

9.1.5 The following statement in ten (10) point type: "This product is home-produced and processed"

The date the product was processed.

9.2 Food products identified as non-potentially hazardous in these regulations and not labeled in accordance with subsection (9.1) of these regulations are deemed misbranded.

9.3 Food products identified in subsection (8.4) of Section 8 of these regulations and produced, processed, and labeled in accordance with these regulations are acceptable food products that may only be offered for sale by farmers' markets, roadside produce stands, or the processor's farm.

**10.0 Supervision:**

10.1 Responsibility for assuring compliance with all requirements of this part shall be clearly assigned to the permit holder of the processing operation.

**11.0 Washing of hands:**

11.1 Employees engaged in food preparation, service, and warewashing operations shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, after smoking, eating, or using the toilet, and as often as is necessary during work to keep them clean. All persons shall keep their fingernails trimmed and clean.

11.1.1 Handwashing facilities

11.1.1.1 A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each handwashing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each handwashing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.

11.1.1.2 Handwashing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

11.1.1.3 Adequate hand washing facilities separate from the utensil cleaning facilities, which includes hot and cold water, single service paper towels and hand soap are required. Properly supplied hand washing facilities provided in toilet facilities located within the structure

containing the domestic kitchen may suffice for this provision.

**12.0 Physical plant characteristics**

The following requirements are the minimum acceptable standards for food processing areas:

12.1 Food contact surfaces shall be smooth and easily cleanable. The use of wood or glass for food preparation is not approved;

12.2 Non-food contact surfaces in the facility, including floor, walls and ceilings, shall be smooth and cleanable. The use of carpeting in the processing area is not approved;

12.3 Refrigeration: All facilities shall have a sufficient number of mechanical refrigeration units capable of holding raw materials requiring refrigeration at a minimum of 41°F. Each such mechanical refrigerator shall be equipped with a thermometer located in the warmest portion of the refrigerator;

12.4 Water supply: All facilities shall have hot and cold running water under pressure, supplied to all sinks in the processing room. If a non-public water supply is used, the laboratory results of a satisfactory water quality test (bacteriological and chemical) shall be submitted to the regulatory authority at least once each year;

12.5 Waste water system: All wastewater and other liquid waste generated during processing operations shall be disposed of through an approved wastewater system designed and installed according to law. A non-public wastewater system shall be approved and permitted by the Delaware Department of Natural Resources and Environmental Control (DNREC);

12.6 Warewashing: For manual cleaning and sanitizing of cooking equipment, and utensils, a sink of three (3) compartments shall be provided and used. A two-compartment sink, with an additional portable tub is acceptable.

12.6.1 Mechanical cleaning and sanitizing shall be conducted as follows: A domestic or home-style dishwasher may be used if the following performance criteria are met:

12.6.1.1 The dishwasher shall effectively remove physical solids from all surfaces of dishes.

12.6.1.2 The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.

12.6.1.3 The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is at least 150 degrees Fahrenheit after the final rinse and drying cycle;

12.6.1.4 The dishwasher shall be installed and operated according to manufacturer's instruction for the highest level possible when sanitizing the kitchen facilities' utensils and tableware. A copy of the manufacturer's instructions shall be available on the premises.

12.7 **Handwashing:** Adequate hand washing facilities separate from the utensil cleaning facilities, which includes hot and cold water, single service paper towels and hand soap are required. Properly supplied hand washing facilities provided in toilet facilities located within the structure containing the domestic kitchen may suffice for this provision.

12.8 **Plumbing system-** in the processing area shall be designed and installed according to law under a valid plumbing permit with a satisfactory plumbing inspection;

12.9 **Refuse:** recyclables and returnable waste generated during processing operations shall be stored in heavy duty, cleanable waste containers equipped with tight fitting lids;

12.10 **Artificial lighting** - (electrical lamps) in the processing area shall be protected from shattering by either shielding or an approved shatter-resistant coating;

12.11 **Toilet facility:** A completely enclosed toilet room equipped with a toilet and a hand washing sink shall be located on premises. The toilet room shall have a tight fitting door, and shall have either mechanical ventilation or an open-able window. The hand washing sink shall be supplied with hot and cold running water, under pressure and be supplied with liquid soap, paper towels and a wastebasket.

12.12 **Exterior openings:** All exterior doors and windows in the process area shall be tight fitting to prevent the entry of vermin. If these doors or windows are to be kept open for ventilation they shall be covered with screening, not less than 16 mesh to the inch. Exterior doors shall be self-closing;

12.13 **Service sink** - shall be provided separately for the disposal of mop water and other liquid waste;

12.14 **Equipment and utensils** - intended for use in food processing shall be separate from those used to cook domestic meals;

12.15 **Storage areas** - for both raw ingredients and finished product shall protect these items from contamination;

12.16 **Ventilation** - that is adequate to prevent an accumulation of excess steam, heat, and condensation on floors, walls and ceilings of the processing area shall be provided; and

12.17 **Poisonous and toxic materials** - shall be stored so they cannot contaminate raw ingredients, utensils, equipment, packaging materials and finished products. This

requirement also applies to medicines and medical items intended for use by humans or on livestock.

### **13.0 Program administration**

13.1 **Permit required.** A person may not conduct an on-farm food processing operation without a valid permit issued by the DDA. DDA may establish and collect a fee for this permit.

13.2 **Application procedure.** An applicant shall submit a written application for permit using forms provided by DDA authority at least 30 days before the date planned to begin an on-farm food processing operation.

13.3 **Application review.** DDA will review the application and may set forth specific conditions or stipulations under which a permit will be issued to the applicant. DDA may establish and collect a fee for this review.

13.4 **Inspection and approval.** No food processing by the applicant or on the premises may begin without an initial approval for permit issue of DDA; such approval may be contingent upon an inspection of the premises to assess compliance with this regulatory foundation. The operator shall allow the DDA access to the premises, equipment and records of the processing operation at reasonable times to inspect and assess compliance, as required.

13.5 **Variance.** The applicant may request in writing a modification or waiver of any provision of this regulatory foundation, according to procedures established by DDA.

13.6 **Permit retention.** The permit is not transferable. The permit holder shall renew the permit when required. The permit holder shall surrender the permit and cease operations, if so ordered by DDA. By acceptance of the permit, the permit holder shall be subject to regulatory, administrative, civil, injunctive and criminal remedies authorized by law for failure to comply with this and other directives issued by competent authority.

### **14.0 Violations and hearing procedures.**

14.1 **Failure to comply with these regulations may result in the assessment of a civil penalty.**

14.2 **No civil penalty shall be imposed until an administrative hearing is held before the Secretary of Agriculture or his or her designee. Administrative hearings for the provisions of this chapter shall be conducted within 30 days of the violation of this chapter. The Department shall issue a decision in writing to the person(s) charged with a violation of this chapter within 30 days of the conclusion of the administrative hearing.**

14.3 **The person(s) charged with a violation of this chapter will be notified in writing of the date and time of the aforementioned administrative hearing. The aforementioned person(s) shall have the right to appear in person, to be represented by counsel and to provide witnesses in his or her own behalf.**

14.4 The Secretary, for the purposes of investigation of a possible violation of this chapter and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Department of Agriculture may compel compliance with the subpoena by filing a motion to compel in Superior Court which shall have jurisdiction over this matter.

14.5 The Department shall preserve a full record of the proceedings and a transcript may be purchased by any interested person.

### **15.0 Appeal.**

15.1 Any party, including an individual or corporation that feels aggrieved by decision of the Secretary or his or her designee after an administrative hearing may take appeal to the Superior Court within thirty days of the date the decision is mailed to that party by the DDA. After a full hearing, the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds therefore, shall be served upon the Secretary of the DDA.

### **16.0 Civil penalties.**

16.1 It shall be unlawful for any person to interfere with the DDA in its effort to enforce these regulations and will subject the violator to a civil penalty of no less than \$100 nor more than \$1,000 per proven violation.

16.2 It shall be unlawful for any person to violate a cease and desist order issued by the DDA and will subject the violator to a civil penalty of no less than \$500 nor more than \$1,000 per proven violation.

16.3 The payment of penalties assessed under these regulations may be made on a payment schedule approved by the Secretary of the DDA.

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## **HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10000 (3 Del.C. §10000)  
3 DE Admin. Code 501

### **ORDER**

#### **501 Harness Racing Rules and Regulations**

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 October 20, 2005,

the Commission makes the following findings and conclusions:

#### **Summary of the Evidence**

1. The Commission posted public notice of the proposed amendments in the October 1, 2005 *Register of Regulations* and for two consecutive weeks in the Delaware Business Review and Delaware State News. The Commission proposed to amend rules 8.4.3.4.2 and 8.4.3.5.9 to permit the use of Commission approved blood collection containers.

2. The Commission received no written comments during October 2005. The Commission held a public hearing on October 20, 2005 and received public comments from Diane Eastburn, Dr. Kim Fincher, Joseph Strug, Sal DiMario and Kenny Mitchell. Mrs. Eastburn's comments were as follows: is the same amount of blood going to be drawn and has the Commission made a determination about the amount of blood that will be collected? Mrs. Eastburn stated that a general rule does not give the horse men enough notice about what to expect.

3. Dr. Fincher has concerns about using syringes and would like Dr. Soma to address the Commission regarding the best collection container to be used. She would like to see testing of tubes versus syringes. Dr. Fincher is concerned that syringes are not made for transporting samples to another facility.

4. Joseph Strug stated that the new language of the rule frees the Commission to use the most appropriate container. Mr. Strug believes that the rule change gives more leeway and a decision about what collection container to be used can be determined later. Sal DiMario stated that he believes that if syringes are used, horses will have to be stuck two or three times. A "high running" horse will be traumatized by multiple sticks and horse men are not going to like having their horse stuck twice.

5. Kenny Mitchell stated that if the Commission will be taking two or three tubes at the time of collection, there will be multiple sticks and horses will run high.

#### **Findings of Fact and Conclusions**

1. 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.

2. The Commission has considered the public comments at the October 20, 2005 hearing. The Commission does not find those comments require further revisions of the proposed rules. The Commission finds that the new rules

8.4.3.4.2 and 8.4.3.5.9 permit the use of Commission approved blood collection containers, rather than requiring the use of vacutainers, which may not be appropriate in every instance. Which collection containers will be used for collection of blood and urine will be determined by the Commission, and the horsemen will be put on notice of the containers that will be used.

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, 2005.

**IT IS SO ORDERED** this \_\_\_\_\_ day of November, 2005.

Beth Steele, Chair  
Robert L. Everett, Commissioner  
Mary Ann Lambertson, Commissioner  
George P. Staats, Commissioner  
Kenneth Williamson, Commissioner

### **501 Harness Racing Rules and Regulations**

## **8.0 Veterinary Practices, Equine Health Medication**

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

#### 8.4 Testing

##### 8.4.1 Reporting to the Test Barn

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

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

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

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

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

##### 8.4.2 Sample Collection

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

8.4.2.2 The Commission veterinarian shall determine a minimum sample requirement for the primary

testing laboratory. A primary testing laboratory must be approved by the Commission.

#### 8.4.3 Procedure for Taking Specimens

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

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

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

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

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

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

8.4.3.3.1 The owner;

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

8.4.3.3.3 A stable representative designated by such owner or trainer.

##### 8.4.3.4

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

8.4.3.4.2 Blood ~~vacutainers~~ 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 ~~twenty (20) milliliters vacutainers,~~ 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.

**\*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 Delaware Harness Racing Commission is available at: <http://www.state.de.us/deptagri/harness/index.shtml>.**

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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** 225

**REGULATORY IMPLEMENTING ORDER****225 Prohibition of Discrimination****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 **DE Admin. Code** 225 Prohibition of Discrimination in order to align the wording of this regulation with the nondiscrimination statement on the Department stationary, the Employee Handbook and the Department's application for employment.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 20, 2005, 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' commented that the proposed regulations do not include one class included in the State employment discrimination statute (Title 19 **Del.C.** §711) "genetic information".

The Department has declined to add "genetic information" since we were responding to Executive Order 10 which did not include it. The regulation is now in line with the Department's nondiscrimination statement. The State Director of HR Management has told us that it is not required unless specifically required by one of our federal funding sources and that not specifically mentioning it does not negate it being protected.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** in order to align the wording of this regulation with the nondiscrimination statement on the Department stationary, the Employee Handbook and the Department's application for employment.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 225. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 225 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 225 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** 225 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 225 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 December 14, 2005. 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 14<sup>th</sup> day of December 2005.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

**225 Prohibition of Discrimination****1.0 Prohibition of Discrimination**

No person in the State of Delaware; shall, on the basis of race, color, ~~ered~~ religion, national origin, sex, sexual orientation, marital status, disability, age or gender Vietnam Era veteran's status, be unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving

approval or financial assistance from or through the Delaware Department of Education.

**2 DE Reg. 1246 (1/1/99)**

**7 DE Reg. 1177 (3/1/04)**

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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 525

### REGULATORY IMPLEMENTING ORDER

#### 525 Requirements for Career Technical Education Programs

#### 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** 525 Requirements for Career Technical Education Programs in order to add the phrase “or under unique circumstances as approved by the Department of Education” to 3.0 Cooperative Education and to 4.0 Diversified Occupations Programs. The word “quarterly” was added to 4.1 under Diversified Education Programs to clarify the number of visits the teacher or counselor must make and “Relative Caregiver” was added to parent or guardian in 3.3 and 4.3. The Name of the Delaware Advisory Council on Career and Technical Education was also corrected in 2.14, and the acronyms for IDEA and IEP were fully identified in 3.4 and 4.4.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 20, 2005, 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 editorial changes were made, the phrase “at least” was added before the word “quarterly” in 3.1 and 4.1 and “ or charter school” was added in 3.3 and 4.3 as recommended.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** in order to add the phrase “or under unique circumstances as approved by the Department of Education” to 3.0 Cooperative Education and to 4.0 Diversified Occupations Programs. The word “quarterly”

was added to 4.1 under Diversified Education Programs to clarify the number of visits the teacher or counselor must make and “Relative Caregiver” was added to parent or guardian in 3.3 and 4.3. The Name of the Delaware Advisory Council on Career and Technical Education was corrected in 2.14.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 525. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 525 attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 525 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** 525 amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 525 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 December 15, 2005. 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 15th day of December 2005.

#### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education  
Approved this 15th day of December 2005

#### 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. Claibourne D. Smith

**525 Requirements for Career Technical Education Programs****1.0 Career-Technical Education Programs**

All Career-Technical Education Programs shall meet the provisions of Delaware's State Plan for Career and Technical Education and meet the provisions of the content standards approved by the Department of Education or, if there are no approved state content standards, meet local program standards approved by the Department of Education.

**6 DE Reg. 955 (2/1/03)****2.0 Requirements for all local School Districts and Charter Schools that Offer State Approved Career-Technical Education Programs**

All local School Districts and Charter Schools that offer State Approved Career-Technical Education Programs shall:

2.1 Have the approval of the Department of Education before implementing new programs.

2.2 Have adequate funding to support and sustain the instructional program.

2.3 Employ teachers certified in Career-Technical Education Program areas.

2.4 Make provisions for meeting the unique needs of all students.

2.5 Establish and maintain an active advisory committee which includes labor and management personnel to assist in the development and operation of the program.

2.6 Use present and projected labor market information, available from the Delaware Occupational Information Coordinating Committee, to determine the need for new and continuing Career-Technical Education Programs.

2.7 Survey local business and industry to determine their occupational needs and the availability of placement and employment opportunities for program completers.

2.8 Survey the student population to determine their occupational interests and needs.

2.9 Organize and financially support career-technical student organizations as integral components of Career-Technical Education Programs in public schools that complement and enrich instruction. The following career-technical student organizations are affiliated in Delaware:

2.9.1 Business Professionals of America (BPA)

2.9.2 Technology Student Association (TSA)

2.9.3 Distributive Education Clubs of America (DECA), an association of marketing students

2.9.4 Family, Career and Community Leaders of America (FCCLA)

2.9.5 The National FFA Organization

2.9.6 Skills USA/VICA

2.9.7 The Delaware Career Association (DCA)

2.10 Integrate related academic content into individual career-technical education courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals.

2.11 Schedule trade and industrial education programs, when offered, for a minimum of two consecutive periods a day or the equivalent, five days a week for two or more years.

2.12 Establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a Career-Technical Education Program in a career-technical school district.

2.13 Use equipment and facilities comparable to that used by local business and industry for which the Career-Technical Education Program is preparing students.

2.14 Schedule Department of Education and Delaware Advisory Council on Career and Technical Education program review and monitoring visits upon request.

**1 DE Reg. 1196 (2/1/98)**

**6 DE Reg. 955 (2/1/03)**

**8 DE Reg. 1603 (5/1/05)**

**3.0 Cooperative Education Programs.**

Cooperative Education Programs provide senior Career-Technical Education Program students with coordinated on-the-job training not ordinarily available in the classroom. During the student's senior year, or under unique circumstances as approved by the Department of Education, employers may provide this on-the-job training in occupations directly related to the Career-Technical-Education Program in which the student is enrolled. For the purpose of granting credit during the school year two hours of Cooperative Education Work Experience shall equal one hour of instructional time. In a summer Cooperative Education Work Experience Program one-half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.

3.1 In order to qualify for Career-Technical Education funding units the Career-Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Cooperative Education Work Experience Program in order to make **[at least]** quarterly visits to the student's place of employment to ensure coordination between the classroom and the on-the-job experience.

3.2 In order to qualify for Career-Technical Education funding units the students shall; possess minimum occupational competencies specified by the Career-Technical Education Teacher Coordinator before being placed in cooperative employment, be in their senior year and be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed career-technical education pathway[, **meet the requirements of 3.0**] and be supervised through on-site visits by an assigned Career-Technical Education Program Teacher Coordinator or Career Guidance Counselor.

3.3 In order to qualify for Career-Technical Education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent ~~or guardian~~, guardian or Relative Caregiver the employer, the student and a representative of the district [**or charter school**]. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.

3.4 For an [**Individuals with Disabilities Education Act (IDEA) ~~IDEA~~**] eligible student, the student's [**Individualized Educational Plan (IEP) ~~IEP~~**] team, in consultation with the Career Technical Education Teacher Coordinator, may authorize the student's participation in this program irrespective of lack of senior year status if necessary to provide the student a free, appropriate public education.

**2 DE Reg. 111 (7/1/98)**

**6 DE Reg. 955 (2/1/03)**

#### 4.0 Diversified Occupations Programs.

Diversified Occupations Programs provide students with coordinated on-the-job training not ordinarily available in the classroom. During the student's junior ~~and or~~ senior year, year or under unique circumstances as approved by the Department of Education employers provide this on-the-job training. For the purpose of granting credit during the school year, two hours of work experience in a Diversified Occupations Work Experience Program shall equal one hour of instructional time. In a summer Diversified Occupations Work Experience Program one-half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.

4.1 In order to qualify for Career-Technical Education funding units a Career-Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Diversified Occupations Work Experience Program in order to make [**at least**] quarterly on-site visits to the student's place of employment to ensure

coordination between the classroom and the on-the-job experience.

4.2 In order to qualify for Career-Technical Education funding units the students shall; possess minimum readiness competencies as specified by the Career-Technical Education Program Teacher Coordinator before being placed in a Diversified Occupations Work Experience Program employment situation, ~~be in their junior or senior year~~ meet the requirements of 4.0 and be actively enrolled in a Diversified Occupations Work Experience Program that meets for at least one class period per week.

4.3 In order to qualify for Career-Technical Education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent ~~or guardian~~, guardian or Relative Caregiver, the employer, the student and a representative of the district [**or charter school**]. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.

4.4 For an [**Individuals with Disabilities Education Act (IDEA) ~~IDEA~~**] eligible student, the student's [**Individualized Educational Plan (IEP) ~~IEP~~**] team, in consultation with the Career Technical Education Teacher Coordinator, may authorize the student's participation in this program irrespective of lack of junior or senior year status if necessary to provide the student a free, appropriate public education.

**2 DE Reg. 111 (7/1/98)**

**6 DE Reg. 955 (2/1/03)**

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**PROFESSIONAL STANDARDS BOARD**  
Statutory Authority: 14 Delaware Code,  
Sections 1250-1252 (14 Del.C. §§1250-1252)  
14 DE Admin. Code 310

### ORDER

#### Repeal Of Certification Regulation 310

##### 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 regulation 310 from the **DE Admin. Code**. The regulation concerns the requirements for certification of educational personnel. As part of a continuing effort to reduce the number of regulations which govern virtually every aspect of

State government, it is recommended that the above-referenced regulation be repealed.

Notice of the proposed repeal of the regulations was published in the *News Journal* and *Delaware State News* on October, in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

## II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal this regulation as the content is incorporated into amended 14 **DE Admin. Code** 1531, School Leader I, as part of the Professional Standards Board's continuing efforts to reduce the number and complexity of regulations governing the licensure and certification of educators.

## III. Decision to Repeal the Regulations

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 regulations attached hereto as Exhibit "B" are hereby repealed.

## IV. Text and Citation

The text of the regulations 310, attached hereto as Exhibit "B" are repealed, and said regulations shall be deleted from the **DE Admin. Code**.

## 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 1<sup>ST</sup> DAY OF DECEMBER, 2005

Harold Roberts, Chair  
Heath Chasanov  
Angela Dunmore  
Barbara Grogg  
Leslie Holden  
Mary Mirabeau  
Karen Schilling Ross

Norman Brown  
Edward Czerwinski  
Karen Gordon  
Bruce Harter  
Carla Lawson  
Gretchen Pikus  
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** this 15<sup>TH</sup> day of December 2005

## 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. Claibourne D. Smith

\* **Please note that no changes were made to the regulation as originally proposed and published in the November 2005 issue of the Register at page 679 (9 DE Reg. 679 (11/01/05)). Therefore, the final regulation is not being republished. Please refer to the November 2005 issue of the Register or contact the Board of Education.**

**A complete set of the rules and regulations for the Board of Education available at:**  
<http://www.state.de.us/research/AdminCode/title14/index.shtml>.

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**PROFESSIONAL STANDARDS BOARD**  
Statutory Authority: 14 Delaware Code,  
Sections 1250-1252 (14 **Del.C.** §§1250-1252)  
14 **DE Admin. Code** 1544-45, 1549-50, 1552-53

## ORDER

**Repeal Of Certification Regulations**  
**1544 Art Teacher Elementary**  
**1545 Art Teacher Secondary**  
**1549 Music Teacher Elementary**  
**1550 Music Teacher Secondary**  
**1552 Physical Education Teacher Elementary**  
**1553 Physical Education Teacher Secondary**

## I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to repeal 14 **DE Admin. Code** 1544, 1545, 1549, 1550, 1552, and 1553. It is necessary to repeal these regulations as comprehensive K-12 regulations exist in all of the affected content areas.

PRAXIS™ II tests in these content areas are comprehensive in nature, addressing grades kindergarten through 12. Passage of the appropriate PRAXIS™ II test would qualify a candidate for all levels of certification. In a continuing effort to reduce the number and complexity of regulations, it is necessary to repeal the above regulations, as they are unnecessary and redundant.

Notice of the proposed repeal of the regulations was published in the *News Journal* and *Delaware State News* on October 24, 2005 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

## II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal this regulation as the content is incorporated into amended 14 **DE Admin. Code** 1531, School Leader I, as part of the Professional Standards Board's continuing efforts to reduce the number and complexity of regulations governing the licensure and certification of educators.

## III. Decision to Repeal the Regulations

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 regulations attached hereto as Exhibit "B" are hereby repealed.

## IV. Text and Citation

The text of the regulations 310, attached hereto as Exhibit "B" are repealed, and said regulations shall be deleted from the **DE Admin. Code**.

## 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 1<sup>ST</sup> DAY OF DECEMBER, 2005

Harold Roberts, Chair  
Heath Chasanov  
Angela Dunmore  
Barbara Grogg

Norman Brown  
Edward Czerwinski  
Karen Gordon  
Bruce Harter

Leslie Holden  
Mary Mirabeau  
Karen Schilling Ross

Carla Lawson  
Gretchen Pikus  
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** this 15<sup>TH</sup> day of December 2005

## 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. Claibourne D. Smith

\* **Please note that no changes were made to the regulation as originally proposed and published in the November 2005 issue of the Register at page 680 (9 DE Reg. 680 (11/01/05)). Therefore, the final regulation is not being republished. Please refer to the November 2005 issue of the Register or contact the Board of Education.**

**A complete set of the rules and regulations for the Board of Education available at:**  
**<http://www.state.de.us/research/AdminCode/title14/index.shtml>**

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

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

## ORDER

**Estate Recovery Program**

**Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State

Plan and the Division of Social Services Manual (DSSM) related to the Estate Recovery program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the November 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### **SUMMARY OF PROPOSED AMENDMENT**

#### **Statutory Authority**

- Section 1917 of the Social Security Act, *Liens, Adjustments and Recoveries, and Transfers of Assets*;
- 42 CFR §433.36, *Liens and Recoveries*;
- State Medicaid Manual, Section 3810, *Medicaid Estate Recoveries*; and,
- Title 25, Delaware Code, Chapter 50, *Liens and Estate Recoveries*.

#### **Amending the Following Updated Pre Print State Plan Pages**

- Pages 53, 53a, 53b, 53c, 53d, 53e
- Attachment 4.17-A, Pages 1, 2, 3, and 4

#### **Background**

Under the estate recoveries provisions in the Omnibus Budget Reconciliation Act (OBRA) of 1993 and §1917(b) of the Social Security Act, states must recover certain Medicaid benefits correctly on behalf of an individual. Beneficiaries are notified of the Medicaid estate recovery program during their initial application for Medicaid eligibility and annual redetermination process. Federal law provides protections to ensure adequate notice to clients, prevention of undue hardship, and cost effectiveness under a state's recovery program.

For individuals age 55 or older, States are required to seek recovery of payments from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services. States have the option of recovering payments for all other Medicaid services provided to these individuals. States are also required to establish procedures, under standards

specified by the HHS Secretary for waiving estate recovery when recovery would cause an undue hardship.

#### **Summary of Proposed Amendment**

For institutionalized individuals age 55 years or over, the time period for the exclusion of placement of a lien on real property due to intent to return home is being reduced from two (2) years to sixty (60) days. Due to the resources available to postpone and prevent institutionalization, such as the elderly and disabled waiver program, most admissions are permanent or for short-term rehabilitation of less than 60 days. In the nine (9) years that DHSS has been placing liens on real property, most of the properties excluded for the intent to return home were sold during the two (2) year exclusion period or the liens were placed after the two (2) years.

The following proposed changes are effective January 1, 2006:

1) DSSM 20310.1.1, *Intent to Return and DSSM 20620.3, Community Spouse Income Allowance/Home Maintenance Disregard*: Amends the length of time DMMA will protect the \$75.00 per month for home maintenance from 6 months to 2 months.

2) DSSM 20500.5.2, *Lien Recovery Exception*: Amends the lien recovery exception provision for a sibling lawfully residing in the home of the recipient from two (2) years (24 months) to one (1) year (12 months) immediately prior to the recipient's admission for long term care services.

3) DSSM 20500.6.1, *Exceptions to the Lien Policy*: Amends the client's intent to return home provision from two (2) years to within sixty (60) days of their admission date to a facility. If the stay in the facility is sixty (60) days or more, DHSS will place a lien on the property.

The proposed amendment is subject to approval by the Centers for Medicare and Medicaid Services (CMS).

#### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

No comments were received.

#### **Findings of Fact:**

The Department finds that the proposed changes as set forth in the November 2005 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) as it relates to the Estate Recovery Program is adopted and shall be final effective January 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 12/15/05

**DSS FINAL ORDER REGULATION #05-80a**

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2005 issue of the Register at page 684 (9 DE Reg. 684 (11/01/05)). Therefore, the final regulation is not being republished. Please refer to the November 2005 issue of the Register or contact the Division of Medicaid and Medical Assistance.

**DIVISION OF SOCIAL SERVICES**

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

**ORDER**

**Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the TANF and GA Programs. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10113 and its authority as prescribed by 31 Delaware Code Section 512.

**Nature of the Exempt Regulation:**

**Citation**

29 Del.C. §10113, *Adoption of Regulations; Exemptions*

**Summary of Proposed Changes**

The purpose of this amendment is to correct the errors in the mathematical computations in the examples given in DSSM 4010, *Determining Financial Eligibility and Grant Amounts for Pregnant Women in TANF and GA*. DSS is not changing existing policies or procedures.

**Findings of Fact:**

The Department finds that these changes are exempt from the procedural requirements of the Administrative Procedures Act (Title 29 Chapter 101).

**THEREFORE, IT IS ORDERED**, that the proposed revision regarding technical corrections to DSSM 4010 be

adopted informally as an exempt regulation and shall become effective January 10, 2006.

Vincent P. Meconi, Secretary, DHSS , 12/15/05

**DSS EXEMPT REGULATION #05-78  
REVISIONS:**

**4010 Determining Financial Eligibility and Grant Amounts for Pregnant Women in TANF and GA**

To determine the financial eligibility of a pregnant woman in the month her child is due, compare her gross income to 185% of the TANF standard of need for one (1) person. If income is less than the standard, determine eligibility and the grant amount as outlined in DSSM 4008.

If the pregnant woman lives with the father of her unborn child, financial eligibility is determined by comparing the sum of the pregnant woman's income and the father's income to the TANF standard of need for three (3) people. This is the number of people who would be included in the TANF unit when the child is born. If income exceeds the standard, the TANF application is denied. If income is less than the standard, only the mother's income is considered in determining the amount of the TANF grant. Her budgetable income is subtracted from the TANF standard of need for one person.

EXAMPLE 1: Mrs. Jones applies for TANF for herself. She is in her ninth month of pregnancy and lives with her husband who is the father of her child. He is employed and earns ~~\$100~~ \$1200 per month.

$\$1200 < \$1737$  (185% of TANF standard of need).

$\$1200 - \$90$  (work deduction) =  $\$1,110 > \$939$  (TANF standard of need).

Mrs. Jones is not eligible for ~~an~~ a TANF grant.

EXAMPLE 2: Same as Example 1 except Mr. Jones' income is a \$200.00/week UC benefit.

~~\$400~~ \$866 (monthly UC) <  $\$1,737$  (185% of TANF standard of need).

~~\$400~~ \$866 <  $\$939$  (TANF standard of need).

Mrs. Jones is eligible for TANF for herself. Since she has no income, she will receive \$201, the TANF standard of need for one person.

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# FINAL REGULATIONS

1077

EXAMPLE 3: Ms. Jones is applying for TANF for herself. She is in her ninth month of pregnancy and lives with the father of her child, Mr. Brown. The couple's income includes Ms. Jones' VA benefit of \$50/month and Mr. Brown's UC benefit of \$50/week.

$\$50 \text{ (VA)} + \del{\$200} \underline{\$216} \text{ (UC)} = \del{\$250} \underline{\$266} <$   
 $\$1,737 \text{ (185\% of TANF Standard of Need).}$

$\del{\$250} \underline{\$266} < \$937 \text{ (TANF Standard of Need).}$

Ms. Jones is eligible for TANF. To determine the amount of her grant, subtract Ms. Jones' income from the TANF Standard of Need for one person. ( $\$201 - \$50 = \$151$ )  
NOTE: If the pregnant woman's income exceeds the TANF standard for one person, the TANF application is denied.

When the child is born, the child and the father must be added to the TANF unit. The father's income is budgeted at this time. To determine the amount of the supplemental grant:

1. Calculate the amount of the monthly TANF grant for three people.
2. Subtract the amount of the TANF grant paid to the mother from the monthly TANF grant determined in Step 1.
3. Pro-rate the remainder from the effective date of eligibility.

If the father has income, it is possible that the amount of the monthly TANF grant will be less than the grant paid to the mother in her ninth month. If this happens, no supplemental grant is issued, but Medicaid is approved for the father and child. A TANF grant is authorized effective the first of the following month.

A woman who has a verified pregnancy and receives a GA check the month she delivers her child is eligible for TANF that month for herself and her child if she reports the birth to DSS, and she meets all other TANF technical and financial eligibility requirements.

The TANF grant is effective the date of the child's birth if the birth is reported within five (5) days. The TANF grant is effective the date of the report if it is not reported within five (5) days.

If the pregnancy had not been verified, the TANF grant is effective the date the birth is verified.

The TANF grant amount is the difference between the GA grant received by the mother and the TANF grant that would have been issued if the birth had occurred in the ninth month of pregnancy.

NOTE: Procedures for completing supplemental applications for newborns are outlined in DSSM 2000.7.

EXAMPLE:

1. Joan Brown is eight (8) months pregnant and receiving GA benefits. Her pregnancy has been verified. She has no income and received a \$123.00 GA grant on 10/1. Her baby is born on 10/2 and she reports the birth to DSS on 10/4.

\$201.00	TANF grant that would be issued to a pregnant woman with no income the month she is due.
+ 66.00	Supplemental TANF grant for the child ( $\$270 - \$201 = \$69$ ), prorated from 10/2 = \$66).
\$267.00	Total TANF grant
\$267.00	Total TANF grant
-123.00	GA grant received
\$144.00	Supplemental TANF grant

2. The situation is the same as above except the birth is reported on 10/12.

\$201.00	TANF grant that would be issued to a pregnant woman with no income the month she is due.
+44.00	Supplemental TANF grant for the child ( $\$270 - \$201 = \$69$ ), prorated from 10/12 = \$44).
\$245.00	Total TANF grant
\$245.00	Total TANF grant
-123.00	GA grant received
\$122.00	Supplemental TANF grant

In the first example, the supplemental grant for the child is pro-rated from the date of birth because the birth was reported within five (5) days. It is pro-rated from the date of the report in the second example because the birth was not reported within five days.

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## DIVISION OF SOCIAL SERVICES

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

### ORDER

#### Food Stamp Program

#### Nature of the Proceedings:

Delaware Health and Social Services ("Department") /  
Division of Social Services initiated proceedings to amend

the policies of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to changes in Federal rules. 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 November 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposed Changes

#### Citations

- 7 CFR §272.1, *General Terms and Conditions*
- 7 CFR §273.1, *Household Concept*
- 7 CFR §273.2(d)(2), *Cooperation with QC Reviewer*

#### Summary of Proposed Changes

DSS proposes to amend its regulations to comply with changes to Federal rules, as follows:

- Under DSSM 1003.2, *Information to Law Enforcement* revises DSS policy regarding disclosure of information about food stamp applicants or recipients to law enforcement agencies.
- Under DSSM 9013.1, *Household Definition* there are three changes. The first change clarifies who can be budgeted together for food stamp purposes when persons do not live in the home for the entire month. Federal rules state that as long as a person is in the home for a portion of the month, they can be included in the food stamp budget as long as they are not receiving food stamps in another household. The second change clarifies the term "spouse" for food stamp purposes based on the definition provided in Section 3 of the Defense of Marriage Act, 1 USC §7. The third change renumbers the current #3 to #6 to accommodate added language at new numbers 3, 4 and 5.
- Under DSSM 9029.1, *Cooperation with Quality Control* clarifies that if a household does not comply with a Quality Control (QC) review, is terminated and moves into another household, that household still cannot get benefits until the

household complies with QC. The change also defines annual review period.

#### Summary of Comments Received With Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) offered the following summarized concerns. DSS has considered each comment and responds as follows:

- 1) In the first paragraph, third bullet, the word "or" prior to "probation" should be "of".

**Agency Response:** Correction made.

- 2) In the first paragraph, the last bullet is grammatically incorrect. Consistent with the preceding text and other bullets, it requires an introductory verb. Additionally, in the first paragraph, Council did not discover any analog for the fourth and fifth bullets in 7 CFR §272.1(c). The Federal regulation appears to be much more restrained in authorizing disclosure than the proposed State standard of "has information that is necessary for the officer to conduct his or her official duties. With such a broad mandate, no other bullet would be needed.

**Agency Response:** That section is not the subject of the proposed regulation. The first paragraph under DSSM 1003.2 is policy for Cash Assistance (TANF and GA Programs). The regulations under 7 CFR §272.1 apply to the Food Stamp Program, which are the only rules DSS is addressing at this time.

- 3) The regulations clarify that "same sex couples" are not considered spouses for Food Stamp purposes. This is consistent with the Defense of Marriage Act, Section 3, codified at Title I USC §7.

**Agency Response:** Thank you for your concurrence.

- 4) The disqualification provisions in Section 9029.1 appear generally consistent with 7 CFR §273.2(d)(2).

**Agency Response:** Thank you for your concurrence.

Additionally, DSS initiated changes to the proposed amendment that are technical in nature to change a reference from ABC (A Better Chance) to TANF (Delaware's Temporary Assistance for Needy Families Program) and to reflect current operations. These changes are indicated by [bracketed bold type] and ~~bracketed bold strikethrough~~.

**Findings of Fact:**

The Department finds that the proposed changes as set forth in the November 2005 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Food Stamp Program as it relates to changes in Federal rules is adopted and shall be final effective January 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 12/15/05

**DSS FINAL ORDER REGULATION #05-79****REVISIONS:****1003.2 Information to Law Enforcement Agencies**

For [TANF] Cash Assistance Programs:

Each DSS [~~Financial Services~~] Regional Operations Manager has the authority to disclose the address of a recipient to a Federal, State or local law enforcement officer at the officer's request if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient:

- is fleeing to avoid prosecution; or
- is a fleeing felon (or in the case of New Jersey is fleeing from conviction of a high misdemeanor); or
- is violating a condition [~~or~~ of] probation or parole; or
- has information that is necessary for the officer to conduct his or her official duties; and,
- the location or apprehension of the recipient is within such official duties.

For Food Stamps:

DSS will disclose information about food stamp applicants or recipients to law enforcement agencies only when the agency provides a written request and it is for the purpose of investigating an alleged violation of the Food Stamp Act or regulation.

The written request shall include:

- the identity of the individual requesting the information,
- the individual's authority to request the information,
- the violation being investigated, and
- the identity of the person on whom the information is requested.

DSS shall also make available to law enforcement officers, on official duty, the address, social security number, and a photograph (if available) of a food stamp recipient if

the officer furnishes the recipient's name and informs DSS that the individual is fleeing to avoid prosecution, custody or confinement for a felony, is violating a condition of parole or probation, or has information necessary for the officer to conduct an official duty related to a felony/parole violation.

DSS will also provide information regarding a household member who has information about another household member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole. The information will be provided as long as the law enforcement officer has provided a written request.

If the law enforcement officer has provided documentation, not just the written request, that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, DSS shall terminate the member's participation.

DSS will only disclose the information that is necessary to comply with a specific written request of a law enforcement agency.

*(Break in Continuity of Sections)*

**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) 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. 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.

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.

3-6. 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.

*(Break in Continuity of Sections)*

**9029.1 Cooperation With Quality Control**

A household is ineligible if it refuses to cooperate in any subsequent review of its eligibility as a part of a Quality Control (QC) review. If a household is terminated for refusal to cooperate with a QC reviewer, the household may reapply but will not be determined eligible until it cooperates with the QC reviewer. If a household terminated for refusal to cooperate with a State QC reviewer reapplies after 95 days from the end of ~~the annual review period~~ September, (the end of the annual review period which runs October through September each fiscal year), do not determine the household ineligible for its refusal to cooperate with a State QC reviewer during the completed review period. However, the household must provide verification in accordance with DSSM 9032.13.

If a household terminated for refusal to cooperate with a Federal QC reviewer reapplies after seven months from the end of ~~the annual review period~~ September, (the end of the annual review period which runs October through September each fiscal year), do not determine the household ineligible for its refusal to cooperate with a Federal QC reviewer during the completed review period. However, the household must provide verification in accordance with DSSM 9032.13.

If the household who refuses to cooperate with a QC reviewer joins another food stamp household, those individuals would be treated as ineligible household members until they cooperate with the QC reviewer.

**DEPARTMENT OF INSURANCE**

18 Delaware Code, Sections 311 and 2503

(18 Del.C. §§311 and 2503)

18 DE Admin. Code 1214

**ORDER****1214 Senior Protection in Annuity Transactions**

A public hearing was held on November 29, 2005 to receive comments on proposed Regulation 1214 relating to protections for senior citizens who may engage in annuity transactions under the Delaware Insurance Code. By my order, Deputy Insurance Commissioner Michael L. Vild was appointed hearing officer to receive comments and testimony on the proposed regulation. Public notice of the hearings and publication of proposed Regulation 1214 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law. Nine persons attended the public hearing. The American Council of Life Insurers ("ACLI") filed the only written comments with respect to the proposed regulation.

**Summary of the Evidence and Information Submitted**

The oral testimony relating to the proposed regulation was as follows: Two individuals representing Common Cause of Delaware spoke in favor of the regulation and expressed appreciation that the Commissioner was adopting this regulation in the form recommended by the National Association of Insurance Commissioners ("NAIC"). They felt it was desirable to promote public protection for seniors and to provide a regulatory standard for producers.

Three licensed producers felt that the regulation was unnecessary because it merely reflects what producers are already required to do with respect to the suitability of the product for the consumer. They also felt that the companies that they sell for already require them to keep the kinds of records and make the kinds of disclosures to consumers that are proposed in the regulation.

The ACLI stated that it "strongly supports adoption of the model in its entirety, especially those provisions on duties of insurers and duties of insurance producers and certification." The ACLI believes that uniform adoption by all states is in the industry's and consumers' best interests. The ACLI recommended that the Department make several semantic changes to conform the regulation to the latest model from the NAIC. The ACLI was concerned that the portions of the proposed regulation dealing with mitigation and causes of action were not taken word for word from the NAIC model. In response to the ACLI's comments relating

to mitigation and private causes of action, the Department's counsel explained that existing Delaware statutory provisions give the Commissioner the ability to take mitigating factors into account in the imposition of penalties for statutory or regulatory violations. Counsel also noted that the causes of action language in section 9 was consistent with similar language in other departmental regulations and that the difference in language between the model and the proposed regulations does not substantively affect the purpose and effect of the regulation.

The record was held open until December 2, 2005.

**Findings of Fact**

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. Although producers may have internal compliance standards that requires specific conduct or disclosure requirements with respect to the sale of annuity products to seniors and other clients, current regulatory standards are not sufficiently explicit to protect senior consumers from potentially unethical or illegal trade practices in the sale of annuity products.

2. The NAIC has worked on the model regulation for over two years and has recommended the adoption of this regulation by its members.

3. Subsequent to the public hearing, it was determined that certain semantic and style changes be made to the regulation to more closely track the wording of the model regulation as adopted by NAIC. The recommended changes do not change the meaning or substance of the regulation and are not such as to require republication under 29 Del.C. §10113. The recommended changes are:

a. Re-word section 6 to reflect the NAIC model and to move section 6.4.5 to a new section 7.

b. Re-word section 7 to reflect the NAIC model with the inclusion of specific references to enforcement under applicable provisions of Delaware law. While this is new compared to the regulation issued for publication and comment, there is no substantive change to the proposed regulation by making this change to the form of the regulation. Sections 7.1.1-7.1.3 were formerly part of section 6.4.5. Section 7.1.4 relating to the applicable statutory enforcement provisions is new but merely reflects the applicable provisions of Delaware law that were in existence at the time the regulation was issued for publication and comment.

c. In section 6.4.1.2 the words "distribution methods" should be changed to the word "records" in accordance with the change in the NAIC model. In light of the requirements of that section of the proposed regulation, the change is merely technical and is more appropriately

descriptive of the general goal in section 6 to assure that the producers' records reflect compliance with the applicable laws and regulations that apply to annuity sales.

### Decision and Effective Date

Based on the provisions of 18 Del.C. §§311(a) and 2312 and 29 Del.C. §§10113-10118 and the record in this docket, I hereby adopt Regulation 1214 with the changes recommended by the hearing officer and as the may more fully and at large appear in the version attached hereto to be effective on July 1, 2006.

### Text and Citation

The text of the proposed amendments to Regulation 1214 last appeared in the *Register of Regulations* Vol. 9, Issue 5, pages 693-96.

IT IS SO ORDERED this 15<sup>th</sup> day of December, 2005

Matthew Denn, Insurance Commissioner

### 1214 Senior Protection in Annuity Transactions

#### **1.0 Purpose**

The purpose of this regulation is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.

#### **2.0 Scope**

This regulation shall apply to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

#### **3.0 Authority**

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

#### **4.0 Exemptions**

Unless otherwise specifically included, this regulation shall not apply to recommendations involving:

4.1 Direct response solicitations where there is no recommendation based on information collected from the senior consumer pursuant to this regulation;

#### 4.2 Contracts used to fund:

4.2.1 An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

4.2.2 A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

4.2.3 A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

4.2.4 A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

4.2.5 Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

4.2.6 Formal prepaid funeral contracts.

### **5.0 Definitions**

"Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

"Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

"Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

"Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual senior consumer that results in an annuity transaction in accordance with that advice.

"Senior consumer" means a person sixty-five (65) years of age or older. In the event of a joint purchase by more than one party, the purchaser will be considered to be a senior consumer if any of the parties is age sixty-five (65) or older.

### **6.0 Duties of Insurers and Insurance Producers**

6.1 In recommending to a senior consumer the purchase or exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

6.2 Prior to the execution of an annuity transaction resulting from a recommendation, an insurance producer, or

an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

- 6.2.1 the senior consumer's financial status;
- 6.2.2 the senior consumer's tax status;
- 6.2.3 the senior consumer's investment

objectives; and

6.2.4 such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.

6.3 The following conditions shall apply to transactions contemplated by this regulation:

6.3.1 Except as provided in section 6.3.2, neither an insurance producer, or an insurer where no producer is involved, shall have any obligation to a senior consumer under section 6.1 related to any annuity transaction if a consumer:

6.3.1.1 refuses to provide relevant information requested by the insurer or insurance producer;

6.3.1.2 decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

6.3.1.3 fails to provide complete or accurate information.

6.3.2 An insurer or insurance producer's recommendation subject to section 6.3.1 shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

6.4 The following procedures shall apply to transactions contemplated by this regulation:

6.4.1 Except as provided in sections 6.4.2 and 6.4.3, an insurer shall establish and maintain a system to supervise the insurer's, and the insurer's insurance producers', recommendations to senior consumers that is reasonably designed to achieve compliance by the insurer and its insurance producers with this regulation, including, but not limited to:

6.4.1.1 written procedures; and

6.4.1.2 periodic reviews of its distribution methods that are reasonably designed to assist in detecting and preventing violations of this regulation.

6.4.2 The following conditions shall apply to the delegation of an insurer's obligations:

6.4.2.1 An insurer may, by contract, delegate to a third party the obligation to perform the functions required by section 6.4.1 with respect to insurance producers under contract with or employed by the third party.

6.4.2.2 An insurer shall make reasonable inquiry to assure that the third party contracting under section 6.4.2.1 is performing the functions required under section 6.4.1 and shall take such action as is reasonable

under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

6.4.2.2.1 The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

6.4.2.2.2 The insurer, based on reasonable selection criteria, periodically selects third parties contracting under section 6.4.2.1 for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

6.4.3 An insurer is not required by section 6.4.1 to:

6.4.3.1 review, or provide for review of, all insurance producer solicited transactions; or

6.4.3.2 include in its supervisory system an insurance producer's recommendations to senior consumers of products other than the insurer's annuities.

6.4.4 Section 7 does not apply to this subsection.

6.4.5 The commissioner may order:

6.4.5.1 an insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's, or by the insurer's insurance producer's, violation of this regulation;

6.4.5.2 an insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation; and

6.4.5.3 a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale of, annuities to senior consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation.

6.5 Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

## **[7.0 Enforcement**

**7.1 The commissioner may:**

**7.1.1 Order an insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's, or by its insurance producer's**

(who is not an agent of the senior consumer), violation of this regulation.

7.1.2 Order an insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation.

7.1.3 Order a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to senior consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation.

7.1.4 Impose such penalties or sanctions as may be appropriate in accordance with the provisions of 18 Del.C. Chapters 3, 17 and/or 23.]

#### [87.0] Recordkeeping

[87.1] Insurers and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

[87.2] Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

#### [98.0] Severability

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.

#### [109.0] Causes of Action and Defenses

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

#### [110.0] Effective Date

This regulation shall become effective on ~~July~~ ~~January~~ 1, 2006.

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

Statutory Authority: 7 Delaware Code,  
Chapter 60 (70 Del.C. Ch. 60)

### ORDER

Secretary's Order No.: 2005-A-0049

#### I. Background

On Thursday, August 25, 2005, a public hearing was held at 6:00 p.m. in the DNREC Auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to receive comment on the planned adoption of a new Air Quality regulation, Regulation No. 1144, "Control of Stationary Generator Emissions", and corresponding amendments to Regulation No. 1102, "Permits". Regulation No. 1144 will impact any owner of a stationary generator, except the owner of the following: any mobile generator; residential generator for emergency use only; certain generators whose emissions are already well controlled; or generators with a standby power rating of 10 kW or less. The amendments to Regulation No. 1102 will clarify the permitting requirements for owners of stationary generators.

Delaware is not in compliance with Federal Air Quality standards for ground-level ozone and fine particulate matter (PM2.5). Among other things, the purpose of Regulation No. 1144 is to help ensure that the air emissions from new and existing stationary generators do not cause or contribute to these existing air quality problems. Regulation No. 1102 is being amended to clarify construction and operation permitting requirements as they apply to stationary generators.

Oral comments were received from members of the public that attended this hearing back in August, as well as written comments, which were received by the Department prior to the close of the public record regarding these proposed regulatory promulgations. The Department provided satisfactory responses to the questions posed by the public at the hearing in August, and also provided a Response Memorandum addressing the written comments entered into the record of this matter. Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing

Officer's Report to the Secretary dated December 13, 2005, and that report is expressly incorporated herein by reference.

## **II. Findings and Conclusions**

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed regulatory actions with regard to new Regulation No. 1144 and the amendments to existing Regulation No. 1102. Furthermore, the Department has given careful and serious consideration to all comments provided by the public with respect to this issue, and AQM's recommended conclusions with respect to each comment and the proposed action to be taken by the Department are well-reasoned and based on the record.

## **III. Order**

It is hereby ordered that the proposed adoption of Regulation No. 1144, "Control of Stationary Generator Emissions" and the proposed amendments to Regulation No. 1102, "Permits" should be promulgated in final for in accordance with the customary and established rule-making procedure required by law.

## **IV. Reasons**

The adoption of Regulation 1144 will aid the State of Delaware in ensuring that emissions from new and existing stationary generators do not cause or contribute to the existing air quality problems with regard to ground-level ozone and fine particulate matter, thereby adversely impacting public health, safety and welfare. Moreover, the amendments to existing Regulation 1102 will result in clarification to existing construction and operating permitting requirements as they apply to stationary generators, and will assist the Department in furtherance of the policy and purposes of 7 Del.C., Ch. 60.

John A. Hughes, Secretary

Date of Issuance: December 14, 2005

Effective Date of the Amendment: January 11, 2006

## **1102 Permits**

**06/01/97**

### **Section 1 - General Provisions**

1.1 This regulation establishes the procedures that satisfy the requirement of 7 Del.C. Chapter 60 to report and obtain approval of equipment which has the potential to discharge air contaminants into the atmosphere, and, for construction or modification activities not subject to

Regulation No. 25, the procedures that satisfy the requirement of 40 CFR Part 51 Subpart I (July 7, 1994 edition) and Section 110(a)(2)(C) of the federal clean air act (CAA) as amended November 15, 1990.

1.2 This regulation establishes procedures that enable a person to, as an option, secure federally enforceable terms and conditions in a permit issued pursuant to this regulation.

1.3 This regulation establishes procedures that enable a person subject to both this regulation and to Regulation No. 30 to, as an option, transfer the terms and conditions of a construction permit issued pursuant to this regulation into a Regulation No. 30 operating permit via the administrative permit amendment process specified in Regulation No. 30.

1.4 Within sixty (60) calendar days of receipt of a written request by the Department, an owner or operator of an existing facility, equipment, or air contaminant control device which emits or causes to be emitted any air contaminant shall submit to the Department any relevant information that the Department may request. Relevant information includes information that, in the Departments opinion, is relevant to any permit application/registration or that is necessary to determine the applicability of or compliance with any State or Federal requirement, any permit term or condition, or any condition of registration. Such information also includes a permit application or a registration form, or a corrected or supplemented application/registration. This provision does not limit the applicability of, nor does it sanction noncompliance with the requirements of Section 2.1 of this regulation.

1.5 Any approval granted by the Department pursuant to this Regulation, and any exemption from the requirements of this Regulation provided for in Section 2.2 shall not relieve an owner or operator of the responsibility of complying with applicable local, State, and Federal laws and regulations.

**06/01/97**

### **Section 2 - Applicability**

2.1 Except as exempted in Section 2.2, no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form.

a. For equipment that meets all applicable emission rate(s) and/or standard(s) specified in Section 11.8(a) and (b) without an air contaminant control device, and that meets the following conditions, the person shall submit to the Department a registration form pursuant to Section 9 of this regulation.

i. For equipment without an air contaminant control device, the equipment has actual emissions to the atmosphere of any air contaminant(s), in the aggregate, during any day that are equal to or greater than 0.2 pound per day and, during each and every day, that are less than ten (10) pounds per day; and

ii. For equipment with an air contaminant control device, the equipment has actual emissions to the inlet of the air contaminant control device of any air contaminant(s), in the aggregate, during any day that are equal to or greater than 0.2 pound per day and, during each and every day, that are less than ten (10) pounds per day; and

iii. Regulation No. 25 does not apply.

b. For equipment, a facility or an air contaminant control device that is not subject to Section 2.1(a) and that is subject to a source category permit, the person shall submit to the Department an application for a source category permit pursuant to Section 10 of this regulation. A list of established source category permits is available from the Department.

c. For equipment, a facility or an air contaminant control device that is not subject to Section 2.1(a) or 2.1(b), the person shall submit to the Department an application for a permit pursuant to Section 11 of this regulation.

d. Any person who operates equipment, a facility or an air contaminant control device in accordance with a valid permit issued pursuant to Section 2.1(c) of this regulation, and who later becomes subject to a source category permit:

i. May, at any time, submit to the Department an application for a source category permit pursuant to Section 10 of this regulation; and

ii. Shall, within sixty (60) calendar days of receipt of written request from the Department, submit to the Department an application for a source category permit pursuant to Section 10 of this regulation.

2.2 Provided that Regulation No. 25 does not apply, a permit for installation, alteration, or operation pursuant to this regulation shall not be required for the following equipment or air contaminant control device. Note however that other State and Federal requirements may apply.

a. Equipment without an air contaminant control device that has actual emissions to the atmosphere of any air contaminant(s), in the aggregate, during each and every day that are less than 0.2 pound per day, provided that:

i. The actual emissions are quantified and documented; and

ii. Records are maintained at the facility and are made available to the Department upon request which document that the equipment qualifies for this exemption.

b. Equipment with an air contaminant control device that has actual emissions to the inlet of the air contaminant control device of any air contaminant(s), in the aggregate, during each and every day that are less than 0.2 pound per day, provided that:

i. The actual emissions are quantified and documented; and

ii. Records are maintained at the facility and are made available to the Department upon request which document that the equipment qualifies for this exemption.

c. The equipment listed in Appendix "A" of this regulation.

d. For operation, any equipment or air contaminant control device that is specifically identified in an operation permit issued pursuant to Regulation No. 30.

e. Equipment that is registered pursuant to Section 9 of this regulation.

2.3 Any person who operates fuel burning equipment which uses only natural gas, LP gas, or other desulfurized fuel gas and has a rated heat input of less than 100 million BTUs per hour, or any other equipment, that was exempted from the requirement to have a permit by Regulation No. 2, Section 3.1 (as in effect immediately preceding the effective date of this regulation), or who operates a piece of equipment, a facility, or an air contaminant control device in accordance with a valid permit or letter of exemption that was issued by the Department prior to May 1, 1997, and who, with regard to that specific equipment, facility, or air contaminant control device, is now subject to Section 2.1 of this regulation:

a. May, at any time, submit to the Department a registration form or a permit application pursuant to Section 2.1; and

b. Shall, within sixty (60) calendar days of receipt of a written request from the Department, submit to the Department a registration form or a permit application pursuant to Section 2.1; and

c. Shall not initiate construction, installation, or alteration of the equipment, facility or air contaminant control device prior to complying with Section 2.1 of this regulation (i.e., prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form).

2.4 Any person may petition the Department to establish a source category permit. The petition and, if approved, the establishment of the source category permit shall be pursuant to the procedures in Regulation No. 30 of the State of Delaware *Regulations Governing the Control of Air Pollution*.

**06/01/97****Section 3 - Application/Registration Prepared by Interested Party**

3.1 Any application/registration form submitted to the Department, or any request for the removal of any permit or registration, shall be made by the owner or lessee of the equipment, facility, or air contaminant control device or by his agent. If the applicant/registrant is a partnership or group other than a corporation, the application/registration shall be made by one individual who is a member of the group. If the applicant/registrant is a corporation, the application/registration shall be made by an appropriate representative of the corporation. The application/registration form shall be filed with the Air Quality Management Section of the Division of Air and Waste Management.

3.2 Each application form shall be signed by the applicant and certified by a professional engineer as to the accuracy of the technical information concerning the equipment, apparatus or design features contained in the application, plus plans and other papers submitted. Any applicant who fails to submit any relevant facts or who submitted incorrect information to the Department shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or correct information. The signature of the applicant shall constitute an agreement that the applicant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this Regulation.

3.3 Each registration form shall be signed and certified by the registrant as to the accuracy of the technical information concerning the equipment, apparatus or design features contained in the registration. Any registrant who fails to submit any relevant facts or who submitted incorrect information to the Department shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or correct information. The signature of the registrant shall constitute an agreement that the registrant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this Regulation.

**06/01/97****Section 4 - Cancellation of Construction Permits**

4.1 The Department may cancel a construction permit if the installation or alteration is not begun or if the work involved in installation or alteration is not completed within the time limits specified in the permit.

**06/01/97****Section 5 - Action on Applications**

5.1 If an application is disapproved, the Department shall set forth its objections in the notice of disapproval.

5.2 Upon granting written approval for operation, the Department shall give notice of such approval to any person who has submitted a written request for such notice.

**06/01/97****Section 6 - Denial, Suspension or Revocation of Operating Permits**

6.1 In the event the Department denies a request for approval of a permit to operate any equipment, facility, or device for which an application was made, the applicant shall not commence operation until such time that approval has been obtained from the Department or a permit to operate has been issued by the Department.

6.2 The Department may suspend or revoke an operating permit for violation of any permit condition or violation of this or any other applicable rule or regulation of the Department or any law administered by the Department and may take such other actions as it deems necessary. Permit term(s) and condition(s) which were not identified under Section 11.2(i) and which were not subject to public participation under Section 12.3, and/or which do not otherwise conform to the requirements of this regulation, may be deemed not federally enforceable by the Administrator of the EPA.

6.3 Suspension or revocation of an operating permit shall become final immediately upon service of notice on the holder of the permit, unless otherwise stated in the notice of suspension or revocation.

**06/01/97****Section 7 - Transfer of Permit/Registration Prohibited**

7.1 No person shall transfer a permit from one location to another, or from one piece of equipment to another. No person shall transfer a permit from one person to another person unless thirty (30) days written notice is given to the Department, indicating the transfer is agreeable to both persons, and approval of such transfer is obtained in writing from the Department.

7.2 No person shall transfer a registration from one location to another, or from one piece of equipment to another. No person shall transfer a registration from one person to another person unless prior written notice is given to the Department, indicating the transfer is agreeable to both persons.

**06/01/97****Section 8 - Availability of Permit/Registration**

8.1 Any permit and any registration form shall be available on the premises where the construction, alteration, installation, or operation activity takes place.

**06/01/97**

**Section 9 - Registration Submittal**

9.1 Any person identified in Section 2.1(a) shall register the piece of equipment with the Department on forms furnished by the Department.

9.2 A person shall register with the Department by submitting to the Department a completed registration form that is certified by the person identified in Section 3.1. Registration forms are available from the Department upon request. The registration shall consist of at least the following:

- a. A description of the equipment covered by the registration; and
- b. A description of the nature and quantification of the amount of the emission from the equipment; and
- c. A demonstration that the equipment meets the emission rate(s) and/or standard(s) specified in Section 11.8(a) and (b) of this regulation without an air contaminant control device.

9.3 Immediately after submitting to the Department the information specified in Section 9.2 of this regulation the registrant may initiate construction, install, alter or initiate operation of the equipment.

a. The registrant shall maintain records at the facility which document that the equipment meets the requirements of Section 2.1(a), and shall make such records available to the Department upon request.

b. If at any time the registered equipment does not meet the requirements of Section 2.1(a), operation of said equipment shall be immediately discontinued until all necessary permits have been secured.

c. If at any time the Department determines that the registered equipment does not meet the requirements of Section 2.1(a), a violation of this regulation may have occurred and enforcement action may ensue.

9.4 The submittal of a registration form does not relieve the registrant from the requirement to comply with all State and Federal requirements. Such requirements include, but are not limited to, monitoring, record keeping and reporting requirements, any requirement to consider actual emissions and/or the potential to emit of all equipment when determining the applicability of and/or compliance with certain State and Federal requirements, and any requirement to revise a Regulation No. 30 permit if required to do so by that regulation.

9.5 A person may, in lieu of submitting to the Department a registration form, elect to:

a. Apply for a permit pursuant to Section 2.1(b) or 2.1(c) of this regulation, as applicable.

b. Submit to the Department all of the information required by Section 9.2(a) and (b). In such a case the registrant shall not commence construction/operation until written approval is obtained from the Department.

**06/01/97**

**Section 10 - Source Category Permit Application**

10.1 Any person identified in Section 2.1(b) shall submit to the Department an application requesting a source category permit on forms furnished by the Department.

10.2 The application requesting a source category permit shall include all of the following:

a. All of the information called for by the source category application form. Source category application forms are available from the Department upon request.

b. Certification by the person identified in Section 3.1 that the source will comply with all of the terms and conditions of the source category permit.

c. For facilities subject to Regulation No. 30, the person identified in Section 3.1 of this regulation shall be a responsible official as defined in Regulation No. 30, and the application shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

10.3 For facilities not subject to Regulation No. 30, the Department shall grant approval by issuing to the applicant a source category permit.

10.4 For facilities subject to Regulation No. 30, the Department shall grant approval by incorporating the source category permit into the Regulation No. 30 permit by reference, and such incorporation shall be via the administrative permit amendment process specified in Regulation No. 30.

10.5 A source category permit may be valid for an indefinite period, except as provided for in Regulation No. 30 for sources subject to that regulation.

**06/01/97**

**Section 11 - Permit Application**

11.1 Any person identified in Section 2.1(c) shall submit to the Department an application for a permit on forms furnished by the Department. Permit application forms are available from the Department upon request.

11.2 The application shall consist of a description of at least the following:

a. The equipment or apparatus covered by the application; and

b. Any equipment connected or attached to, or servicing or served by the unit of equipment or apparatus covered by the application; and

c. The plot plan, including the distance and height of building within a reasonable distance from the place where the equipment is or will be installed, if necessarily required by the Department; and

d. The proposed means for the prevention or control of the emissions or contaminant;

e. The chemical composition and amount of any trade waste to be produced as a result of the construction, installation, or alteration of any equipment or apparatus covered by this application;

f. Any additional information, evidence or documentation required by the Department to show what the proposed equipment or apparatus will do.

g. Methods and expected frequency of occurrence of the start-up and shutdown of the equipment, including projected effects of emissions to the atmosphere and on ambient air quality.

h. The nature and amount of emission to be emitted by equipment, the facility, or an air contaminant control device or emitted by associated mobile sources.

i. If the applicant desires any of the term(s) or condition(s) of the permit to be federally enforceable, the applicant shall state that fact in the application. The ensuing permit shall clearly indicate the specific term(s) and condition(s) that are federally enforceable.

j. If the applicant desires any of the term(s) or condition(s) of a construction permit to transfer to a Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30 the following additional requirements apply:

i. The person identified in Section 3.1 of this regulation shall be a responsible official as defined in Regulation No. 30, and the application shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

ii. The application shall include the following additional information:

A. The citation and description of all applicable requirements that will apply to the equipment, facility, or air contaminant control device and that will become applicable to any covered source as a result of the construction, installation, alteration, or operation; and a description of, or reference to, any applicable test method for determining compliance with each applicable requirement.

The terms "applicable requirement" and "covered source" retain the meanings accorded to them in Regulation No. 30.

B. Certification by the responsible official that the source will meet all applicable requirements on a timely basis, and, if a more detailed schedule is expressly required by any applicable requirement, that applicable requirement in accordance with that more detailed schedule.

C. If desired, information necessary to define alternative operating scenarios under Regulation No. 30, Section 6(a)(10), or to define permit terms and conditions to implement emission averaging or operational flexibility under Regulation No. 30, Section 6(a)(11) and 6(h).

D. If desired, a request that the Department, upon taking final action under Section 11.5(b) or 11.5(c) of this regulation, allow coverage under the permit shield as described in Regulation No. 30, Section 6(f).

iii. The applicant shall provide additional information necessary to address any requirements that become applicable to the equipment, facility, or air contaminant control device after the date it filed an application under this section but prior to the date advertisement is made pursuant to Section 12.4(b) of this regulation. This requirement is in addition to the requirement of Section 2.1 of this regulation in situations where construction, installation, or alteration is necessary to comply with the new applicable requirement.

iv. The ensuing construction permit shall clearly indicate the specific term(s) or condition(s) to transfer to the Regulation No. 30 permit, and each such term or condition shall specify the origin and the authority for that term or condition, and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

11.3 In situations in which construction, installation, or alteration is proposed, and operation of the equipment, facility, or air contaminant control device is to follow, such operation shall not commence until written approval is obtained by the applicant from the Department in accordance with Section 11.4 and 11.5, as applicable. The Department may condition approval to operate on a demonstration by the applicant of satisfactory performance of the equipment, facility, or air contaminant control device. In the event the applicant fails to demonstrate satisfactory performance, the Department may require the applicant to cease emissions from the source.

11.4 Persons not requesting review under Section 11.2(j) shall, upon completion of the construction, installation or alteration, request that the Department grant approval to operate.

a. An application does not need to be submitted to the Department. Note however that an application may be required under Regulation No. 30 for persons subject to that regulation.

b. Upon satisfactory demonstration that the equipment, facility or air contaminant control device complies with all of the terms and conditions of the construction permit, the Department shall grant approval to operate by issuing an operation permit.

11.5 Persons requesting review under Section 11.2(j) shall, upon completion of the construction, installation or alteration, request that the Department transfer the terms and conditions of the construction permit into the Regulation No. 30 operating permit.

a. The request shall contain the following information, and shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

i. A description of the compliance status, a compliance schedule, and a certification of compliance for the equipment, facility, or air contaminant control device with respect to all applicable requirements, in accordance with Regulation No. 30, Section 5(d)(8) and (9); and

ii. A statement of the methods used to determine compliance, including a description of monitoring, record keeping, and reporting requirements and test methods.

b. Upon satisfactory demonstration that the equipment, facility or air contaminant control device complies with all applicable requirements and all of the terms and conditions of the construction permit, and not prior to the expiration of the EPA review period provided for in Section 12.5, the Department shall transfer the specified terms and conditions to the Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30.

c. If the Department determines that the equipment, facility, or air contaminant control device does not comply with any applicable requirement the Department may take enforcement action, and shall do one of the following:

i. Provide an opportunity for the applicant to resolve the noncompliance; then, upon resolution, transfer the specified terms and conditions of the construction permit to the Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30; or

ii. Transfer the specified terms and conditions of the construction permit, and an enforceable compliance schedule which satisfies the requirements of

Regulation No. 30, Section 5(d)(8)(iii), to the Regulation No. 30 permit by reopening the permit for cause pursuant to the procedures in Regulation No. 30; or

iii. Deny the request for approval to operate.

11.6 No permit shall be issued by the Department unless the applicant shows to the satisfaction of the Department that the equipment, facility, or air contaminant control device is designed to operate or is operating without causing a violation of the State Implementation Plan, or any rule or regulation of the Department, and without interfering with the attainment or maintenance of National and State ambient air quality standards, and without endangering the health, safety, and welfare of the people of the State of Delaware. The Department may, from time to time, issue or accept criteria for the guidance of applicants indicating the technical specifications which it deems will comply with the performance standards referenced herein.

11.7 Before a permit is issued, the Department may require the applicant to conduct such tests as are necessary in the opinion of the Department to determine the kind and/or amount of the contaminants emitted from the equipment or whether the equipment or fuel or the operation of the equipment will be in violation of any of the provisions of any rule or regulation of the Department. Such tests shall be made at the expense of the applicant and shall be conducted in a manner approved by the Department.

11.8 The following emission rates and/or standards for each air contaminant emitted from any equipment, facility or air contaminant control device shall be specified in each permit issued pursuant to this regulation:

a. The rate and/or standard established and/or relied upon in the State Implementation Plan (SIP) to include the State of Delaware *Regulations Governing the Control of Air Pollution* and regulations promulgated pursuant to Section 111 and Section 112 of the Clean Air Act (CAA); and

b. The rate that was shown under Section 11.6 as not interfering with the attainment and maintenance of any National and State ambient air quality standard, and not endangering the health, safety, and welfare of the people of the State of Delaware; or

c. The rate requested by the applicant. In no case shall this rate be greater than the potential to emit of the equipment, facility, or air contaminant control device; and in no case shall this rate be less stringent than the rate specified in Section 11.8(a) and (b) of this regulation.

11.9 Each emission rate and standard shall be enforceable as a practical matter. Enforceable as a practical matter means that each emission rate and standard:

a. Is stated in the permit as a technically specific and accurate limitation.

b. Is specifically associated with a particular piece(s) of equipment or air contaminant control device(s).

c. Has associated conditions which, in total, establish a method to determine compliance. Such associated conditions shall include appropriate testing, monitoring, record keeping, and reporting requirements.

d. Has a recurring, predictable time period under which compliance with the limitation will be demonstrated. Such time period shall be that specified in the underlying State regulation or federal rule or, in the absence of such specification and upon approval by the Department, shall be hourly, daily, monthly, or some other time period which provides for the demonstration of compliance with the limitation no less frequently than monthly.

11.10 A construction permit or any renewal thereof shall be valid for a period not to exceed three years from the date of issuance, unless sooner revoked by order of the Department, and may be renewed upon application to and approval by the Department.

11.11 An operating permit may be valid for an indefinite period, unless the equipment or operation for which a permit is written has controlled emissions of 100 tons or more per year of any air contaminant, in which case the permit shall be valid for not more than a 5-year period and shall be evaluated prior to re-issuance to determine if permitted emission limits are appropriate.

11.12 The provisions of Section 2.1 and 11.3 shall not apply to the operation of equipment or processes for the purpose of initially demonstrating satisfactory performance to the Department following construction, installation, modification or alteration of the equipment or processes. The applicant shall notify the Department sufficiently in advance of the demonstration and shall obtain the Department's prior concurrence of the operating factors, time period and other pertinent details relating to the demonstration.

11.13 Upon receipt of an application for the issuance of an operating permit the Department, in its discretion, may issue a temporary operating permit valid for a period not to exceed ninety (90) days. A temporary operating permit issued pursuant to this Section shall not be extended more than once for an additional 90-day period.

**06/01/97**

**Section 12 - Public Participation**

12.1 Information obtained through the provisions of this Regulation shall be made available for public inspection at any Department office except where such information is of confidential nature as defined in 7 Del.C. Chapter 60, Section 6014. The Department shall provide for public

participation and comment in accordance with Section 12.2 through 12.6, as applicable.

12.2 Upon receipt of a source category permit application or a permit application, in proper form, the Department shall provide for public participation and comment by:

a. Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment).

b. Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

c. Sending notice of the information detailed in Section 12.2(b) by mail to any person who has requested such notification from the Department by providing to the Department their name and mailing address.

d. Holding, if the Department receives a meritorious request for a hearing within fifteen (15) calendar days of the date of the advertisement described in Section 12.2(b), or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action.

i. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

ii. Not less than twenty (20) calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:

A. Served upon the applicant as summonses are served or by registered or certified mail; and

B. Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

e. Considering all comments submitted by the applicant and the public in reaching its final determination.

12.3 For each permit application requesting to make the terms and conditions of a permit federally enforceable, the Department shall provide for public participation and comment by:

a. Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment), a copy of the draft permit, and a copy or summary of other materials, if any, considered in making the preliminary determination.

b. Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

c. On or before the date of the advertisement described in Section 12.3(b):

i. Sending notice of the information detailed in Section 12.3(b) by mail to the Administrator of the EPA, through the Region III office, and to any person who has requested such notification from the Department by providing to the Department their name and mailing address.

ii. Providing the Administrator of the EPA, through the Region III office, a copy of the draft permit.

d. Holding, if the Department receives a meritorious request for a hearing within thirty (30) calendar days of the date of the advertisement described in Section 12.3(b), or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application or the draft permit for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action or on the specific terms and conditions of the draft permit.

i. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

ii. Not less than thirty (30) calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:

A. Served upon the applicant as summonses are served or by registered or certified mail; and

B. Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

e. Affording the applicant an opportunity to submit, within fifteen (15) days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.

f. Considering all comments submitted by the applicant, the public, and the Administrator of the EPA in reaching its final determination.

g. Providing to the Administrator of the EPA, through the Region III office, a copy of the permit.

12.4 For each permit application requesting to allow the terms and conditions of a construction permit to transfer to a Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30, the Department shall provide for public participation and comment by:

a. Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment), a copy of the draft permit, and a copy or summary of other materials, if any, considered in making the preliminary determination.

b. Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

c. On or before the date of the advertisement described in Section 12.4(b):

i. Sending notice of the information detailed in Section 12.4(b) by mail to any person who has requested such notification from the Department by providing to the Department their name and mailing address, and to the representative of any affected states designated by those states to receive such notices. The term "affected states" retains the meaning accorded to it in Regulation No. 30.

ii. Providing the Administrator of the EPA, through the Region III office, affected states, any person who requests it, and the applicant a statement that sets forth the legal and factual basis for the draft permit conditions

(including references to the applicable statutory or regulatory provisions).

iii. Providing the Administrator of the EPA, through the Region III office, a copy of the permit application unless the Administrator waives the requirement.

d. Holding, if the Department receives a meritorious request for a hearing within thirty (30) calendar days of the date of the advertisement described in Section 12.4(b), or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application or the draft permit for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action or on the specific terms and conditions of the draft permit.

i. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

ii. Not less than thirty (30) calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:

A. Served upon the applicant as summonses are served or by registered or certified mail; and

B. Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

e. Affording the applicant an opportunity to submit, within fifteen (15) days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.

f. Considering all comments submitted by the applicant, the public, and any affected state in reaching its final determination. The Department shall maintain a list of all commenters and a summary of the issues raised and shall make that information available in the public file and supply it to EPA upon request.

g. After meeting the requirements of 12.4(a) through 12.4(f), providing the Administrator of the EPA, through the Region III office, a copy of the proposed permit [i.e., the version of the permit that represents the Department's final determination under Section 12.4(f)], all necessary supporting information, and providing a notice to the Administrator and to any affected state of any refusal by the Department to accept all recommendations for the proposed permit that the affected state submitted during the public review period. The notice shall include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable

requirements. The term "applicable requirement" retains the meaning accorded to it in Regulation No. 30.

h. On or before the date that the Department provides the proposed permit to EPA for review under Section 12.4(g), issuing a written response to all comments submitted by affected states and all significant comments submitted by the applicant and the public.

12.5 The Department shall not issue the permit if the Administrator objects to its issuance in writing within forty-five (45) days of receipt of all of the information provided to the Administrator pursuant to Section 12.4(g). Any EPA objection under this paragraph shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that must be revised to respond to the objection. The Administrator will provide the applicant a copy of the objection. The Department may thereafter issue only a revised permit that satisfies EPA's objection.

12.6 If the Administrator does not object in writing under Section 12.5, any person may petition the Administrator within sixty (60) days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period provided for in Section 12.4, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the Department shall not amend the Regulation No. 30 permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of the construction permit and/or the amended Regulation No. 30 permit or its requirements if the construction permit or the amended Regulation No. 30 permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Department has issued an amended the Regulation No. 30 permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the time limits established in 40 CFR 70.7(g)(4) or (5)(i) and (ii), except in emergencies, and the Department may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application under Regulation No. 30.

#### **06/01/97**

#### **Section 13 - Department Records**

13.1 The Department will keep for five (5) years such records and submit to the Administrator of the EPA such information as the Administrator may reasonably

require to ascertain whether the optional procedures to establish and transfer the terms and conditions of a construction permit issued pursuant to this regulation into a Regulation No. 30 operating permit via the administrative permit amendment process specified in Regulation No. 30 comply with the requirements of the Federal Clean Air Act and 40 CFR Part 70.

#### Appendix A

(For the applicability of Appendix A see Section 2.2 of the regulation)

- a. Air contaminant detector, air contaminant recorder, combustion controller or combustion shut-off.
- b. Except as provided for in Regulation No. 22, **Restriction on Quality of Fuel in Fuel Burning Equipment, external combustion** fuel burning equipment which:
  - i. Uses any fuel and has a rated heat input of less than 10 million British-Thermal Units (BTUs) per hour.
  - ii. Uses only natural gas, LP gas, or other desulfurized fuel gas and has a rated heat input of less than 15 million British-Thermal Units (BTUs) per hour.
- c. Air conditioning or comfort ventilating systems.
- d. Vacuum cleaning systems used exclusively for office applications or residential housekeeping.
- e. Ventilating or exhaust systems for print storage room cabinets.
- f. Exhaust systems for controlling steam and heat.
- g. Any equipment at a facility used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance, provided the operation of the equipment is not an integral part of the production process and the total actual emissions from all such equipment at the facility do not exceed 450 pounds in any calendar month.
- h. Internal combustion engines in vehicles used for transport of passengers or freight.
- i. Maintenance, repair, or replacement in kind of equipment for which a permit to operate has been issued.
- j. Equipment which emits only nitrogen, oxygen, carbon dioxide, and/or water vapor.
- k. Ventilating or exhaust systems used in eating establishments where food is prepared for the purpose of consumption.
- l. Equipment used to liquefy or separate oxygen, nitrogen or the rare gases from the air.
- m. Fireworks display.
- n. Smudge pots for orchards or small outdoor heating devices to prevent freezing of plants.
- o. Outdoor painting and sand blasting equipment.
- p. Lawnmowers, tractors, farm equipment and construction equipment.
- q. Gasoline dispensing facilities that never exceed a monthly throughput of 10,000 gallons.
- s. Stationary gasoline storage tanks that:
  1. Have a capacity less than 550 gallons and that are used exclusively for the fueling of implements of husbandry; or
  2. Have a capacity less than 2000 gallons and that were constructed prior to January 1, 1979; or
  3. Have a capacity less than 250 gallons and that were constructed after December 31, 1978.
- t. Fire schools or fire fighting training.
- u. Residential wood burning stoves and wood burning fireplaces.
- v. Any stationary storage tank not subject to control by these regulations which contains any liquid having a true vapor pressure less than 0.5 psia at 70°F or is less than 5000 gallons capacity.
- w. Buildings, cabinets, and facilities used for storage of chemicals in closed containers.
- x. Sewage treatment facilities.
- y. Water treatment units.
- z. Quiescent wastewater treatment operations.
- aa. Non-contact water cooling towers (water that has not been in direct contact with process fluids).
- bb. Laundry dryers, extractors, or tumblers used for fabrics cleaned with a water solution of bleach or detergents.
- cc. Equipment used for hydraulic or hydrostatic testing.
- dd. Blueprint copiers and photographic processes.
- ee. Kilns used for firing ceramic ware that are heated exclusively by natural gas, electricity, and/or liquid petroleum gas, and the BTU input is less than 15 million BTUs per hour.
- ff. Inorganic acid storage tanks equipped with an emission control device.
- gg. Any internal combustion engine associated with a stationary electrical generator that: 1)has a standby power rating of 450 kilowatts or less that is used only during times of emergency; 2)is located at any residence; or 3)is located at any commercial poultry producing premise, as these terms are defined in Regulation No. 1144.
- hh. Any internal combustion fuel burning equipment, which is not associated with a stationary electrical generator, and has an engine power rating of 450 hp or less.

**1144 Control of Stationary Generator Emissions**

**1.0 General**

1.1 Purpose. The purpose of this regulation is to ensure that emissions of nitrogen oxides (NO<sub>x</sub>), nonmethane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), and carbon dioxide (CO<sub>2</sub>) from stationary generators in the State of Delaware do not adversely impact public health, safety, and welfare.

1.2 Applicability.

1.2.1 This regulation applies to new and existing, emergency and distributed, stationary generators, except for:

1.2.1.1 a generator covered by a permit which imposes a NO<sub>x</sub> emission limitation established to meet Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER);

1.2.1.2 an emergency generator located on a residential property where no commercial or industrial activity is carried on, and operated solely to provide emergency electric power to the domestic residence and structures on that property housing no more than three (3) families;

1.2.1.3 a generator which is mobile; or ~~or~~

1.2.1.4 a generator with a standby power rating of 10 kW or less.

1.2.1.5 existing, emergency, stationary generators installed at the stations of the member companies of the Delaware Volunteer Firemen's Association, listed in 9.0 of this regulation. However, the provision of 1.2.2 of this regulation applies to the generators at the stations listed in 9.0 of this regulation.]

1.2.2 On or after January 11, 2006, a new or existing, stationary generator installed at any of the stations of the member companies of the Delaware Volunteer Firemen's Association, listed in 9.0 of this regulation, shall only operate as an emergency generator.]

1.3 Dates

1.3.1 The owner of a new stationary generator shall submit the information required in Initial Notification, of this regulation and comply with the requirements of this regulation by the date of installation.

1.3.2 The owner of an existing stationary generator shall submit the information required in 1.4 of this regulation no later than ~~insert date 3 months after the effective date~~ April 11, 2006].

1.3.2.1 If the generator is to be classified as an emergency generator, the owner shall comply with the requirements of this regulation by ~~insert date 3 months after the effective date~~ April 11, 2006].

1.3.2.2 If the generator is to be classified as a distributed generator, and is subject to 3.2.1.1 of this

regulation, the owner shall comply with the requirements of this regulation by April 1, 2007. [The owner may request an extension of this compliance date, up to one (1) year, if the owner demonstrates to the Department that the additional compliance time is needed, based upon the requirements of 1.3.4 of this regulation.]

1.3.2.3 If the generator is to be classified as a distributed generator, and is subject to 3.2.1.2 of this regulation, the owner shall comply with the requirements of this regulation by ~~insert date 3 months after the effective date~~ April 11, 2006].

1.3.3 If a generator is to be reclassified from an emergency generator to a distributed generator, or vice versa, the owner of a stationary generator shall submit to the Department a letter stating that the generator is to be reclassified, and the owner shall comply with the requirements of this regulation before this reclassification.

1.3.4 The owner of an existing, distributed generator may request, and the Department may grant, an extension of the April 1, 2007 compliance date, up to one (1) year, if the owner demonstrates to the Department's satisfaction that additional compliance time is necessary by providing an analysis to the Department which:

1.3.4.1 details the economical or technological reasons, or both, for the extension request; and

1.3.4.2 demonstrates that Delaware's attainment of the National Ambient Air Quality Standards for 8-hour ozone, or fine particulate matter, will not be delayed due to the generator's delayed compliance.]

1.4 Initial Notification.

1.4.1 The owner of a stationary generator shall submit to the Department the following information:

1.4.1.1 the generator owner's name and telephone number;

1.4.1.2 the physical address where the generator is installed, or will be installed;

1.4.1.3 a description of the generator including the make, model number, and serial number;

1.4.1.4 the year of manufacture for the generator;

1.4.1.5 the standby power rating or the prime power rating for the generator, or both power ratings if both are known; and

1.4.1.6 the date of installation for existing generators, or the expected date of installation for new generators.

1.4.2 The owner of a stationary generator shall submit to the Department a letter stating whether the

generator is to be classified as an emergency generator or a distributed generator.

**2.0 Definitions. The following words and terms, when used in this regulation, shall have the following meanings:**

**“Biodiesel”** means a renewable fuel for diesel engines derived from natural oils like soybean oil, and which meets the specifications of ASTM D 6751-03a, “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels,” ASTM International, hereby incorporated by reference.

**“Biodiesel Blend”** means a blend of biodiesel and diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend. Pure biodiesel is designated as B100.

**“Combined heat and power”** and **“CHP”** means a generator that sequentially produces both electric power and thermal energy from a single source, where the thermal energy is wholly or partly used for either industrial processes or other heating or cooling purposes.

**“Combustion turbine”** means an internal combustion engine in which expanding gases from the combustion chamber drive the blades of a turbine to generate mechanical energy in the form of a rotating shaft.

**“Commercial poultry producing premises”** means any location in the State of Delaware where live, commercial poultry (*i.e.*, poultry wholly owned by a corporate enterprise that controls the entire growing cycle of the birds, from the breeder flock to the processing plant) is kept.

**“Department”** means Department of Natural Resources and Environmental Control as defined in 29 Del.C., Chapter 80, as amended.

**“Design system efficiency”** means for CHP, the sum of the full load design thermal output and electric output divided by the heat input.

**“Diesel fuel”** means any fuel sold in any state or Territory of the United States and suitable for use in diesel motor vehicles, diesel motor vehicle engines, or diesel nonroad engines, and which is commonly or commercially known or sold as diesel fuel.

**“Digester gas”** means gas generated by the anaerobic digestion of organic wastes, which include, but are not limited to, livestock manure, industrial wastewater, or food processing waste.

**“Distributed generator”** means a stationary generator that may be used during an emergency, during testing, and for maintenance purposes, as well as for any other purpose at times other than during an emergency.

**“Emergency”** means:

- an electric power outage due to: a failure of

the electrical grid; on-site disaster; local equipment failure; or public service emergencies such as flood, fire, natural disaster, or severe weather conditions (*e.g.*, hurricane, tornado, blizzard, etc.); or

- when there is a deviation of voltage or frequency from the electrical provider to the premises of three percent (3%) or greater above, or five percent (5%) or greater below, standard voltage or frequency.

**“Emergency generator”** means a stationary generator used only during an emergency, during testing, and for maintenance purposes. An emergency generator may not be operated in conjunction with a voluntary demand-reduction program or any other interruptible power supply arrangement with a utility, other market participant, or system operator (*e.g.*, Delmarva Power, Delaware Electric Cooperative, PJM, etc.).

**“Existing”** means a generator which is not new. An existing generator shall not be considered new if it is relocated and reinstalled on the same property, nor if it is reclassified from an emergency generator to a distributed generator or vice versa.

**“Gaseous fuel”** means a fuel which is neither solid nor liquid, and includes but is not limited to natural gas, propane, landfill gas, waste gas, and anaerobic digester gas.

**“Generator”** means an internal combustion engine, except for a combustion turbine, and associated equipment that converts primary fuel (including fossil fuels and renewable fuels) into electricity, or electricity and thermal energy. Use of the term “generator” in this regulation shall refer to any and all generators subject to the requirements of this regulation unless the type of generator being referred to is otherwise specified.

**“Installation”** and **“install”** mean:

- for generators which are not required to obtain a permit, the date upon which the emplacement of a generator is commenced; or
- for generators which are required to obtain a permit, the date upon which the owner has all necessary preconstruction approvals or permits and either has:
  - begun, or caused to begin, a continuous program of actual on-site emplacement of the generator, to be completed within a reasonable time; or
  - entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual emplacement of the generator to

be completed within a reasonable time.

“Landfill gas” means gas generated by the decomposition of organic waste deposited in a landfill (including municipal solid waste landfills) or derived from the evolution of organic compounds in the waste.

“Maintenance” means the recurrent, periodic, or scheduled work necessary to repair, prevent damage, or sustain existing components of a generator or any ancillary equipment associated with its use.

“Mobile” means a generator powered by an internal combustion engine that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as converting primary fuel into electricity, or electricity and thermal energy); is intended to be propelled while performing its function; or that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another (i.e., a generator which is not stationary).

“New” means a generator which is installed or repowered on or after ~~insert effective date~~ January 11, 2006.

“Owner” means the owner of, or person responsible for, a generator.

“Power to heat ratio” means for a CHP unit, the design electrical output divided by the design recovered thermal output in consistent units.

“Prime power rating” means the maximum amount of power a generator is capable of supplying during continuous duty, as specified by the manufacturer.

“Repower” means the replacement of the internal combustion engine of a generator with another internal combustion engine.

“Standby power rating” means the amount of power a generator is capable of supplying during a power outage for the duration of the interruption, as specified by the manufacturer.

“Stationary” means a generator powered by an internal combustion engine which is not propelled or intended to be propelled while performing its function, that is used either in a fixed application, or in a portable (or transportable) application in which the engine will stay at a single location on a property (which includes the land, the buildings, and all improvements thereon) for more than 12 consecutive months (i.e., a generator which is not mobile). Any stationary generator which is moved from one location to another in a deliberate attempt to circumvent the residence time requirement of 12 consecutive months shall be deemed stationary.

“Supplier” means a person or firm that manufactures, assembles, or otherwise supplies generators.

“Testing” means determining the capability of a generator to meet the specified requirements of this regulation or determining if the generator and any ancillary equipment associated with its use are functioning correctly.

“US EPA” means the United States Environmental Protection Agency.

“Waste gas” means manufacturing or mining byproduct gases that are not used and are otherwise flared or incinerated. A manufacturing or mining byproduct is a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation, and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.

**3.0 Emissions.**

A generator shall not exceed the following standards (in pounds per megawatt-hour (lbs/MWh) of electricity output) under full load design conditions or at the load conditions specified by the applicable testing methods.

3.1. Emergency generator.

3.1.1 Existing emergency generator. The owner or operator of an existing emergency generator shall operate the generator in conformance with the generator manufacturer’s instructions, such as following maintenance and operating requirements to help minimize emissions.

3.1.2 New emergency generator. A new emergency generator shall meet the applicable emissions standards set by the US EPA for non-road engines (40 CFR 89, 90, 91, 92, 94, 1039, or 1048 July 1, 2004 Edition).

3.2 Distributed generator. The following standards do not apply to distributed generators while operating to provide emergency electric power during an emergency.

3.2.1 Existing distributed generator.

3.2.1.1 Except as provided for in 3.2.1.2 of this regulation, an existing distributed generator shall meet the following emission standards:

<b>Pollutant</b>	<b>Emission Standard (lbs/MWh)</b>
Nitrogen Oxides	4.0
Nonmethane Hydrocarbons	1.9
Particulate Matter (liquid-fueled reciprocating engines only)	0.7
Carbon Monoxide	10.0
Carbon Dioxide	1,900

3.2.1.2 As an alternative to the owner of an existing distributed generator installed on commercial poultry producing premises, to generate electricity to those premises, the generator shall be exempt from the emission standards of 3.2.1.1 of this regulation if one of the following requirements are met:

3.2.1.2.1 the owner of such a generator is participating or is signed up to participate in a Department approved, emission control strategy cost-share program for generators offered by either the Kent Conservation District or the Sussex Conservation District; or

3.2.1.2.2 the generator is gaseous fueled.

### 3.2.2 *New distributed generator.*

3.2.2.1 Except as provided for in 3.2.2.2 of this regulation, a new distributed generator shall meet the following emission standards:

<u>Pollutant</u>	<u>Emission Standards (lbs/MWh)</u>		
	<u>Installed On</u> <u>or</u> <u>After</u> <u>[Effective</u> <u>Date]</u>	<u>Installed On</u> <u>or</u> <u>After</u> <u>January</u> <u>1, 2008</u>	<u>Installed On</u> <u>or</u> <u>After</u> <u>January 1,</u> <u>2012</u>
<u>Nitrogen Oxides</u>	<u>2.2</u>	<u>1.0</u>	<u>0.6</u>
<u>Nonmethane Hydrocarbons</u>	<u>0.5</u>	<u>0.5</u>	<u>0.3</u>
<u>Particulate Matter</u> <u>(liquid-fueled</u> <u>reciprocating</u> <u>engines only)</u>	<u>0.7</u>	<u>0.7</u>	<u>0.07</u>
<u>Carbon Monoxide</u>	<u>10.0</u>	<u>10.0</u>	<u>2.0</u>
<u>Carbon Dioxide</u>	<u>1,900</u>	<u>1,900</u>	<u>1,650</u>

3.2.2.2 A new distributed generator that uses waste, landfill, or digester gases shall be exempt from the emission standards of 3.2.2.1 of this regulation and shall meet the following emission standards:

<u>Pollutant</u>	<u>Emission Standards (lbs/MWh)</u>
	<u>Installed on or After [Effective</u> <u>Date]</u>
<u>Nitrogen Oxides</u>	<u>2.2</u>
<u>Nonmethane Hydrocarbons</u>	<u>0.7</u>
<u>Carbon Monoxide</u>	<u>10.0</u>
<u>Carbon Dioxide</u>	<u>1,900</u>

3.3 By ~~[insert date 4 years after the effective date January 11, 2010]~~ the Department shall complete a review of the state of, and expected changes in, technology and

emissions rates; as well as a review of generators operating within the State of Delaware, and their emissions. This review shall be used by the Department in considering whether these standards in this regulation should be amended, or new standards adopted, to ensure the continued improvement of the ambient air quality of the State of Delaware. Any amendment to these standards shall be in accordance with the requirements of 7 Del.C., Chapter 60 and 29 Del.C., Chapter 101.

### 4.0 **Operating Requirements**

4.1 An emergency generator may operate for an unlimited number of hours during an emergency.

4.2 An emergency generator may operate for an unlimited number of hours during testing or for maintenance purposes, pursuant to the definition of an emergency generator, except as restricted by 4.4 of this regulation.

4.3 A distributed generator may operate at any time, except as restricted by 4.4 of this regulation.

4.4 No emergency or distributed generator shall be used during testing or for maintenance purposes before 5 p.m. on a day which has a Ground Level Ozone Pollution Forecast or Particle Pollution Forecast of "Code Red" or "Code Orange" as announced by the Department.

4.5 Despite of this regulation, an emergency generator may be tested on any day that such testing is required to meet National Fire Protection Association (NFPA) or Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards.

### 5.0 **Fuel Requirements**

5.1 Each shipment of diesel fuel or a biodiesel blend, received for use in a generator on or after ~~[3 months after the effective date April 11, 2006]~~, shall have a sulfur content equal to or less than 0.05% by weight.

5.2 Gaseous fuels, except for waste, landfill, or digester gases, combusted in a generator on or after ~~[3 months after the effective date April 11, 2006]~~ shall contain no more than ten grains total sulfur per 100 dry standard cubic feet (170 ppmv total sulfur) on a daily average.

5.3 Waste, landfill, or digester gases combusted in a generator on or after ~~[3 months after the effective date April 11, 2006]~~ shall contain no more than ten grains total sulfur per 100 dry standard cubic feet (170 ppmv total sulfur) on a daily average. An alternative total sulfur limit for waste, landfill, or digester gases shall be allowed based upon a case-by-case determination.

### 6.0 **Record Keeping and Reporting**

6.1 Record-Keeping Requirements. The owner of a generator shall maintain the following records on the

property where the generator is installed, or at such other readily accessible location that the Department approves in writing:

6.1.1 An owner shall monitor the monthly and yearly amounts of fuel, or fuels, consumed by their generators. Yearly fuel consumption shall be calculated and recorded each calendar month by recording (for each fuel) the current calendar month's fuel consumption and adding it to those of the previous eleven consecutive months.

6.1.2 A non-resettable hour metering device shall be used by an owner to continuously monitor the monthly and yearly operating hours for each of their generators. Yearly operating hours shall be calculated and recorded each calendar month by recording the current calendar month's operating hours and adding them to those of the previous eleven consecutive months.

6.1.3 Monthly and yearly operating hours for an emergency generator. Yearly operating hours during which testing or maintenance occurred shall be calculated and recorded each calendar month by recording the current calendar month's testing or maintenance hours and adding them to those of the previous eleven consecutive months. A brief description of each testing or maintenance performed shall also be recorded.

6.1.4 Except as provided for in 6.1.5 of this regulation, for each shipment of liquid fuel (other than liquefied petroleum gas), received for use in a generator, a shipping receipt and certification shall be obtained from the fuel distributor which identifies:

6.1.4.1 the type of fuel delivered; and

6.1.4.2 the percentage of sulfur in the fuel (by weight dry basis), and the method used to determine the sulfur content.

6.1.5 As an alternative to 6.1.4 of this regulation, the owner may have the fuel in the generator's fuel tank certified by a third party laboratory, after each shipment of liquid fuel. This certification shall identify:

6.1.5.1 the type of fuel delivered; and

6.1.5.2 the percentage of sulfur in the fuel (by weight dry basis), and the method used to determine the sulfur content.

6.2 Availability of Records. The owner shall maintain each record required by 6.1 of this regulation for a minimum of five years after the date the record is made. The owner may retain hard copies (e.g., paper) or electronic copies (e.g., compact discs, computer disks, magnetic tape, etc.) of the records. An owner shall promptly provide the original or a copy of a record or records to the Department upon request.

## **7.0 Emissions Certification, Compliance, and Enforcement**

7.1 Emissions Certification of New Distributed Generators by a Supplier. A supplier may seek to certify that its generators, which are meant to be installed as new distributed generators, meet the provisions of this regulation.

7.1.1 Certification Process. Emissions of nitrogen oxides, nonmethane hydrocarbons, particulate matter, carbon monoxide, and carbon dioxide from the generator shall be certified in pounds of emissions per megawatt hour (lb/MWh) at International Organization for Standardization (ISO) conditions or at the load conditions specified by the applicable testing methods in Emissions. Compliance with this regulation shall be demonstrated through testing using the applicable EPA Reference Methods, California Air Resources Board methods, or equivalent test methods approved by the Department if: of this regulation. If the design of a certified generator is modified, the generator will need to be re-certified. Certification means that a generator meets the required emissions standards of this regulation and can be installed, as supplied, for use as a distributed generator. With respect to nitrogen oxides, nonmethane hydrocarbons, carbon monoxide, and carbon dioxide, test results from EPA Reference Methods, California Air Resources Board methods, or equivalent testing may be used to verify this certification. When testing the output of particulate matter from liquid-fuel reciprocating engines, ISO Method 8178 shall be used. Test results shall be provided upon request to the Department. A statement attesting to certification shall be displayed on the nameplate of the unit or on a label attached to the unit with the following text:

This generator has met the standards defined by the State of Delaware's Regulation No. 1144 and is certified as meeting applicable emission levels when it is maintained and operated in accordance with the supplier's instructions.

7.1.2 Responsibility of Supplier. Certification will apply to a specific make and model of generator. For a make and model of a generator to be certified, the supplier shall certify that the generator is capable of meeting the requirements of this regulation for the lesser of 3,000 hours of operation or five years.

7.2 Emissions Certification of New Emergency Generators by a Supplier. An engine that has been certified to meet the currently applicable US EPA non-road emissions standards shall be deemed to be certified for use in new emergency generators.

7.3 Emissions Verification by an Owner. An owner shall verify, by each generator's respective compliance date as detailed in Dates, of this regulation, that a generator complies with its respective emission requirements of Emissions. A generator shall not exceed the following standards (in pounds per megawatt-hour (lbs/MWh) of electricity output) under full load design conditions or at the load conditions specified by the applicable testing methods, of this regulation by submitting any or all of the following types of data to the Department for review:

**[7.3.1 any emissions certification of a new distributed generator as detailed in 7.1 of this regulation;**

**7.3.2 any emissions certification of a new emergency generator as detailed in 7.2 of this regulation;]**

**[7.3.4.3] any maintenance or operating requirements/instructions provided by the generator manufacturer;**

**[7.3.4.2] the type, or a description, of any emission control equipment used; or**

**[7.3.4.3] emissions test data for the generator (such as a manufacturer's technical data sheet), any supporting documentation for any emission control equipment used, any supporting calculations, any quality control or assurance information, and any other information needed to demonstrate compliance with the requirements.**

7.4 Reverification. To ensure continuing compliance with the emissions limitations, the owner or operator shall verify a distributed generator's compliance with the emission standards every five years. This verification may be accomplished by following a maintenance schedule that the manufacturer certifies will ensure continued compliance with the required standards, by third party testing of the distributed generator using appropriate test methods to demonstrate that the distributed generator still meets the required emission standards, or by some other means as proven to the Department.

#### 7.5 Testing

7.5.1 Emissions. Compliance with this regulation shall be demonstrated through testing using the applicable EPA Reference Methods, California Air Resources Board methods, or equivalent test methods approved by the Department if:

7.5.1.1 a supplier is seeking to certify that one of its generators meets the provisions of this regulation, pursuant to 7.1 of this regulation;

7.5.1.2 an owner owns a generator that is not certified or verified under the terms of 3.1.2, 7.1, 7.2, or 7.3 of this regulation; or

7.5.1.3 an owner of a generator is seeking to reverify the generator via third party testing pursuant to 7.4 of this regulation.

#### 7.5.2 Sulfur Content.

7.5.2.1 Sulfur limits pursuant to 5.1 of this regulation shall be determined using the applicable sampling and testing methodologies set forth in 40 CFR 80.580 (July 1, 2004).

7.5.2.2 Sulfur limits pursuant to 5.2 of this regulation shall be determined using the applicable sampling and testing methodologies set forth in Appendix D of 40 CFR 75 (July 1, 2004) or in the South Coast Air Quality Management District's Rule 431.1 "Sulfur Content of Gaseous Fuels" (June 12, 1998).

7.6 Duty to Comply. An owner shall comply with the requirements of this regulation. Neither certification nor compliance with this regulation relieves owners from compliance with any other applicable state and federal regulations or permitting requirements.

7.7 This regulation is enforceable by the Department as provided by law.

### **8.0 Credit for Concurrent Emissions Reductions**

8.1 Flared Fuels. If a generator uses fuel that would otherwise be flared (i.e., not used for generation or other energy related purpose), the emissions that were or would have been produced through the flaring can be deducted from the actual emissions of the generator, for the purposes of calculating compliance with the requirements of this regulation. If the actual emissions from flaring can be documented, they may be used as the basis for calculating the credit, subject to the approval of the Department. If the actual emissions from flaring cannot be documented, then the following default values shall be used:

<u>Emissions</u>	<u>Waste, Landfill, Digester Gases</u>
<u>Nitrogen Oxides</u>	<u>0.1 lbs/MMBtu</u>
<u>Particulate Matter</u>	<u>N/A</u>
<u>Carbon Monoxide</u>	<u>0.7 lb/MMBtu</u>
<u>Carbon Dioxide</u>	<u>117 lb/MMBtu</u>

#### 8.2 Combined Heat and Power.

8.2.1 CHP installations shall meet the following requirements to be eligible for emissions credits related to thermal output:

8.2.1.1 At least 20% of the fuel's total recovered energy shall be thermal and at least 13% shall be electric. This corresponds to an allowed power-to-heat ratio range of between 4.0 and 0.15.

8.2.1.2 The design system efficiency shall be at least 55%.

8.2.2 A CHP system that meets the requirements of CHP installations shall meet the following

requirements to be eligible for emissions credits related to thermal output: of this regulation may receive a compliance credit against its actual emissions based on the emissions that would have been created by a conventional separate system used to generate the same thermal output. The credit shall be subtracted from the actual generator emissions for purposes of calculating compliance with the limits in 3.1 or 3.2 of this regulation. The credit will be calculated according to the following assumptions and procedures:

8.2.2.1 The emission rates for CHP facilities that replace existing thermal systems (e.g., boiler) for which historic emission rates can be documented shall be the historic emission rates in lbs/MMBtu, but not more than the emission rates for new facilities that displace a thermal system, which are:

<u>Emissions</u>	<u>Maximum Rate</u>
Nitrogen Oxides	0.2 lbs/MMBtu
Particulate Matter	N/A
Carbon Monoxide	0.08 lbs/MMBtu
Carbon Dioxide	117 lbs/MMBtu

8.2.2.2 The emissions rate of the thermal system in lbs/MMBtu will be converted to an output-based rate by dividing by the thermal system efficiency. For new systems the efficiency of the avoided thermal system will be assumed to be 80% for boilers or the design efficiency of other process heat systems. If the design efficiency of the other process heat system cannot be documented, an efficiency of 80% will be assumed. For retrofit systems, the historic efficiency of the displaced thermal system can be used if that efficiency can be documented and if the displaced thermal system is either enforceably shut down and replaced by the CHP system, or if its operation is measurably and enforceably reduced by the operation of the CHP system.

8.2.2.3 The emissions per MMBtu of thermal energy output will be converted to emissions per MWh of thermal energy by multiplying by 3.413 MMBtu/MWh<sub>thermal</sub>.

8.2.2.4 The emissions credits in lbs/MWh<sub>thermal</sub>, as calculated in The emissions per MMBtu of thermal energy output will be converted to emissions per MWh of thermal energy by multiplying by 3.413 MMBtu/MWh<sub>thermal</sub>. of this regulation, will be converted to emissions in lbs/MWh<sub>emissions</sub> by dividing by the CHP system power-to-heat ratio.

8.2.2.5 The credit, as calculated in 8.2.2.4 of this regulation, will be subtracted from the actual emission rate of the CHP unit to produce the emission rate used for compliance purposes.

8.2.2.6 The mathematical calculations set out in 8.2.2.1 through 8.2.2.4 of this regulation are expressed in the following formula:

$$C_{\text{credit}} \text{ lbs/MWh}_{\text{emissions}} = \frac{(\text{boiler limit lbs/MMBtu})}{(\text{boiler efficiency})} \times \frac{3.413}{(\text{power to heat ratio})}$$

8.3 Non-Emitting Resources. When electricity generation that does not produce any of the emissions regulated herein is installed and operated simultaneously at the facility where the generator is installed and operated, then the electricity savings supplied by the non-emitting electricity source shall be added to the electricity supplied by the generator for the purposes of calculating compliance with the requirements of this regulation, subject to the approval of the Department and in accordance with the following formula for determining such savings:

$$Rate_{EF} = (Rate_{\Delta}) * [(Size_{\Delta}) / (Size_{\Delta} + Size_{NER})]$$

Rate<sub>EF</sub> = effective emission rate of generator, accounting for non-emitting resource(s) (lb/MWh)

Rate<sub>Δ</sub> = actual emission rate of generator alone (lb/MWh)

Size<sub>Δ</sub> = actual prime power rating of generator (MW)

Size<sub>NER</sub> = total generating capacity of non-emitting resource(s) (MW)

**[9.0 DVFA Member Companies. The provisions of 1.2.1.5 and 1.2.2 of this regulation apply to the following stations:**

- 9.1 Aetna Hose, Hook & Ladder Company, Inc., Stations 7, 8, and 9**
- 9.2 Belvedere Volunteer Fire Company, Station 30**
- 9.3 Bethany Beach Volunteer Fire Company, Station 70**
- 9.4 Blades Volunteer Fire Company, Station 71**
- 9.5 Bowers Fire Company, Inc., Station 40**
- 9.6 Brandywine Hundred Volunteer Fire Company No. 1, Station 11**
- 9.7 Bridgeville Volunteer Fire Company, Station 72**
- 9.8 Camden-Wyoming Volunteer Fire Company, Station 41**
- 9.9 Carlisle Fire Company, Station 42**
- 9.10 Cheswold Volunteer Fire Company, Station 43**
- 9.11 Christiana Fire Company, Stations 3, 6, and 12**
- 9.12 Citizens' Hose Company, No. 1, Station 44**
- 9.13 Claymont Fire Company, Station 13**
- 9.14 Clayton Fire Company, No. 1, Station 45**
- 9.15 Cranston Heights Fire Company, Station 14**
- 9.16 Dagsboro Volunteer Fire Company, Station 73**

- 9.17 Delaware City Fire Company, No. 1, Station  
15 9.18 Delmar Volunteer Fire Company, Station 74  
9.19 Dover Air Force Base Fire Department,  
Station 58  
9.20 Ellendale Volunteer Fire Company, Station  
75  
9.21 Elsmere Fire Company, No. 1, Station 16  
9.22 Farmington Volunteer Fire Company,  
Station 47  
9.23 Felton Community Fire Company, Station  
48  
9.24 Five Points Fire Company, Station 17  
9.25 Frankford Volunteer Fire Company, Station  
76  
9.26 Frederica Volunteer Fire Company, Station  
49  
9.27 Georgetown American Legion Ambulance  
Service, Station 93  
9.28 Georgetown Volunteer Fire Company,  
Station 77  
9.29 Good-will Fire Company, No. 1, Station 18  
9.30 Greenwood Fire Company, No. 1, Station 78  
9.31 Gumboro Volunteer Fire Company, Station  
79  
9.32 Harrington Fire Company, Station 50  
9.33 Hartly Volunteer Fire Company, Station 51  
9.34 Hockessin Volunteer Fire Company, Station  
19  
9.35 Holloway Terrace Volunteer Fire Company,  
No. 1, Station 20  
9.36 Houston Volunteer Fire Company, Station  
52  
9.37 Indian River Volunteer Fire Company,  
Station 80  
9.38 Laurel Fire Department, Station 81  
9.39 Leipsic Volunteer Fire Company, Station 53  
9.40 Lewes Volunteer Fire Company, Station 82  
9.41 Little Creek Volunteer Fire Company,  
Station 54  
9.42 Magnolia Volunteer Fire Company, Station  
55  
9.43 Marydel Volunteer Fire Company, Station  
56  
9.44 Memorial Volunteer Fire Company, Station  
89  
9.45 Mid Sussex Rescue Squad, Station 91  
9.46 Mill Creek Fire Company, Stations 2 and 21  
9.47 Millsboro Volunteer Fire Company, Station  
83  
9.48 Millville Volunteer Fire Company, Station  
84
- 9.49 Milton Volunteer Fire Company, Station 85  
9.50 Minquadale Fire Company, Station 22  
9.51 Minquas Fire Company, No.1, Station 23  
9.52 Odessa Fire Company, Stations 4 and 24  
9.53 Port Penn Fire Company, Station 29  
9.54 Rehoboth Beach Volunteer Fire Company,  
Station 86  
9.55 Robbins Hose Company, No. 1, Station 46  
9.56 Roxana Volunteer Fire Company, Station 90  
9.57 Seaford Volunteer Fire Company, Station 87  
9.58 Selbyville Volunteer Fire Company, Station  
88  
9.59 Smyrna-Clayton American Legion  
Ambulance, Station 64  
9.60 South Bowers Beach Volunteer Fire  
Company, Station 57  
9.61 Talleyville Volunteer Fire Company, Station  
25  
9.62 Townsend Fire Company, Inc., Station 26  
9.63 Volunteer Hose Company, Station 27  
9.64 Wilmington Fire Department  
9.65 Wilmington Manor Volunteer Fire  
Company, Stations 28 and 32.]

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### DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)

### ORDER

Secretary's Order No. 2005-W-0050

### Total Maximum Daily Loads (TMDLs) for the Chester River, Choptank River, Marshyhope Creek and Pocomoke River Watersheds

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.

The proposed regulations under consideration are intended to protect and improve the water quality of the Delaware waters within the four Delaware watersheds of the following waters: Choptank River, Chester River,

Marshyhope Creek and Pocomoke River. The Department conducted extensive testing and analysis, including applying approved and tested computerized water quality models, and developed Total Maximum Daily Loads (“TMDLs”) for nitrogen, phosphorus and bacteria. These TMDLs were included in proposed regulations published October 1, 2005, in the *Delaware Register of Regulations*, after the Department conducted two public workshops and provided opportunity for informal public comment. On October 27, 2005, a public hearing was held and the record remained open for public comment until October 31, 2005.

Based on the record of decision, including the public hearing record reviewed in the December 12, 2005 Hearing Officer’s Report (“Report”) attached as Appendix A hereto, I find and conclude that the proposed regulations are amply supported and are not arbitrary or capricious. I agree with the Report, which found that the proposed regulations set forth a reasoned basis to achieve the goal of improving the quality of waters within the four Delaware watersheds. The Department previously determined portions of these waters are impaired, that is, they failed to meet Delaware’s water quality standards. The Report reviews and summarizes the record and recommends approval of the proposed regulations as final regulations without any substantive modifications. I adopt the Report as part of this Order, and include the following additional reasoning.

The final regulations are based upon sound scientific evidence, are consistent with state and federal law, and are a reasonable means to achieve improved water quality through reducing or capping levels of nitrogen, phosphorus and bacteria that are entering the waters from nonpoint sources in the watershed. The regulations will control all the nonpoint sources in the four watersheds by requiring that the release of these substances will be under the TMDLs. The Department has determined that the TMDLs reasonably define the maximum limits of potential pollution causing substances that should be allowed to enter the waters already determined to be impaired. Thus, these regulations will allow the TMDLs to be used to develop the pollution control strategies to enforce the TMDLs in order that the goal of cleaner water may be achieved.

The Report discusses the public comments, including extensive comments submitted by the Mid-Atlantic Environmental Law Clinic, which, if adopted, would delay the establishment of these TMDLs, or any TMDLs, at this time. I find that any delay in approving these regulations is contrary to the effort to improve the water quality. I agree that the proposed regulations should be approved and adopted as final regulations without any delay, particularly since the Department is subject to a consent order deadline.

The substance of the proposed regulations is found in Article 1 through 3 of each of the proposed regulations for the four watersheds. These articles set forth TMDLs that will either cap at baseline levels or reduce from base line levels the amount of nitrogen, phosphorus and bacteria that will enter and harm the water quality. There will be significant reduction in the level of these substances entering the waters once the TMDLs are enforced through pollution control strategies. Approval of these TMDLs will allow all of the impaired waters within the four watersheds to meet the Delaware water quality standards, which is an important goal for the Department to achieve.

In conclusion, the following findings and conclusions are entered:

The Department, acting through this Order of the Secretary, adopts the proposed regulation as final regulations, as set forth in the Appendix B 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;

The issuance of the proposed regulations as final regulations will protect and improve the water quality of the Chesapeake Drainage Watersheds, as defined by elevation maps, and allow the pollution control strategies to be developed for the watersheds that will result in improved water quality that meets Delaware’s water quality standards;

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 in the record;

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;

The Department’s proposed regulations, as published in the October 1, 2005, *Delaware Register of Regulations*, and set forth in Appendix B to this Order, were found by the Hearing Officer to be well-supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. I adopt the Report and hereby approve as final regulations the proposed regulations recommended for adoption by the Report; and that;

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 written comments.

John A. Hughes, Secretary  
 Date of Issuance: **December 15, 2005**  
 Effective Date: **January 11, 2006**

**7412 Total Maximum Daily Loads (TMDLs) for Chester River[, Watershed in] Delaware**

**1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Chester River is impaired by high levels of bacteria, elevated levels of the nutrients nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Chester River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Enterococcus bacteria.

**2.0 Total Maximum Daily Loads (TMDLs) [Regulation] for the Chester River[, Watershed in] Delaware**

Article 1. The nonpoint source nitrogen load in the entire watershed shall be capped at the 2001-2003 baseline level. This shall result in a yearly-average total nitrogen load of 708 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 40 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total phosphorous load from 54.6 pounds per day to 32.3 pound per day.

Article 3. The nonpoint source bacteria load in the entire watershed shall be reduced by 75.6% from the 1997 – 2005 baseline levels. This shall result in reducing a yearly-mean bacteria load from 1.9E+11 CFU per day to 4.6E+10 CFU per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Chester River.

Article 5. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be

developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

**7413 Total Maximum Daily Loads (TMDLs) for Choptank River[, Watershed in] Delaware**

**1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Choptank River is impaired by high levels of bacteria, elevated levels of the nutrients nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Choptank River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Enterococcus bacteria.

**2.0 Total Maximum Daily Loads (TMDLs) [Regulation] for the Choptank River[, Watershed in] Delaware**

Article 1. The nonpoint source nitrogen load in the entire watershed shall be capped at the 2001-2003 baseline level. This shall result in a yearly-average total nitrogen load of 1,359 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 40 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total phosphorous load from 127 pounds per day to 75.9 pound per day.

Article 3. The nonpoint source bacteria load shall be reduced by 87.8% from the 1997 – 2005 baseline level. This shall result in reducing a yearly-mean bacteria load from 4.3E+11 CFU per day to 4.4E+10 CFU per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Choptank River.

Article 5. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

**7414 Total Maximum Daily Loads (TMDLs) for [the] Marshyhope Creek[; Watershed in] Delaware**

**1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Marshyhope Creek is impaired by high levels of bacteria, elevated levels of nutrients nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Marshyhope Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Enterococcus bacteria.

**2.0 Total Maximum Daily Loads (TMDLs) [Regulation] for Marshyhope Creek[; Watershed in] Delaware**

Article 1. The nonpoint source nitrogen load in the entire watershed shall be reduced by 20 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total nitrogen load from 2,687 pounds per day to 2,148 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 25 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total phosphorous load from 109 pounds per day to 78.1 pound per day.

Article 3. The nonpoint source bacteria load shall be reduced by 85.7% from the 1997 – 2005 baseline levels. This shall result in reducing a yearly-mean bacteria load from 1.1E+11 CFU per day to 1.6E+10 CFU per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Marshyhope Creek.

Article 5. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

**7415 Total Maximum Daily Loads (TMDLs) for [the] Pocomoke River[; Watershed in] Delaware**

**1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Pocomoke River is impaired by high levels of bacteria, elevated levels of the nutrients nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Pocomoke River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Enterococcus bacteria.

**2.0 Total Maximum Daily Loads (TMDLs) [Regulation] for the Pocomoke River[; Watershed in] Delaware**

Article 1. The nonpoint source nitrogen load in the entire watershed shall be reduced by 55 percent from the 1997-2003 baseline level. This shall result in reducing the yearly-median total nitrogen load from 226 pounds per day to 102 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 55 percent from the 1997-2003 baseline level. This shall result in reducing the yearly-median total phosphorous load from 13.5 pounds per day to 6.1 pound per day.

Article 3. The nonpoint source bacteria load shall be reduced by 69.2% from the 1997- 2005 baseline levels. This shall result in reducing a yearly-mean bacteria load from 4.2E+11 CFU per day to 1.3E+11CFU per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Pocomoke River.

Article 5. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**3000 BOARD OF MENTAL HEALTH AND**  
**CHEMICAL DEPENDENCY PROFESSIONALS**  
 Statutory Authority: 24 Delaware Code,  
 Section 3006(a)(1) (24 Del.C. §3006(a)(1))  
 24 DE Admin. Code 3000

**ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on November 29, 2005 at a scheduled meeting of the Delaware Board of Mental Health Chemical Dependency Professionals to receive comments regarding proposed amendments to Regulation 5.0: *Application and Fee, Affidavit and Time Limit*. The full text of the proposed regulation was published in the *Register of Regulations*, Vol. 9, Issue 2, on August 1, 2005.

**Summary of the Evidence and Information Submitted**

No written comments were received. No public comment was received at the November 29, 2005 hearing.

**Findings of Fact With Respect to the Evidence and Information Submitted**

The Board finds that the proposed amendments to Regulation 5.0 are necessary in order to make the regulation

consistent with the mandate of Senate 229 enacted by the 142<sup>nd</sup> General Assembly. The proposal strikes regulation 5.2.4 as currently written with references to felony convictions and replaces it with language that requires an applicant to submit an affidavit stating that the applicant has not been convicted of and has no pending criminal charge(s) relating to any crime that is substantially related to the provision of mental health counseling and chemical dependency counseling. The proposal also amends the rule where applicable to include references to chemical dependency professionals. The proposed regulation also changes the name of the Board in applicable sections to conform to the Board's new title resulting from House Bill 215 as amended by House Amendment No. 1 and Senate Amendment No.1 enacted by the 143<sup>rd</sup> General Assembly adding licensed marriage and family therapists to those professionals regulated by the Board.

**Decision and Effective Date**

The Board hereby adopts the amendments to Regulation 5.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

**Text and Citation**

The text of the regulation remains as published in *Register of Regulations*, Vol. 9, Issue 2, on August 1, 2005, without any changes, and as attached hereto as Exhibit A.

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2005.  
**BOARD OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS**  
 David Ciamaricone, LPCMH, President, Professional Member  
 James D. Wilson, Ed.D, LPCMH, Vice-President, Professional Member  
 Russell Bushkirk, LCSW, LCDP, Professional Member  
 Dr. Kathleen Nichols, LPCMH, LCDP, Professional Member  
 John Dowling, LPCMH, LCDP  
 Jean Gunnells, LPCMH, Professional Member  
 Michael Kriner, LCSW, LCDP, Professional Member  
 Carmetah Murray, Public Member  
 Vera Murrell, Public Member  
 Dawn Brown, Public Member

**3000 Board Mental Health and Chemical Dependency Professionals****5.0 Application and Fee, Affidavit and Time Limit**

When applying for licensure, the applicant shall complete the following:

5.1 Application and Fee - The applicant shall submit a completed "Application for Licensure," accompanied by a non-refundable application fee.

5.2 Affidavit - The applicant shall submit a signed, notarized "Affidavit," affirming the following:

5.2.1 that he/she has not violated any rule or regulation set forth by the Delaware Board of ~~Professional Counselors of Mental Health;~~ Mental Health and Chemical Dependency Professionals;

5.2.2 that he/she has not been the recipient of any administrative penalties from any jurisdiction in connection with licensure, registration or certification as a mental health or chemical dependency provider,

5.2.3 that he/she does not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to safely act as a ~~LPCMH or LACMH,~~ mental health or chemical dependency professional;

5.2.4 ~~that he/she has not been convicted of any felony and that he/she does not have any criminal conviction or pending criminal charge, whether felony or misdemeanor, which is substantially related to fitness to practice as a mental health provider; and that he/she has not been convicted of and has no pending criminal charge(s) relating to any crime that is substantially related to the provision of mental health counseling or chemical dependency counseling; and~~

5.2.5 that the applicant has not been penalized for any willful violation of any code of ethics or professional mental health or chemical dependency counseling standard.

5.3 Time Limit for Completion of Application - Any application not completed within one (1) year shall be considered null and void.

Statutory authority: 24 Del.C. §§3008, 3009, 3010.

**4 DE Reg. 970 (12/1/00)**

**\*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 Mental Health and Chemical Dependency Professionals is available at:

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

**DIVISION OF PROFESSIONAL REGULATION**

3500 Board of Examiners of Psychologists

Statutory Authority: 24 Delaware Code,

Section 3506(a)(1) (24 Del.C. §3506(a)(1))

**24 DE. Admin. Code 3500**

**ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on November 14, 2005 at a scheduled meeting of the State Board of Examiners of Psychology to receive comments regarding proposed changes to Regulation 6.0. The proposal amends Regulation 6.1 and the subsections therein to conform to the American Psychological Association requirements for accreditation. The proposed regulation was published in the *Register of Regulations*, Vol. 9, Issue 3, on September 1, 2005.

**Summary of the Evidence and Information Submitted**

No written comments were received. No public comment was received at the November 14, 2005 hearing.

**Findings of Fact With Respect to the Evidence and Information Submitted**

The Board finds that the proposed amendments to Regulation 6.0 are necessary in order to make the regulation consistent with the American Psychological Association requirements for accreditation with regard to the evaluation of credentials. Pursuant to 24 Del.C. §3506 (a)(1) the Board has statutory authority to promulgate and amend its regulations.

**Decision and Effective Date**

The Board hereby adopts the amendments to Regulation 6.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

**Text and Citation**

The text of the regulation remains as published in *Register of Regulations*, Vol. 9, Issue 3, on September 1, 2005, without any changes, and as attached hereto as Exhibit A.

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2005.

**BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Dr. Joseph Keyes, President, Professional Member

Dr. Martha Boston, Vice-President, Professional Member

Dr. Merris Hollingsworth, Professional Member

Dr. Gary Johnson Professional Member

Lisa Gardner, Public Member

Hollis Anglin, Public Member

Frank Szczuka, Public Member

Joan McDonough, Public Member

## 6.0 Evaluation of Credentials

6.1 Candidates for licensure as psychologists in the State of Delaware shall:

6.1.1 Have received a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a college or university, accredited as required by 24 **Del.C.** §3508(a)(1) having a graduate program which states its purpose to be the training and preparation of psychologists. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service approved by the National Association of Credential Evaluation Services, to determine equivalency to the accreditation requirements of §3508(a)(1) and equivalency of psychological content and training. The Board will consider programs to be psychological in content by the criteria established by the joint designation project of the Association of State and Provincial Psychology Boards and the Council for the National Register of Health Service Providers in Psychology, as follows:

6.1.1.1 Programs that are accredited by the American Psychological Association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serves as a model for professional psychology training.

6.1.1.2 Or, all of the following criteria, (1) through (9):

6.1.1.2.1 Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

6.1.1.2.2 The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

6.1.1.2.3 The psychology program must stand as a recognizable, coherent organizational entity within the institution.

6.1.1.2.4 There must be a clear authority and primary responsibility for the core and

specialty areas whether or not the program cuts across administrative lines.

6.1.1.2.5 The program must be an integrated, organized sequence of study.

6.1.1.2.6 There must be an identifiable psychology faculty and a psychologist responsible for the program.

6.1.1.2.7 The program must include a body of students who are matriculated in that program for a degree.

6.1.1.2.8 The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

~~6.1.1.2.9 The curriculum shall encompass a minimum of three (3) academic years of full time graduate study. In addition to instruction in scientific and professional ethics and standards research design and methodology, statistics, and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (5 or more graduate quarter hours) in each of these 4 substantive content areas:~~

~~6.1.1.2.9.1 Biological bases of behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.~~

~~6.1.1.2.9.2 Cognitive-affective bases of behavior: Learning, thinking, motivation, emotion.~~

~~6.1.1.2.9.3 Social bases of behavior: Social psychology, group processes, organizational and systems theory.~~

~~6.1.1.2.9.4 Individual differences: Personality theory, human development, abnormal psychology.~~

6.1.1.2.9 The program specifies education and training objectives in terms of competencies expected of its graduates. Those competencies must be consistent with:

6.1.1.2.9.1 The program's philosophy and training models.

6.1.1.2.9.2 The substantive area(s) of professional psychology for which the program prepares students at the entry level of practice.

6.1.1.2.9.3 An understanding of professional issues, including ethical, legal, and quality assurance principles.

6.1.1.2.10 In achieving its objectives, the program has implemented a clear and coherent curriculum plan that provides the means whereby all

students can acquire and demonstrate substantial understanding of and competence in the following areas:

6.1.1.2.10.1 The breadth of scientific psychology, its history of thought and development, its research methods, and its applications. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas: biological aspects of behavior; cognitive and affective aspects of behavior; social aspects of behavior; history and systems of psychology; psychological measurement; research methodology; and techniques of data analysis:

6.1.1.2.10.2 The scientific, methodological, and theoretical foundations of practice in the substantive area(s) of professional psychology in which the program has its training emphasis. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas: individual differences in behavior; human development; dysfunctional behavior or psychopathology; and professional standards and ethics:

6.1.1.2.10.3 Diagnosing or defining problems through psychological assessment and measurement and formulating and implementing intervention strategies (including training in empirically supported procedures). To achieve this end, students shall be exposed to the current body of knowledge in at least the following areas: theories and methods of assessment and diagnosis; effective intervention; consultation and supervision; and evaluating the efficacy of interventions; and

6.1.1.2.10.4 Issues of cultural and individual diversity that are relevant to all of the above.

~~6.1.1.3 In addition, all professional education programs in psychology will include course requirements in specialty areas:~~

6.2 Have had, after receiving the doctoral degree, at least 2 years of supervised experience in psychological work satisfactory to the Board; and

6.3 Have achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) or its successor; or

6.4 The Board will qualify for licensing without examination any person who applies for licensure and who is a Diplomate of the American Board of Professional Psychology. All such applicants must meet all other requirements for licensure.

**2 DE Reg. 776 (11/1/98)**

**4 DE Reg. 980 (12/1/00)**

**amended they are not being published. A complete set of the rules and regulations for the Board of Examiners of Psychologists is available at:**

**<http://www.state.de.us/research/AdminCode/title24/3500%20Board%20of%20Examiners%20of%20Psychologists.shtml#TopOfPage>**

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**\*Please Note: As the rest of the sections were not**

**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION**  
**NOTICE OF PUBLIC HEARING**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to amend rule 8.9.15.2.1 to clarify that the Commission will retest the primary sample drawn if the initial test comes up high, not redraw a second blood sample from the horse. The Commission will hold a public hearing on the proposed rule change on January 17, 2006. Written comments should be sent to Hugh Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

**DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, January 19, 2006 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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

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 Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding changes to Delaware's Temporary Assistance for Needy Families (TANF) Employment and Training policies.

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 Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by January 31, 2006

**DIVISION OF SOCIAL SERVICES**  
**NOTICE OF PUBLIC HEARING**

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 Social Services (DSS) is proposing to amend the rules in the Division of Social Services Manual (DSSM) used to determine eligibility for cash assistance as it relates to the special Education and Business Investment Accounts (EBIAs).

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 Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by January 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.

**DEPARTMENT OF NATURAL**  
**RESOURCES AND**  
**ENVIRONMENTAL CONTROL**  
**DIVISION OF SOIL AND WATER CONSERVATION**  
**NOTICE OF PUBLIC HEARING**

Notice is hereby given that the Division of Soil and Water Conservation, Shoreline and Waterway Management Branch will continue a Public Hearing regarding revisions to the Regulations Governing Beach Protection and the Use of Beaches.

The continued hearing will be held on January 13, 2006 at 6:00 pm at Bethany Beach Town Hall at 214 Garfield Parkway, Bethany Beach, Delaware 19930.

Copies of the draft Regulations are available at [www.dnrec.state.de.us/dnrec2000/Divisions/soil/ShorelineCons/Draftregulations105.pdf](http://www.dnrec.state.de.us/dnrec2000/Divisions/soil/ShorelineCons/Draftregulations105.pdf) or by calling the Shoreline and Waterway Management Section at 739-9921.

All written comments must be submitted in writing by January 10, 2006 in order to be included in the public hearing record. Send them to Maria Sadler at:

Division of Soil and Water Conservation  
 Department of Natural Resources and  
 Environmental Control  
 89 Kings Highway

Dover, Delaware 19901  
Phone: (302) 739-9921

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
Board of Dental Examiners  
**NOTICE OF PUBLIC HEARING**

The Delaware Board of Dental Examiners in accordance with 24 **Del.C.** §1106(a)(1) has proposed changes to its rules and regulations regarding continuing professional education. Specifically, the proposal amends the cardiopulmonary resuscitation (CPR) continuing education requirements for dentists and dental hygienists found in regulations 6.0 and 6.9 to provide that acceptable CPR courses must include hands on clinical participation. The proposal also adds a new subsection 6.6.9 under regulation 6.6 to require continuing education on an Anesthesia topic for holders of Unrestricted Permits and Restricted I Permits.

A public hearing will be held on March 9, 2006 at 6:15 p.m. in the first floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Dental Examiners, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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**DIVISION OF PROFESSIONAL REGULATION**  
**Council on Real Estate Appraisers**  
**NOTICE OF PUBLIC HEARING**

The Delaware Council on Real Estate Appraisers in accordance with 24 **Del.C.** §4006(a)(1) & (b) has proposed changes to its rules to implement HB 73 of the 143<sup>rd</sup> General Assembly. The qualifications for licensure specifically identify the criteria established by the Appraisal Qualifications Board of the Appraiser Subcommittee. Provisions are made for late renewal of license or certificate and for inactive status. The Council identified crimes substantially related to the practice of real estate appraisal.

A public hearing will be held at 10:00 a.m. on February 21, 2006 in the second floor conference room A of the

Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from the Delaware Council on Real Estate Appraisers, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

The Council will consider promulgating the proposed rules at its regularly scheduled meeting following the public hearing.

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**PUBLIC SERVICE COMMISSION**  
**NOTICE OF PUBLIC HEARING**

On July 12, 2005, the Delaware General Assembly enacted legislation finding that “the benefit of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers share an obligation to develop a minimum level of [renewable energy] resources in the electric supply portfolio of [Delaware.]” The General Assembly further stated that its purpose in enacting this legislation is to establish a market in Delaware for electricity from renewable resources, and to lower the cost of such electricity to Delaware consumers. To this end, the General Assembly directed the Delaware Public Service Commission (the “Commission”) to adopt rules and regulations governing the implementation of Renewable Energy Portfolio Standards, and further directed the Commission to promulgate such rules and regulations by July 31, 2006.

In connection with the authority given to it, the Commission now proposed to adopt new rules and regulations to govern the Renewable Energy Portfolio Standards obligations of electric suppliers. The text of the Rules proposed to be adopted is set forth as Exhibit “B” to PSC Order No. 6793 (Dec. 6, 2005). Such proposed Rules will be published in the January 2006 volume of the *Delaware Register of Regulations*. In summary form:

The first section of the Rules contains definitions of the terms used in the regulations.

The second section addresses the purpose and scope of the regulations, and identifies the entities which will be subject to the regulations. That section further identifies the steps that must be taken for certain entities to be exempt from the regulations.

The third section sets forth proposed regulations regarding the Commission’s administration of the standards including, certifying eligible energy resources; ensuring compliance with the renewable energy standards (beginning with a cumulative minimum percentage of electricity

generated by renewable energy resources of 1% in 2007 and reaching a 10% cumulative level in 2019); and verifying compliance with the renewable energy standards.

The fourth section of the regulations addresses an electricity supplier's recovery of costs incurred in complying with the renewable energy standards.

The final section of the regulation addresses the Freedom of Information Act, the persons who may file a complaint, and the penalties for failure to comply with the rules and regulations.

The Commission has authority to promulgate such regulations pursuant to 26 Del.C. §§353 and 362.

The Commission hereby solicits written comments, suggestions, compilations of data, briefs or other written materials concerning the proposed rules and regulations. Anyone desiring to submit written comments, suggestions, data compilations, briefs or other written materials shall file ten (10) copies of such materials with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904. **All such materials shall be filed with the Commission on or before February 2, 2006.** Persons who wish to participate in the proceedings but who do not wish to submit written materials are asked to send a letter to the Commission informing the Commission of their intention to participate on or before **February 2, 2006.**

In addition, the Commission will conduct a public hearing concerning the proposed rules and regulations on **February 14, 2006, beginning at 10:00 A.M. at the Commission's Dover office, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904.** Interested persons may present comments, evidence, testimony and other materials at that public hearing.

The proposed rules and regulations and all materials submitted in connection with this docket will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The proposed rules and regulations may also be reviewed at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4<sup>th</sup> Floor, 820 N. French Street, Wilmington, DE 19801, during normal business hours by appointment. Finally, the proposed rules and regulations will be available for review on the Commission's website located at [www.state.de.us/delpsc](http://www.state.de.us/delpsc).

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing, by telephone or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-

4333. Inquiries may also be sent via Internet e-mail to david.bloom@state.de.us.

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