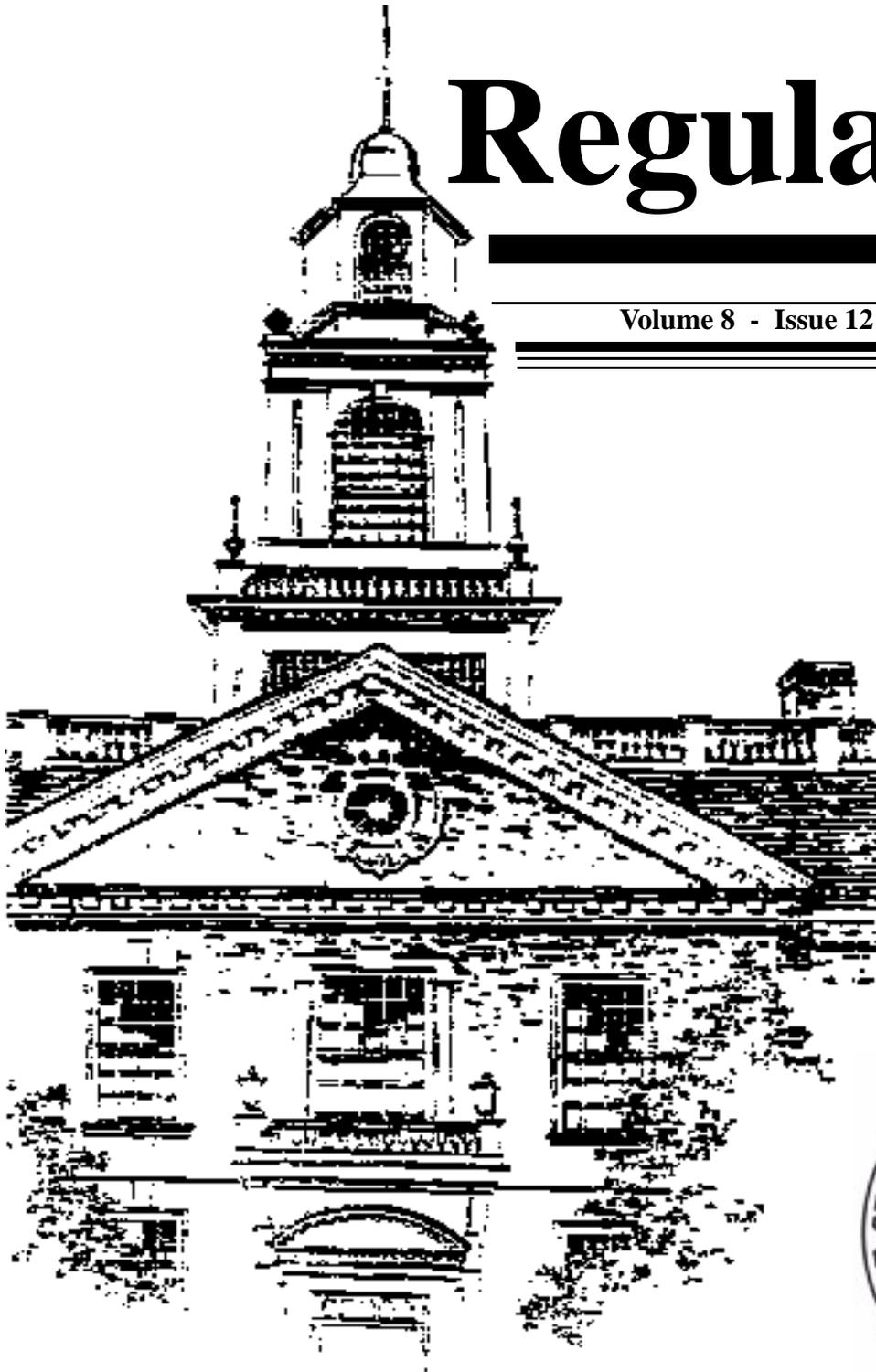


---

---

# Delaware Register of Regulations



---

Issue Date: June 1, 2005

Volume 8 - Issue 12

Pages 1636 - 1741

---

---

## IN THIS ISSUE:

Regulations:

Errata  
Proposed  
Final

Governor

Executive Order  
Appointments

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before May 15, 2005.

---

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

1637

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

---

---

### CITATION TO THE DELAWARE REGISTER

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

8 **DE Reg.** 757-772 (12/01/04)

Refers to Volume 8, pages 757-772 of the *Delaware Register* issued on December 1, 2004.

---

---

### 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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
-----	-----	-----
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.

---



---

#### DIVISION OF RESEARCH STAFF:

**Deborah A. Porter**, Interim Supervisor; **Sandra F. Clark**, Administrative Specialist II; **Kathleen Morris**, Unit Operations Support Specialist; **Jeffrey W. Hague**, Registrar of Regulations; **Steve Engebretsen**, Assistant Registrar; **Victoria Schultes**, Administrative Specialist II; **Rochelle Yerkes**, Administrative Specialist II; **Ruth Ann Melson**, Legislative Librarian; **Debbie Puzzo**, Research Analyst; **Judi Abbott**, Administrative Specialist I; **Alice W. Stark**, Legislative Attorney; **Ted Segletes**, Paralegal; **Deborah J. Messina**, Print Shop Supervisor; **Marvin L. Stayton**, Printer; **Don Sellers**, Printer.

---

---

# TABLE OF CONTENTS

---

1639

Cumulative Tables..... 1641

**FINAL**

---

## ERRATA

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

DSSM; 20330.4.1 Annuities..... 1650

---

## PROPOSED

### DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

1400 Board of Electrical Examiners..... 1652

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

DSSM 9093 through 9093.10, Electronic Benefit Transfer (EBT)..... 1653

### DEPARTMENT OF INSURANCE

1310 Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services ..... 1657

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF WATER RESOURCES

Regulations Governing the Control of Water Pollution Section 9.0, Subsection 9.4, Concentrated Animal Feeding Operation..... 1661

### DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

Delaware Bicycle Facility Master Plan..... 1672

### DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

1900 Board of Nursing..... 1683  
2100 Board of Examiners in Optometry..... 1697

### DEPARTMENT OF AGRICULTURE THOROUGHbred RACING COMMISSION

Rules 15.0, Medication, Testing Procedure and 19.0 Hearings, Reviews & Appeals..... 1699

### DEPARTMENT OF EDUCATION

503 Instructional Program Requirements..... 1709

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

DSSM: 20330.9 Long Term Care Program..... 1711  
DSSM: 3024 Citizens and Aliens Eligible for TANF..... 1712  
9007.1 Citizenship & Alien Status..... 1712

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

Tidal Finfish Regulations:  
3512 Winter Flounder Size Limit; Possession Limit; Seasons..... 1718  
3504 Striped Bass Possession Size Limit; Exceptions..... 1718  
3541 Atlantic Sharks..... 1718  
3566 Minimum Age for a Commercial Finfish Licensee or a Recreational Gill Net..... 1718  
Licensee..... 1718  
3701 General..... 1718

### DIVISION OF WATER RESOURCES

7408 TMDLs for the Murderkill River Watershed..... 1722

### DEPARTMENT OF TRANSPORTATION

Motorcycle Rider Education Courses Provider Requirements ..... 1724

**GOVERNOR**

Executive Order 67, Establishing a Retirement Benefit Study Committee.....	1730
Appointments.....	1732

---

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

State Plan for Child Care Development Fund Services for the Period October 1, 2003 through September 30, 2005.....	1736
Client Cost Sharing for Pharmaceutical Services Cumulative Maximum.....	1737
Title XIX Medicaid State Plan Pharmaceutical Services Program.....	1737

**DEPARTMENT OF INSURANCE**

Circular Letter 01-05, Health Benefit Coverage for Serious Mental Illness-Drug and Alcohol Dependency.....	1739
--	------

---

**CALENDAR OF EVENTS/HEARING  
NOTICES**

Dept. of Administrative Services, Div. of Professional <i>Regulation</i> , Notices of Public Hearings: Board of Electrical Examiners.....	1740
Board of Geologists.....	1740
State Board of Education Monthly Meeting.....	1740
Dept. of Health & Social Service, Div. of Social <i>Services</i> ; Notice of Public Comment Periods.....	1740
<i>Dept. of Insurance</i> , Notice of Public Hearing.....	1741
<i>DNREC, Div. of Water Resources</i> , Notice of Public Hearing.....	1741

---

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

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

**DELAWARE RIVER BASIN COMMISSION**

Proposed Amendment to the Water Quality Regulations, Water Code and Comprehensive Plan to Classify the Lower Delaware River as Special Protection Waters.....	8 DE Reg.	513 (Prop.)
Proposed Amendment to the Water Quality Regulations, Water Code and Comprehensive Plan to Establish Pollutant Minimization Plan Requirements for Point and Non-Point Source Discharges of Toxic Pollutants Following Issuance of a TMDL by either the U.S. Environmental Protection Agency or a Member State, or an Assimilative Capacity Determination by the Delaware River Basin Commission.....	8 DE Reg.	515 (Prop.)

**DELAWARE STATE FIRE PREVENTION COMMISSION**

State Fire Prevention Regulations.....	8 DE Reg.	6 (Prop.)
	8 DE Reg.	416 (Final)

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

100 Board of Accountancy.....	8 DE Reg.	944 (Prop.)
	8 DE Reg.	1216 (Prop.)
	8 DE Reg.	1269 (Final)
	8 DE Reg.	1583 (Final)
200 Board of Landscape Architects.....	8 DE Reg.	625 (Prop.)
	8 DE Reg.	947 (Prop.)
	8 DE Reg.	1431 (Final)
300 Board of Architecture.....	8 DE Reg.	953 (Prop.)
500 Board of Podiatry.....	8 DE Reg.	955 (Prop.)
	8 DE Reg.	1273 (Final)
700 Board of Chiropractic.....	8 DE Reg.	627 (Prop.)
	8 DE Reg.	997 (Final)
	8 DE Reg.	1218 (Prop.)
	8 DE Reg.	1586 (Final)
1100 Board of Dental Examiners.....	8 DE Reg.	1057 (Prop.)
1400 Board of Electrical Examiners.....	8 DE Reg.	627 (Prop.)
	8 DE Reg.	998 (Final)
1700 Board of Medical Practice.....	8 DE Reg.	628 (Prop.)
	8 DE Reg.	750 (Errata)
	8 DE Reg.	1438 (Final)
1770 Board of Medical Practice Respiratory Care Advisory Council.....	8 DE Reg.	635 (Prop.)
	8 DE Reg.	1445 (Final)
	8 DE Reg.	1587 (Final)
1800 Board of Plumbing Examiners.....	8 DE Reg.	639 (Prop.)
	8 DE Reg.	1000 (Final)
1900 Board of Nursing.....	8 DE Reg.	377 (Prop.)
	8 DE Reg.	757 (Prop.)
	8 DE Reg.	864 (Final)
	8 DE Reg.	1089 (Final)
	8 DE Reg.	1219 (Prop.)
2000 Board of Occupational Therapists.....	8 DE Reg.	518 (Prop.)
	8 DE Reg.	1063 (Prop.)

## CUMULATIVE TABLES

2000 Board of Occupational Therapists.....	8 DE Reg. 1449 (Final)
2100 Board of Examiners in Optometry.....	8 DE Reg. 16 (Prop.)
	8 DE Reg. 536 (Final)
	8 DE Reg. 640 (Prop.)
	8 DE Reg. 1002 (Final)
	8 DE Reg. 1370 (Prop.)
2500 Board of Pharmacy, Rule 16.0, Crimes Substantially Related to the Practice of Pharmacy.....	8 DE Reg. 517 (Prop.)
	8 DE Reg. 879 (Final)
	8 DE Reg. 1371 (Prop.)
2600 Board of Physical Therapists & Athletic Trainers.....	8 DE Reg. 772 (Prop.)
	8 DE Reg. 1233 (Prop.)
	8 DE Reg. 1452 (Final)
	8 DE Reg. 1591 (Final)
2700 Board of Professional Land Surveyors.....	8 DE Reg. 774 (Prop.)
	8 DE Reg. 1280 (Final)
2900 Real Estate Commission.....	8 DE Reg. 961 (Prop.)
	8 DE Reg. 1283 (Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	8 DE Reg. 963 (Prop.)
	8 DE Reg. 1456 (Final)
3100 Board of Funeral Services.....	8 DE Reg. 777 (Prop.)
	8 DE Reg. 1241 (Prop.)
	8 DE Reg. 1285 (Final)
3300 Board of Veterinary Medicine.....	8 DE Reg. 645 (Prop.)
	8 DE Reg. 1105 (Final)
3500 Board of Examiners of Psychologists.....	8 DE Reg. 779 (Prop.)
	8 DE Reg. 1518 (Prop.)
3600 Board of Geologists.....	8 DE Reg. 785 (Prop.)
	8 DE Reg. 1105 (Final)
	8 DE Reg. 1388 (Prop.)
3700 Board of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers....	8 DE Reg. 786 (Prop.)
	8 DE Reg. 1106 (Final)
3800 State Committee on Dietetics/Nutrition.....	8 DE Reg. 787 (Prop.)
	8 DE Reg. 1288 (Final)
3900 Board of Clinical Social Work Examiners.....	8 DE Reg. 218 (Prop.)
	8 DE Reg. 880 (Final)
	8 DE Reg. 966 (Prop.)
	8 DE Reg. 1524 (Prop.)
	8 DE Reg. 1600 (Final)
5100 Board of Cosmetology & Barbering.....	8 DE Reg. 788 (Prop.)
	8 DE Reg. 1460 (Final)
5200 Board of Nursing Home Administrators.....	8 DE Reg. 790 (Prop.)
	8 DE Reg. 1526 (Prop.)
5300 Board of Massage and Bodywork.....	8 DE Reg. 390 (Prop.)
	8 DE Reg. 692 (Final)
	8 DE Reg. 796 (Prop.)
	8 DE Reg. 1107 (Final)
Gaming Control Board, Bingo, Charitable Gambling and Raffles.....	8 DE Reg. 531 (Final)
 <b>PUBLIC INTEGRITY COMMISSION</b>	
Public Integrity Commission, Rules of.....	8 DE Reg. 710 (Final)
 <b>PUBLIC SERVICE COMMISSION</b>	
Reg. Docket No. 15, Concerning the Terms and Conditions Under Which Water Utilities Require Advances and/or Contributions In-Aid-Of Construction from Customers or Developers, and the Proper Ratemaking Treatment for such Contributions and Advances.....	8 DE Reg. 969 (Prop.)

---

---

# CUMULATIVE TABLES

1643

---

Reg. Docket No. 54, Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services.....	8 DE Reg. 646 (Prop.)
	8 DE Reg. 1464 (Final)
Reg. Docket No. 55, Regarding the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission.....	8 DE Reg. 1389 (Prop.)

## DEPARTMENT OF AGRICULTURE

### HARNESS RACING COMMISSION

Rule 8.3.3.5, Erythropietin.....	8 DE Reg. 329 (Final)
Rule 8.8 Prohibited Substances Protests; Testing.....	8 DE Reg. 698 (Final)
Rule 8.9 Prerace Testing By Blood Gas Analyzer or Similar Equipment.....	8 DE Reg. 798 (Prop.)
	8 DE Reg. 1108 (Final)
Rule 8.10 Quarantine Procedure for Carbon Dioxide Positive Test (Prerace or Postrace)....	8 DE Reg. 1108 (Final)
502 Standardbred Breeder's Fund Regulations.....	8 DE Reg. 336 (Final)
	8 DE Reg. 1393 (Prop.)

### THOROUGHBRED RACING COMMISSION

Rule 11.14.1.5 Scratches.....	8 DE Reg. 652 (Prop.)
	8 DE Reg. 1289 (Final)
Rules 15.0, Medication, Testing Procedure and 19.0 Hearings, Reviews and Appeals.....	8 DE Reg. 1394 (Prop.)
Rule 19.3.1.1, Application for Review.....	8 DE Reg. 652 (Prop.)
	8 DE Reg. 1289 (Final)

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

101 Delaware Student Testing Program.....	8 DE Reg. 17 (Prop.)
	8 DE Reg. 425 (Final)
106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).....	8 DE Reg. 23 (Prop.)
	8 DE Reg. 431 (Final)
107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).....	8 DE Reg. 23 (Prop.)
	8 DE Reg. 431 (Final)
108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).....	8 DE Reg. 23 (Prop.)
	8 DE Reg. 431 (Final)
251 Family Educational Rights and Privacy Act (FERPA).....	8 DE Reg. 1112 (Final)
252 Required Educational Records and Transfer and Maintenance of Educational Records.....	8 DE Reg. 1112 (Final)
260 General Appeal Procedure for the Child and Adult Care Food Program of the United States Department of Agriculture CACFP/USDA .....	8 DE Reg. 221 (Prop.)
	8 DE Reg. 537 (Final)
262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA)-Fiscal Action.....	8 DE Reg. 1066 (Prop.)
	8 DE Reg. 1471 (Final)
264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA.....	8 DE Reg. 1068 (Prop.)
	8 DE Reg. 1473 (Final)
278 Non-public School Educator Licensure and Certification.....	8 DE Reg. 811 (Prop.)
	8 DE Reg. 1123 (Final)
364 Certification for Interpreter/Tutor for the Hearing Impaired (Transferred to 1560)	8 DE Reg. 1531 (Prop.)
365 Certification Resident Advisor (Houseparent) (Transferred to 765)	8 DE Reg. 1533 (Prop.)
401 Major Capitol Improvement Program.....	8 DE Reg. 1295 (Final)
501 State Content Standards.....	8 DE Reg. 36 (Prop.)
	8 DE Reg. 445 (Final)
503 Instructional Program Requirements.....	8 DE Reg. 1405 (Prop.)
525 Requirements for Career-Technical Education Programs.....	8 DE Reg. 1243 (Prop.)
	8 DE Reg. 1603 (Final)
545 K-12 School Counseling Program.....	8 DE Reg. 1245 (Prop.)

# CUMULATIVE TABLES

545 K-12 School Counseling Program.....	8 <b>DE Reg.</b> 1606 (Final)
609 District and School Based Intervention Services	8 <b>DE Reg.</b> 657 (Prop.)
611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems	8 <b>DE Reg.</b> 1008 (Final)
618 (Formerly Reg. 879) School Safety Audit.....	8 <b>DE Reg.</b> 657 (Prop.)
620 (Formerly Reg. 880) School Crisis Response Plans.....	8 <b>DE Reg.</b> 1008 (Final)
701 Unit Count.....	8 <b>DE Reg.</b> 344 (Final)
705 Training Camp and Special Duty in the National Guard and/or Reserves.....	8 <b>DE Reg.</b> 344 (Final)
706 Credit for Experience for Full Time Service in the Armed Forces.....	8 <b>DE Reg.</b> 1070 (Prop.)
712 Employee Leave.....	8 <b>DE Reg.</b> 1475 (Final)
714 Professional Employee Work Stoppage or Strike.....	8 <b>DE Reg.</b> 396 (Prop.)
718 Health Examinations for School District Employees.....	8 <b>DE Reg.</b> 700 (Final)
725 School Administrator Contracts/Agreements.....	8 <b>DE Reg.</b> 701 (Final)
727 Credit for Experience for Administrators, Teachers and Specialists.....	8 <b>DE Reg.</b> 1073 (Prop.)
731 School Food Service Employees.....	8 <b>DE Reg.</b> 1479 (Final)
733 Substitutes .....	8 <b>DE Reg.</b> 820 (Prop.)
742 Compensation of District Personnel Under Specific Project Proposals	8 <b>DE Reg.</b> 1132 (Final)
765 Certification Resident Advisor (Houseparent) (Transferred from 365)	8 <b>DE Reg.</b> 37 (Prop.)
805 The School Health Tuberculosis (TB) Control Program.....	8 <b>DE Reg.</b> 399 (Prop.)
	8 <b>DE Reg.</b> 702 (Final)
	8 <b>DE Reg.</b> 821 (Final)
	8 <b>DE Reg.</b> 1133 (Final)
	8 <b>DE Reg.</b> 1246 (Prop.)
	8 <b>DE Reg.</b> 1607 (Final)
	8 <b>DE Reg.</b> 1248 (Prop.)
	8 <b>DE Reg.</b> 1608 (Final)
	8 <b>DE Reg.</b> 1249 (Prop.)
	8 <b>DE Reg.</b> 1609 (Final)
	8 <b>DE Reg.</b> 520 (Prop.)
	8 <b>DE Reg.</b> 884 (Final)
	8 <b>DE Reg.</b> 1533 (prop.)
	8 <b>DE Reg.</b> 38 (Prop.)
	8 <b>DE Reg.</b> 400 (Prop.)
	8 <b>DE Reg.</b> 822 (Prop.)
	8 <b>DE Reg.</b> 1134 (Final)
851 K-12 Comprehensive Health Education Program.....	8 <b>DE Reg.</b> 661 (Prop.)
852 Child Nutrition.....	8 <b>DE Reg.</b> 1012 (Final)
885 Safe Management and Disposal of Surplus Chemicals in the Delaware Public School System .....	8 <b>DE Reg.</b> 224 (Prop.)
925 Children with Disabilities.....	8 <b>DE Reg.</b> 540 (Final)
	8 <b>DE Reg.</b> 345 (Final)
	8 <b>DE Reg.</b> 225 (Prop.)
	8 <b>DE Reg.</b> 402 (Prop.)
	8 <b>DE Reg.</b> 886 (Final)
940 Early Admission to Kindergarten for Gifted Students.....	8 <b>DE Reg.</b> 1074 (Prop.)
	8 <b>DE Reg.</b> 1479 (Final)
1006 Delaware Interscholastic Athletic.....	8 <b>DE Reg.</b> 1535 (Prop.)
1008 DIAA Junior High/Middle School Interscholastic.....	8 <b>DE Reg.</b> 1542 (Prop.)
1009 DIAA Senior High School Interscholastic Athletic.....	8 <b>DE Reg.</b> 1544 (Prop.)
1105 School Transportation.....	8 <b>DE Reg.</b> 237 (Final)
	8 <b>DE Reg.</b> 541 (Final)
1560 Certification for Interpreter/Tutor for the Hearing Impaired (Transferred from 364).....	8 <b>DE Reg.</b> 1531 (Prop.)
<b>REGULATIONS REPEALED</b>	
250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data, Repeal of.....	8 <b>DE Reg.</b> 800 (Prop.)
	8 <b>DE Reg.</b> 1112 (Final)
610 Treatment of Severe Discipline Problems Component (14 Del.C. §1604 of Chapter 16, Comprehensive School Discipline Improvement Program August 1998.....	8 <b>DE Reg.</b> 657 (Prop.)

---

---

# CUMULATIVE TABLES

1645

---

610 Treatment of Severe Discipline Problems Component (14 Del.C. §1604 of Chapter 16, Comprehensive School Discipline Improvement Program August 1998.....	8 DE Reg. 1008 (Rep.)
<b>PROFESSIONAL STANDARDS BOARD</b>	
307 Certification Administrative - Director of Special Education.....	8 DE Reg. 825 (Prop.)
Certification Administrative - Director of Special Education (Transferred to 1523).....	8 DE Reg. 1299 (Final)
309 Certification Administrative - Supervisor of Special Education, Repeal of.....	8 DE Reg. 827 (Prop.)
	8 DE Reg. 1297 (Final)
323 Certification Computer Science Teacher.....	8 DE Reg. 247 (Prop.)
	8 DE Reg. 552 (Final)
324 Certification Driver Education and Traffic Safety Teacher.....	8 DE Reg. 1554 (Prop.)
331 (Transferred to 1566) Certification Family and Consumer Sciences Teacher.....	8 DE Reg. 248 (Prop.)
	8 DE Reg. 553 (Final)
334 (Transferred to 1560) Standard Certificate Marketing Education Teacher.....	8 DE Reg. 1250 (Prop.)
	8 DE Reg. 1611 (Final)
368 Certification School Psychologist.....	8 DE Reg. 41 (Prop.)
381 Standard Certificate School To work Transition Teacher.....	8 DE Reg. 1556 (Prop.)
1501 Knowledge, Skills And Responsibility Based Supplements For Educators.....	8 DE Reg. 73 (Final)
	8 DE Reg. 828 (Prop.)
	8 DE Reg. 1137 (Final)
1502 Educator Mentoring.....	8 DE Reg. 347 (Final)
1505 Professional Growth Programs.....	8 DE Reg. 78 (Final)
1509 Meritorious New Teacher Candidate Designation.....	8 DE Reg. 446 (Final)
1513 Denial of Licenses.....	8 DE Reg. 1558 (Prop.)
1523 (Formerly 307) Standard Certificate Director of Special Education.....	8 DE Reg. 1299 (Final)
1528 Foreign Language Teacher Comprehensive.....	8 DE Reg. 80 (Final)
1529 Foreign Language Teacher Secondary.....	8 DE Reg. 80 (Final)
1531 Certification Administrative School Leader I.....	8 DE Reg. 832 (Prop.)
	8 DE Reg. 1301 (Final)
1533 Foreign Language Teacher Elementary.....	8 DE Reg. 80 (Final)
1537 Bilingual Teacher (Spanish) Secondary.....	8 DE Reg. 80 (Final)
1540 Standard Certificate Science Teacher.....	8 DE Reg. 834 (Prop.)
	8 DE Reg. 1138 (Final)
1542 Standard Certificate Science Teacher Middle Level.....	8 DE Reg. 837 (Prop.)
	8 DE Reg. 1139 (Final)
1554 Standard Certificate Reading Specialist.....	8 DE Reg. 405 (Prop.)
	8 DE Reg. 899 (Final)
1555 Standard Certificate Early Care and Education (Ages 0-K) Teacher.....	8 DE Reg. 1252 (Prop.)
	8 DE Reg. 1612 (Final)
1558 Bilingual Teacher (Spanish) Primary Middle Level	8 DE Reg. 80 (Final)
1560 (Formerly Reg. 334) Standard Certificate Marketing Education Teacher.....	8 DE Reg. 1611 (Final)
1566 (Formerly Reg. 331) Standard Certificate Family & Consumer Sciences Teacher.....	8 DE Reg. 553 (Final)
1577 (Formerly Reg. 368) Standard Certificate-School Psychologist .....	8 DE Reg. 448 (Final)
1584 Permits Paraeducators.....	8 DE Reg. 839 (Prop.)
	8 DE Reg. 1141 (Final)
	8 DE Reg. 1560 (Prop.)

## EXECUTIVE DEPARTMENT

### DELAWARE ECONOMIC DEVELOPMENT OFFICE

Procedure for Public Comment at Meetings.....	8 DE Reg. 1417 (Final)
---	------------------------

## DEPARTMENT OF FINANCE

### DIVISION OF REVENUE

Tobacco Quarterly Escrow Installments and Certification.....	8 DE Reg. 1075 (Prop.)
Abandoned or Unclaimed Property Voluntary Disclosure Agreement and Audit Programs.	8 DE Reg. 1562 (Prop.)

**DELAWARE MANUFACTURED HOME RELOCATION TRUST FUND**

201 Delaware Manufactured Home Relocation Trust Fund Regulations.....	8 DE Reg. 619 (Prop.)
.....	8 DE Reg. 1418 (Final)

**OFFICE OF THE STATE LOTTERY**

Rule 4.2 Licensing of Technology Providers.....	8 DE Reg. 842 (Prop.)
.....	8 DE Reg. 1143 (Final)
Rule 6.34 & 6.35 Agents.....	8 DE Reg. 842 (Prop.)
.....	8 DE Reg. 1143 (Final)
Rule 7.16.2 Game Requirements.....	8 DE Reg. 842 (Final)
.....	8 DE Reg. 1143 (Final)

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

3205 Nursing Home Regulations for Intermediate Care.....	8 DE Reg. 662 (Prop.)
3220 Training and Qualifications for Nursing Assistant and Certified Nursing Assistant....	8 DE Reg. 1014 (Final)
3225 Assisted Living Facilities, Regulations for.....	8 DE Reg. 46 (Prop.)
.....	8 DE Reg. 85 (Final)

**DIVISION OF PUBLIC HEALTH**

461 Regulations Governing the Production and Sale of Milk and Milk Products.....	8 DE Reg. 1255 (Prop.)
.....	8 DE Reg. 1615 (Final)
4107 Testing of Newborn Infants for Metabolic, Hematologic and Endocrinologic Disorders	8 DE Reg. 100 (Final)
4109 Autism Surveillance and Registration Program.....	8 DE Reg. 972 (Prop.)
.....	8 DE Reg. 1481 (Final)
4203 Cancer Treatment Program.....	8 DE Reg. 107 (Final)
.....	8 DE Reg. 509 (Emer.)
.....	8 DE Reg. 850 (Prop.)
.....	8 DE Reg. 1144 (Final)
4463 Licensing and Registration of Operators of Public Water Supply Systems.....	8 DE Reg. 47 (Prop.)
.....	8 DE Reg. 453 (Final)

**DIVISION OF SOCIAL SERVICES**

Private Duty Nursing Program Provider Specific Policy;.....	8 DE Reg. 975 (Prop.)
.....	8 DE Reg. 1303 (Final)
Provider Contractual/Programmatic Responsibilities, Section 1.6.....	8 DE Reg. 854 (Prop.)
.....	8 DE Reg. 1148 (Final)

**Division of Social Services Manual (DSSM)**

Client Cost Sharing for Pharmaceutical Services.....	8 DE Reg. 664 (Prop.)
.....	8 DE Reg. 1017 (Final)
2001.1 and 2001.1.1 Redetermination: Eligibility Review Periods.....	8 DE Reg. 855 (Prop.)
.....	8 DE Reg. 1150 (Final)
3003 Non-Time Limited Program-Children's Program.....	8 DE Reg. 670 (Prop.)
.....	8 DE Reg. 1024 (Final)
3024 Citizens and Aliens Eligibility for TANF.....	8 DE Reg. 1406 (Prop.)
3031 Work for your Welfare.....	8 DE Reg. 670 (Prop.)
.....	8 DE Reg. 1024 (Final)
5311 Notification of Time and Place of Hearing.....	8 DE Reg. 351 (Final)
.....	8 DE Reg. 376 (Errata)
9007.1, Citizens & Alien Status	8 DE Reg. 1406 (Prop.)
9026.1, Food Stamp Program.....	8 DE Reg. 521 (Prop.)
.....	8 DE Reg. 901 (Final)
9028.1, Joint Application Processing.....	8 DE Reg. 1076 (Prop.)
.....	8 DE Reg. 1485 (Final)
9032.6 Residency (Including Homelessness Definition).....	8 DE Reg. 857 (Prop.)
.....	8 DE Reg. 1153 (Final)
9068.1 Certification Period Length.....	8 DE Reg. 113 (Final)
11002.9, Child Care Subsidy Program - Definitions and Explanation Of Terms;	
11004.4.1 Explanation of Certificates; 11006.4.2 Fee Paying Clients.....	8 DE Reg. 407 (Prop.)

---

---

# CUMULATIVE TABLES

1647

11004.4.1 Explanation of Certificates; 11006.4.2 Fee Paying Clients.....	8 DE Reg. 1154 (Final)
11004.7, Child Care Subsidy Program - Determination of the Child Care Parent Fee and Fee Waiving Situations.....	8 DE Reg. 978 (Prop.) 8 DE Reg. 1310 (Final) 8 DE Reg. 1565 (Prop.)
20200.2 Excluded Income.....	8 DE Reg. 980 (Prop.)
20300.2 and 20360, Long Term Care Eligibility Process.....	8 DE Reg. 1312 (Final)
20330.4.1, Long Term Care Program, Annuities.....	8 DE Reg. 1262 (Prop.) 8 DE Reg. 1617 (Final)
20330.7, U.S. Savings Bonds.....	8 DE Reg. 981 (Prop.) 8 DE Reg. 1313 (Final)
20330.9, Medicaid Long Term Care Program	8 DE Reg. 1411 (Prop.)
20700.5-20700.5.8, Acquired Brain Injury Waiver Program.....	8 DE Reg. 250 (Prop.) 8 DE Reg. 555 (Final) 8 DE Reg. 616 (Errata)
20700.6, Attendant Services Waiver Program (ASWP)	8 DE Reg. 1263 (Prop.) 8 DE Reg. 1624 (Final)
20810 Treatment of Couples in Medical Assistance	8 DE Reg. 1566 (Prop.)
<b>TANF (Temporary Assistance for Needy Families)</b>	
TANF and Food Stamp Employment Training Program.....	8 DE Reg. 1256 (Prop.) 8 DE Reg. 1618 (Final)

## DEPARTMENT OF INSURANCE

301 Audited Financial Reports.....	8 DE Reg. 252 (Prop.) 8 DE Reg. 557 (Final)
504 (Formerly Reg. No. 47) Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants.....	8 DE Reg. 409 (Prop.) 8 DE Reg. 703 (Final)
603 Delaware Motorists Protection Act.....	8 DE Reg. 1158 (Final)
606 (Formerly Reg. No. 31) Proof of Automobile Insurance.....	8 DE Reg. 55 (Prop.)
607 (Formerly Reg. No. 37) Defensive Driving Course Discount Automobiles and Motorcycles.....	8 DE Reg. 59 (Prop.) 8 DE Reg. 460 (Final)
702 Required Disclosures for Residential Homeowners Policies.....	8 DE Reg. 1264 (Prop.) 8 DE Reg. 1566 (Prop.)
1310 Standards for Prompt, Fair & Equitable Settlement of Claims for Helath Care Services...	8 DE Reg. 1077 (Prop.)
1404 Long-Term Care Insurance.....	8 DE Reg. 257 (Prop.) 8 DE Reg. 562 (Final)
1501 Medicare Supplement Insurance Minimum Standards.....	8 DE Reg. 62 (Prop.) 8 DE Reg. 465 (Final) 8 DE Reg. 672 (Prop.) 8 DE Reg. 1026 (Final)

## DEPARTMENT OF LABOR

### COUNCIL ON APPRENTICESHIP & TRAINING

Section 106.5, Standards of Apprenticeship.....	8 DE Reg. 65 (Prop.) 8 DE Reg. 468 (Final)
---	---

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### OFFICE OF THE SECRETARY

Green Energy Fund Program Regulation.....	8 DE Reg. 114 (Final)
---	-----------------------

### DIVISION OF AIR AND WASTE MANAGEMENT-AIR QUALITY MANAGEMENT SECTION

1352 Above Ground Storage Tank Regulations.....	8 DE Reg. 677 (Prop.) 8 DE Reg. 1167 (Final)
Hazardous Waste, Regulations Governing.....	8 DE Reg. 352 (Final)
Reporting of a Discharge of a Pollutant or Air Contaminant.....	8 DE Reg. 126 (Final)
Solid Waste, Regulations Governing.....	8 DE Reg. 354 (Final)
Reg. 43, Heavy Duty Diesel Engine Standards.....	8 DE Reg. 672 (Prop.)

# CUMULATIVE TABLES

Reg. 43, Heavy Duty Diesel Engine Standards.....	8 DE Reg. 1162 (Final)
Reg. 45, Excessive Idling of Heavy Duty Vehicles.....	8 DE Reg. 982 (Prop.)
1125 Requirements for Preconstruction Review.....	8 DE Reg. 1486 (Final)
	8 DE Reg. 1568 (Prop.)
<b>DIVISION OF FISH &amp; WILDLIFE</b>	
4.0 Seasons & 7.0 Deer.....	8 DE Reg. 355 (Final)
3308 (Formerly NT-7) Fish Stocking Practices.....	8 DE Reg. 374 (Emer.)
	8 DE Reg. 858 (Prop.)
	8 DE Reg. 1315 (Final)
3502 Striped Bass Spawning Season and Area Restrictions.....	8 DE Reg. 858 (Prop.)
	8 DE Reg. 1169 (Final)
3504 Striped Bass Possession Size Limit; Exceptions.....	8 DE Reg. 1413 (Prop.)
3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging & Reporting Requirements.....	8 DE Reg. 858 (Prop.)
	8 DE Reg. 1169 (Final)
3507 Black Sea Bass Size Limits; Trip Limits; Seasons; Quotas.....	8 DE Reg. 1080 (Prop.)
	8 DE Reg. 1488 (Final)
3511 Summer Flounder Size Limits; Possession Limits; Seasons.....	8 DE Reg. 1080 (Prop.)
	8 DE Reg. 1488 (Final)
3512 Winter Flounder Size Limit; Possession Limit; Seasons.....	8 DE Reg. 1412 (Prop.)
3541 Atlantic Sharks.....	8 DE Reg. 1413 (Prop.)
3553 River Herring Creel Limit.....	8 DE Reg. 858 (Prop.)
	8 DE Reg. 1315 (Final)
3566 Minimum Age for a Commercial Finfish Licensee or a Recreational Gill Net Licensee	8 DE Reg. 1413 (Prop.)
3701 General.....	8 DE Reg. 1413 (Prop.)
<b>DIVISION OF SOIL &amp; WATER CONSERVATION</b>	
5101 Sediment and Stormwater Regulations.....	8 DE Reg. 1172 (Final)
	8 DE Reg. 1352 (Errata)
<b>DIVISION OF WATER RESOURCES</b>	
Surface Water Quality Standards.....	8 DE Reg. 154 (Final)
Water Pollution, Regulations Governing.....	8 DE Reg. 679 (Prop.)
7101 Design, Installation and Operation of On-Site Wastewater Treatment & Disposal Systems, Regulations Governing.....	8 DE Reg. 283 (Prop.)
	8 DE Reg. 861 (Prop.)
	8 DE Reg. 1491 (Final)
7203 Control of Water Pollution, Regulations Governing, Sect. 9.0, Subsection 9.4, The Concentrated Animal Feeding Operation.....	8 DE Reg. 984 (Prop.)
	8 DE Reg. 1189 (Final)
7408 TMDL's for the Murderkill River Watershed.....	8 DE Reg. 1266 (Prop.)
7409 TMDL's for Little Assowoman Bay Watershed.....	8 DE Reg. 688 (Prop.)
	8 DE Reg. 1027 (Final)
<b>DEPARTMENT OF SAFETY AND HOMELAND SECURITY</b>	
Board of Examiners of Private Investigators and Private Security Agencies.....	8 DE Reg. 325 (Final)
Bounty Hunter/Bail Enforcement Agents.....	8 DE Reg. 689 (Prop.)
	8 DE Reg. 994 (Prop.)
	8 DE Reg. 1313 (Final)
	8 DE Reg. 1626 (Final)
<b>Division of Highway Safety</b>	
Electronic Red Light Safety Program.....	8 DE Reg. 524 (Prop.)
	8 DE Reg. 1029 (Final)
<b>DEPARTMENT OF STATE</b>	
<b>DIVISION OF HISTORICAL AND CULTURAL AFFAIRS</b>	
Historic Preservation Tax Credit.....	8 DE Reg. 194 (Final)

---

---

# CUMULATIVE TABLES

1649

Historic Preservation Tax Credit.....	8 DE Reg. 526 (Prop.) 8 DE Reg. 1031 (Final)
<b>Human Relations Commission</b>	
1502 Fair Housing Regulation.....	8 DE Reg. 591 (Final)
<b>OFFICE OF THE STATE BANKING COMMISSIONER</b>	
708 (Formerly Reg. No. 5.770.0009) Establishment of a Branch Office by a Bank or Trust Company.....	8 DE Reg. 68 (Prop.) 8 DE Reg. 472 (Final)
714 Establishment of a Mobile Branch Office by a Bank or Trust Company.....	8 DE Reg. 68 (Prop.) 8 DE Reg. 473 (Final)
1113 Election by a Subsidiary Corporation of a Banking Organization of Trust Company to be Taxed in Accordance with Chapter 19 of Title 30.....	8 DE Reg. 68 (Prop.) 8 DE Reg. 474 (Final)
<b>DEPARTMENT OF TRANSPORTATION</b>	
Motorcycle Rider Education Courses Provider Requirements.....	9 DE Reg. 1083 (Prop.)
<b>GOVERNOR'S OFFICE</b>	
Appointments.....	8 DE Reg. 361 8 DE Reg. 479 8 DE Reg. 602 8 DE Reg. 715 8 DE Reg. 907 8 DE Reg. 1036 8 DE Reg. 1200 8 DE Reg. 1321 8 DE Reg. 1493 8 DE Reg. 1630 8 DE Reg. 199
Executive Order No. 56, Establishing The Infant Mortality Task Force.....	8 DE Reg. 199
Executive Order No. 57, Declaring Friday, June 11, 2004 A Legal Holiday In Remembrance of Former President Reagan.....	8 DE Reg. 360
Executive Order No. 58, Relating to the Reestablishment of the Juvenile Justice Advisory Group.....	8 DE Reg. 477
Executive Order No. 59, Implementing the Strategies for State Policies & Spending .....	8 DE Reg. 714
Executive Order No. 61, Green Infrastructure.....	8 DE Reg. 905
Executive Order No. 62, Establishing a Task Force on Surface Water Management.....	8 DE Reg. 1199
Executive Order No. 63, Amendment to Executive Order Number Forty-Nine.....	8 DE Reg. 1199
Executive Order No. 64, Reallocation of State Private Activity Bond Volume Cap for Calendar Year 2004 and Initial Suballocation of State Private Activity Bond Volume Cap for Calendar Year 2005.....	8 DE Reg. 1320
Executive Order No. 66, Establishing the Veterans Home Oversight Committee.....	8 DE Reg. 1629
<b>MERIT EMPLOYEES RELATIONS BOARD</b>	
Classification Maintenance Review Appeal Procedures.....	8 DE Reg. 599 (Final)

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Chapter 5, Section 512 (31 Del.C. Ch. 5, §512)

**ORDER**

**Nature of the Proceedings**

**DSSM 20330.4.1 Annuities**

**PLEASE NOTE: The following final regulation was published in the May 2005 *Register of Regulations*. A paragraph in the regulation text contained a grammatically flawed sentence. The sentence is located on page 1618, under DSSM 20330.4.1 Annuities, third paragraph, first sentence. The grammatically flawed sentence is not what the DSS hearing officer wrote.**

**The order and text are reproduced in their entirety. There is no change in the indicated effective date of the order.**

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal gives direction on counting annuities and their stream of income for the eligibility process. 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 March 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 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 Change**

**Citation**

20 CFR §416.1201(a) - Resources

DSSM 20330.4.1: Adds a new rule that addresses annuities and how they count towards the eligibility process.

**Summary of Comments Received with Agency Response  
with Explanation of Changes**

The following public comments were received on the current proposal to amend the Division of Social Services Manual that addresses annuities and how they count towards the eligibility process. DSS received comments on the policy from the State Council for Persons with Disabilities and JNM Financial. DSS considered each comment and responds as follows:

- This regulation would force individuals to try to liquidate an irrevocable and non-assignable investment/annuity at a substantial loss. The State could consider placing a look-back period on purchases of annuities.

**Agency Response:** While it is true that Delaware is trying to find ways to save money on program expenditures, that is not the reasoning behind the adoption of this rule. Delaware has discovered that estate planners have exploited a loop hole which allows people to shelter their assets in annuities rather than private pay for the services they need. Medicaid is a medical assistance program for the needy. We have determined there is a secondary market for the purchase of annuities. There are dozens of web sites that will purchase the stream of income generated by an annuity.

We are aware that other states are placing a longer look back period for transfer of assets. Most annuities are purchased immediately before application for Medicaid. They are not subject to a transfer of assets penalty period.

- The Federal regulation which DSS references to support this regulation [20 CFR §416.1201(a)] does not explicitly mention annuities.

**Agency Response:** This is true this is not a quote from the CFR - rather a direction on how DSS arrived at the summation that the stream of income is a resource.

- The calculation of the annuity’s value is somewhat counterintuitive.

**Agency Response:** The example given in the comment would leave the individual with a zero value for the annuity. This would only benefit the individual at the State’s expense.

- Some revocable annuities may include a “hefty” penalty for “cashing in” or termination as well as other administrative or processing fees. This should be included in any calculation of resource value.

**Agency Response:** DSS allows the sale of resources at the Fair Market Value which would take into account the penalties.

- The last paragraph requires a spouse claiming that an income allowance is inadequate to request a fair hearing. This may lead to unnecessary fair hearings. DSS may wish to allow reconsideration outside the context of fair hearings.

**Agency Response:** In order to be consistent DSS believes that the only fair and equitable way to decide who should be allowed to protect additional money for the spouse is through the fair hearing process.

*Additional comments were received from Roger Waters, DSS Hearing Officer. His suggested changes are intended to make the language of the rules simpler and easier to understand. As a result of the suggestions [and Division staff analysis], DSS made non-substantive grammatical and clarifying language changes throughout the final order regulation indicated by [bracketed bold type].*

#### **Findings of Fact**

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the policies for the Long Term Care Program regarding annuities is adopted and shall be final effective May 10, 2005.

Vincent P. Meconi, Secretary,  
Department of Health and Social Services (DHSS)

**DSS FINAL ORDER REGULATION #05-21  
NEW:**

#### **DSSM 20330.4.1 Annuities**

An annuity is a financial device that conveys a right to receive periodic payments for life or a fixed number of months or years. While the annuity itself may or may not be an available resource, the stream of income generated by the annuity is a countable asset. [If DSS will determine if] there is a market to purchase the annuity stream of income[.] [If there is a market, DSS it is considered will consider it] to be available for the applicant's or spouse's support and maintenance. See 20 CFR 416.1201 (a)

To calculate the value of the annuity's stream of income[, DSS will] use the amount at which the annuity was originally purchased and subtract all payments received to

date. The remainder is the value of the annuity's income stream. [The DSS will require the annuity income stream [must] be sold at Fair Market Value [as a condition of eligibility]. See DSSM 20350.1.7.

[An DSS will not count the value of an] annuity purchased by a third party, e.g., the applicant's employer, as a retirement benefit to the applicant. [is not counted as an available resource.] However, [the DSS will count the value of the] income generated from a third party annuity [is counted as income].

An annuity that is revocable is always a countable resource. Revocable annuities are able to be converted to cash.

Spouses that claim the income allowance is inadequate to meet the needs of the Community Spouse may request additional resources be set aside to bring their income up to the minimum maintenance needs allowance. These requests MUST go through the fair hearing process in order to retain excess resources for their protected income share. See DSSM 20970 and 42 USC 1396r-5(e). In these cases, at the death of the annuity's owner, the beneficiary of the annuity must be the estate of the Medicaid recipient.

### Symbol Key

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

### Proposed Regulations

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

---

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
1400 BOARD OF ELECTRICAL EXAMINERS  
24 DE. Admin. Code 1400**

Statutory Authority: 24 Delaware Code,  
Section 1406(a)(1) (24 **Del.C.** §1406(a)(1))

**PUBLIC NOTICE**

The Delaware Board of Electrical Examiners in accordance with 24 **Del.C.** §1406(a)(1) has proposed changes to its rules and regulations to clarify the requirement for lettering on a vehicle, the renewal responsibility of a licensee, and the conditions for receiving a homeowner's permit.

A public hearing will be held at 9:00 a.m. on July 6, 2005 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**1400 Board of Electrical Examiners**

**1.0 License Required.**

1.1 No person shall perform electrical services or represent themselves as qualified to perform electrical services without first having been duly licensed unless specifically excepted by statute. 24 **Del.C.** §§1407, 1419

1.2 To perform "electrical services" or "electrical work" means to plan, estimate, layout, perform, or supervise the installation, erection, or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device, or fixture for the purpose of lighting, heating, or power in or on any structure or for elevators, swimming pools, hot tubs, electric signs, air conditioning, heating, refrigeration, oil burners, and overhead and underground primary distribution systems.

1.3 A license is not required for servicing equipment in the fields of heating, air conditioning, refrigeration or appliances.

1.4 A licensee under this chapter shall perform all electrical services or electrical work in accordance with the standards established in the National Electric Code (NEC) as adopted by the Delaware Fire Commission and in any applicable local building code. The version of the NEC applicable to a particular project is determined by the Delaware Fire Commission.

1.5 Every individual who receives a license shall prominently display the words "Licensed Electrician" and the license number on the exterior of all vehicles used for work in not less than three inch letters and numbers. This section is satisfied by any abbreviation readily understood to

mean "Licensed Electrician" such as "Lic. Elec." along with the license number.

**7 DE Reg. 1167 (3/1/04)**

### **7.0 Expiration and Renewal.**

7.1 ~~Beginning in 2002, all licenses expire June 30 and biennially every two years thereafter. The biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board.~~

7.2 As a condition of renewal, each applicant must show proof of continuing education as required in the Rules and Regulations. Extra continuing education hours do not carry over to the next licensing period. Renewal applications will be audited by the Board for compliance with the continuing education requirements.

7.3 A license is expired when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status. A licensee may activate an expired license within one year of the date the renewal application was due by meeting all requirements and paying an additional fee set by the Division of Professional Regulation.

7.4 A licensee with a valid license may request in writing to be placed on inactive status. An inactive status can be effective for up to two years and renewed biennially by application to the Division upon proof of 10 hours of continuing education. Said license may be reactivated by the Board upon written request, proof of insurance, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of inactive status.

7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience satisfies the requirements under 24 Del.C. §1408(a). However, the applicant must take the examination required by §1408(5) again and achieve a passing score.

**4 DE Reg. 1788 (5/1/01)**

### **14.0 Homeowners Permits**

14.1 The Division of Professional Regulation is authorized to issue homeowners' permits pursuant to an application process approved by the Board. ~~Generally homeowner's permits are not required for replacement in kind but are required for new construction, renovation, and any work that requires a building permit. Only owner-~~

~~occupants who perform the work themselves qualify for homeowners' permits.~~

~~14.2 Homeowners' permits are required for new construction, renovation, and any work that requires a building permit. Generally, homeowners' permits are not required for replacement in kind.~~

~~14.2 14.3A~~ homeowner shall not be permitted to install his or her own internal wiring, electrical work or equipment associated with a hot tub or a swimming pool.

14.4 A homeowner's permit issued for a mobile home on a leased lot authorizes electrical services for the mobile home itself and does include hook-up to the pole.

14.5 A homeowner's permit is not authorized until a dwelling is on the site or under construction.

14.6 For the purposes of this section, evidence of homeownership can be a:

14.6.1 deed to the property;

14.6.2 a long term lease, e.g. 99 years, if the site of the dwelling is part of a community where title to the land is not conveyed by deed to the homeowner.

14.6.3 the title to a mobile home;

14.6.4 a written contract of sale, signed by the parties, for a mobile home that includes the names of the buyer, seller, contract price, date of sale, and identification number of the mobile home.

14.7 If a homeowner's permit is approved for a dwelling on a lot, other structures on the same lot, such as a non-commercial garage, are also covered unless otherwise prohibited under this section.

**4 DE Reg. 1788 (5/1/01)**

**\*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 Electrical Examiners is available at: <http://dpr.delaware.gov/boards/electrician/index.shtml>.**

---

## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Chapter 5, Section 512 (31 Del.C. Ch. 5, §512)

### **PUBLIC NOTICE**

#### **FOOD STAMP PROGRAM**

#### **Electronic Benefit Transfer**

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/Division of Social Services (DHSS/DSS) is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to Electronic Benefit Transfer (EBT).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by June 30, 2005.

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 Regulations

DSS is adding EBT policy/procedural language to the manual which provides information on:

- common EBT terms,
- the EBT process,
- account adjustments,
- manual transactions,
- manual vouchers,
- timely processing,
- benefit/claim processing, and
- aging periods and expungement.

The proposed language provides an overview of the procedures. This amendment to the regulation also provides the policy for actions taken by DSS/ARMS (Audit & Recovery Management Services) when it is necessary to make account adjustments, claim processing, and expungement of benefits.

#### Citation

7 CFR §274.12, EBT Issuance System Approval Standards

#### **DSS PROPOSED REGULATION #05-24**

**NEW:**

#### **9093 Electronic Benefit Transfer (EBT)**

Electronic Benefit Transfer (EBT) is the method by which Delaware Division of Social Services (DSS) issues food stamp benefits to participants. The EBT card is a plastic card called the Delaware Food First Card. The card is used with a Personal Identification Number (PIN) at grocery retailers to purchase food.

eFunds Government Systems (eFunds) is Delaware's contractor for EBT. Client/case file and benefit information are transmitted through an interface between eFunds and the Division's data processing systems.

EBT did not change the way that eligibility determinations are made for food stamps. EBT affected the way that food benefits are delivered to participants. EBT provides greater privacy and security for those receiving food stamp benefits.

#### **9093.1 Definitions/Acronyms**

**Administrative Terminal:** This is the eFunds system through which DSS staff can obtain EBT card and account information.

**Authorized Representative:** This is an individual outside the household designated to have access to the household's benefit account. This can also be a household member, for example, a spouse, who is a secondary card holder.

**Benefit Status:** This is a code which indicates the current status of the benefit in the Administrative Terminal.

**Card Number:** The card number is printed on the front of the EBT card. The first six digits are the same for all of Delaware's cards. This is known as the Primary Account Number (PAN).

**Card Status:** An EBT card may be active or inactive. The card status for a replacement card can indicate stolen, lost, payee changed, name changed, damaged, undelivered, deactivated/cancelled or bad address.

**Date Available:** Benefits are available at 6:00 a.m. on the date specified in the Administrative Terminal. Regular monthly food stamp benefits are available according to a seven day staggered schedule based on the last name. Benefits start staggering on the fifth calendar day of each month.

**eFunds Customer Support:** The Customer Support Unit receives phone calls from participants to check balances, report lost or stolen cards, report problems with a retailer, and request new PINs. The CSU number is 1-800-526-9099.

**Expunged Benefits:** Benefits in client accounts not used for 270 days are expunged (removed) from the account forever.

**FNS Number:** A unique number is assigned to retailers by FNS indicating that the retailer is eligible to accept food stamp benefits.

**Hold Amount:** When a food stamp manual voucher transaction is used, an authorization number must be obtained by phoning eFunds. A hold is put on the participant's food stamp benefits balance equal to the amount of the transaction until the voucher is cleared by the retailer. Once an accept reason is assigned to the voucher,

the hold amount is deducted from the participant's benefit balance and this field becomes blank.

**Manual Entries:** If a card or POS machine is damaged, the card number can be keyed manually to complete the transaction.

**Manual Voucher:** Retailers use paper vouchers when the eFunds system is not available. Retailers who are not eligible to have POS terminals also use these vouchers. A voucher has a unique number which identifies the voucher. This field is completed only if the transaction displayed in the Administrative Terminal is an off-line voucher.

**PAN:** The Primary Account Number is the 16 digit number on the card. This is also called the card number.

**PIN (Personal Identification Number):** A PIN is a four number secret code that must be used when the EBT card is used. No one can use the card but the participant as long as the participant does not give the PIN out to anyone.

**PIN Info:** The Card Maintenance screen in the Administrative Terminal displays whether or not a PIN has been selected and the method. Yes indicates that a PIN has been selected. Fails is the number of times the PIN entered has failed that day. Chg Count is the number of times the PIN has been changed. Method is how the PIN was selected.

**Point-of-Sale (POS) Terminal:** A POS is a device on which transactions are made by the food stamp participant. The POS machine reads the card and allows the participant to buy food with the food stamp benefits.

**Stale Benefits:** Benefits not used by a household within 60, 90 or 230 days are called stale benefits.

### **9093.2 Using EBT for Food Stamp Benefits**

The household may use its EBT card in any grocery store, anywhere in the United States, authorized by FNS to accept them. The benefits may be used the same as cash to purchase any food or food product prepared for human consumption. Households cannot use benefits to purchase alcoholic beverages, tobacco, soap and paper products, and hot foods or hot foods prepared for immediate consumption. Households can use benefits to buy seeds and plants for use in gardens to produce food for personal consumption by the eligible household.

EBT benefits are available 24 hours a day, seven days per week including weekends and holidays. DSS issues benefits on a daily and monthly basis. DSS issues monthly benefits on the same day each month for each household based on a staggered issuance schedule. eFunds posts benefits in the household's account by 6 a.m. the day after benefits are approved in DCIS II.

There is no minimum dollar amount per transaction. There is no maximum limit on the number of transactions a household can make. Stores cannot impose transaction fees on food stamp households using their EBT card at grocery stores.

Households can check their food stamp account balances without making a purchase or standing in a checkout line.

Households receive printed receipts at the time of transactions.

When transacting food stamp benefits by EBT, the household cannot receive change. When a household returns food to a grocery store, the store will credit the household's EBT account with the amount of the refund. The household cannot receive a cash refund for returned food.

### **9093.3 Food Stamp EBT Adjustments**

eFunds makes adjustments to EBT accounts to correct system errors. A system error is an error resulting from a malfunction at any point in the redemption process, for example, errors made at the grocery store. Adjustments are initiated by the client or store and may result in a debit or credit to the household.

Emphasize to clients that they should review their transaction slips before leaving the store. If there is a mistake, the client should discuss the problem with the store clerk or manager before leaving the store. Problems discovered later must be resolved through the eFunds Customer Service Unit.

#### **Client-Initiated Adjustments**

An EBT credit adjustment occurs when eFunds returns benefits to a household's account after the store deducted the benefits in error.

For example, a household member uses an EBT card to purchase groceries. Due to a system error, the store debited the purchase amount from the household's EBT account twice.

The household has 90 days from the date of the problem transaction to contact eFunds Customer Service at 1-800-526-9099 and inform the customer service representative that a problem has occurred. The household will need to tell the customer service representative the date, time and location of the transaction and the amount of food stamp benefits that were debited in error.

If the request is a legitimate request, eFunds will return the funds to the household's EBT account within 10 business days from the date the household filed the report with the eFunds Customer Service Unit. A business day is any calendar day other than a Saturday, a Sunday or a federal holiday.

If the household's request is not legitimate, eFunds will deny the credit adjustment. The household may request a fair hearing. eFunds will take no action to credit the household's EBT account unless the hearing decision is in the household's favor.

#### **Retailer-Initiated Adjustments**

A retailer-initiated adjustment occurs when the retailer does not receive a credit for an EBT purchase

amount when the household made the purchase. The store needs the adjustment to get credit for the purchase made by the household.

For example, a household uses the EBT card to purchase \$200 worth of groceries. The credit to the store's account does not go through and the \$200 remains in the household's account.

DSS must act upon all adjustments to debit a household's account no later than 10 business days from the date the error occurred, by placing a hold on the adjusted amount in the household's account. If there are insufficient benefits to cover the entire adjustment, DSS shall place a hold on any remaining balance that exists and the whole amount will be debited from the household's account when the next month's benefits become available.

DSS will send a notice to the household informing them of the account adjustment. The household has 90 days from the date of the notice to request a fair hearing.

If the household disputes the adjustment and requests a hearing within 10 days of the notice, DSS will make a provisional credit to the household's account by releasing the hold on the adjustment balance within 48 hours of the request by the household, pending resolution of the fair hearing. If the household does not request for a hearing within 10 days of the notice, DSS will release the hold on the adjustment balance, and credit this amount to the retailer's account.

#### **9093.4 Account Balances**

An EBT food stamp benefit account does not close when a food stamp DCIS case closes. The former recipient remains entitled to the account balance. As long as benefits remain in the EBT food stamp account, the former recipient may still have cards issued or reissued and be able to select or change PINs.

#### **9093.5 Manual Transactions**

Sometimes circumstances cause the client or store clerk to enter the transaction manually instead of swiping the EBT card through the POS machine. This happens when the card's magnetic stripe becomes scratched, worn or demagnetized.

Until the client can get a new card issued, the client can still use the card at a retailer. The clerk keys the card number in manually to complete the transaction. Only the client should enter his/her PIN. The client should never reveal the PIN to a store clerk when entering a manual transaction.

#### **9093.6 Manual Vouchers**

Retailers use a manual voucher process when the eFunds system or the terminals are not working and cannot accept the EBT card for a food stamp purchase. Retailers do

not have to use the manual process, but most will not turn away a sale.

Retailers that do not have POS terminals, for example, farmers' markets and street or route vendors also use manual vouchers.

The manual voucher is a paper form on which the retailer writes the card number, the cardholder's name, the store FNS number, and the dollar amount of the sale. The client must sign the voucher. The retailer must call in manual vouchers to eFunds to get an authorization for the amount of the transaction. The retailer calls in to make sure that the money is in the client's account. If the client has enough funds in the account to cover the transaction, the retailer subtracts the whole amount of the transaction from the client's account.

Retailers use manual vouchers when the eFunds system is down. Since the retailer cannot confirm whether the client has an available balance, the client is limited to a \$40.00 purchase.

#### **9093.7 EBT & Timely Application Processing**

Regulations say we must provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but no later than 30 calendar days following the date the household filed the application. With EBT, FNS has issued guidelines saying that the opportunity to participate is the date the money is posted to the account **plus** two days when mailing the EBT card. DSS mails EBT cards for hardship cases. To avoid these timeliness errors, staff will need to take the action to approve a case on or before the 26<sup>th</sup> day at the latest.

When it is not possible to process the case on or before the 28<sup>th</sup> day because the client did not turn in the verifications or worker time constraints, document the case record. The error may still count but the explanation will be there.

#### **9093.8 EBT Benefits and Claim Issues**

When eFunds posts the EBT benefits to the household's account, the household is considered in receipt of those benefits. If the household receives benefits they were not entitled to, DSS/ARMS will establish a claim. DSS/ARMS establishes a claim even if the household has not used the benefits in the EBT account. As long as the benefits are in the account, the household has access to those benefits and owes the State the amount of the claim.

ARMS must allow a household to pay its claim using benefits from its EBT benefit account according to DSSM 7004.3.

Benefits not used for 230 days are stale and ARMS can use the stale benefits to credit a household's claim with the consent of the household.

eFunds will expunge benefits not used for 270 days from the household's account and credit the amount to a household's outstanding claim.

### **9093.9 Aging Periods and Expungement Process**

Benefits remain available to the household for 270 days from the date of availability. eFunds sends reports to DSS that show accounts with no activity.

eFunds provides DSS with a report for the following periods of time:

- Period 1: 60 days
- Period 2: 90 days
- Period 3: 230 days
- Period 4: 270 days

A household will get a notice at Periods 1, 2 and 3 if the household has not used benefits for 60, 90 or 230 days. Stale benefits are benefits not used by these time periods. The notice will tell the household the following information:

- The account has not been used in the past 60, 90 or 230 days;
- To call the eFunds customer service unit to get the balance on the account;
- Stale food stamp benefits not used for 230 days can be applied to any existing claim with the client's permission;
- Food stamp benefits that are not used by day 270 will be removed from the account forever; and
- Food stamp benefits removed from the account on day 270 will be applied to any remaining food stamp claim."

On day 230, DSS will generate notices to clients with outstanding claims. The notice tells the household that ARMS will apply benefits not used for 230 days to the outstanding claim unless the household contacts ARMS within ten days. On day 250, households who do not contact ARMS to stop the repayment will have their stale benefits applied to the outstanding claim. On day 270, the eFunds system will expunge (remove from the account) any remaining stale benefits and send DSS a report of those benefits expunged.

DCIS II and ARMS accounting systems will credit any expunged benefits to household accounts with an outstanding claim. ARMS and the Payments Unit will receive a report of benefits posted to household's claims so ARMS can update the benefit recovery screens. ARMS will send the client a credit slip indicating the credit made on their claim and the existing balance.

### **9093.10 Replacement of EBT Benefits**

Please refer to DSSM 9079 for Replacing Food Benefits Issued by Electronic Benefits Transfer (EBT).

---

## **DEPARTMENT OF INSURANCE**

**18 DE Admin. Code 1310**

Statutory Authority: 18 Delaware Code,  
Sections 311, 2304(16) and 2312  
(18 Del.C. §§311, 2034(16) and 2312)

### **PUBLIC NOTICE**

#### **1310 Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services [Formerly Regulation 80]**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Tuesday, June 28, 2005 at 10:00 a.m. in the Consumer Services Hearing Room at the Delaware Department of Insurance, Rodney Building, 841 Silver Lake Blvd., Dover, Delaware. The hearing is to amending **Regulation 1310** relating to **Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services**.

The purpose for amending Regulation 1310 is to speed resolution of health care providers' claims and simplify the current process for resolution of those claims. The proposed amendments provide for a 30 day time period for insurers to process all clean claims and limits the number of times an insurer can request additional information from a provider. The proposed amendment also redefines a clean claim and changes the penalty provisions for violations of the regulation. The hearing officer shall also consider any non-substantive technical changes that may presented at the time of the hearing. This hearing will also consider changes to the proposed regulation resulting from the public hearing conducted by the Department on March 3, 2005.

The hearing will be conducted in accordance with 18 Del.C. §311 and the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday June 27, 2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

#### **1310 Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services [Formerly Regulation 80]**

##### **1.0 Authority**

This regulation is adopted by the Commissioner

pursuant to 18 Del.C. §§311, 2304(16), and 2312. It is promulgated in accordance with 29 Del.C. Ch. 101.

7 DE Reg. 100 (7/1/03)

## 2.0 Definitions

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

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

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

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

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

## 3.0 Scope

This regulation shall apply to all health insurers as defined in Section 2, and shall apply to all plans or policies of health insurance or benefits delivered or issued for delivery in this State and which cover residents of this State or employees of employers located in this State and their dependents. Exempted from the provisions of this regulation are policies of automobile and workers compensation insurance, hospital income and disability income insurance, Medicare supplement and long term care insurance.

7 DE Reg. 100 (7/1/03)

## 4.0 Purpose

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

7 DE Reg. 100 (7/1/03)

## 5.0 Prompt Payment of Claims

5.1 A health insurer shall pay the benefit due under a clean claim to a policyholder or covered person, or make payment to a health care provider no later than 30 calendar days after receipt of clean claim for services.

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

5.2.1 Where the obligation of a health insurer to

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

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

5.2.3 For claims properly disputed or litigated and subsequently paid.

5.3 In those cases covered by section 5.2.1, a health insurer shall pay all portions of a claim meeting the definition of clean claim in accordance with section 5.1. Additionally, a health insurer shall notify the policyholder in writing within 30 days of the receipt of the claim:

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

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

5.4 Upon receipt of the information required by section 5.3.2, or upon the administrative resolution of a dispute wherein the health insurer is deemed obligated to pay the benefit due under the claim or make medical payment, a health insurer shall make payment as required by section 5.1.

7 DE Reg. 100 (7/1/03)

## 6.0 General Business Practice

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

6.2 The 36 month time period established in section 6.1 shall be measured based upon the date the claims or bills became due. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual policyholder that is processed in violation of this regulation shall constitute an “instance” as described in section 6.1.

7 DE Reg. 100 (7/1/03)

## 7.0 Penalties

In addition to the imposition of penalties in accordance with 18 Del.C. 2312(b), the Commissioner may order the

~~health insurer to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under 6 Del.C. 2301(a). Such interest shall be computed from the date the claim or bill for services first became due.~~

~~7 DE Reg. 100 (7/1/03)~~

### **8.0 Causes of Action**

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

~~7 DE Reg. 100 (7/1/03)~~

### **9.0 Separability**

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

~~7 DE Reg. 100 (7/1/03)~~

### **10.0 Effective Date**

~~This regulation, as amended, shall become effective on August 1, 2003.~~

~~7 DE Reg. 100 (7/1/03)~~

### **2.0 Scope**

This regulation shall apply to all carriers as defined herein. Exempted from the provisions of this regulation are policies of insurance that provide coverage for accident-only, credit, Medicaid plans, Medicare supplement plans, long-term care or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance or automobile medical payment insurance.

### **3.0 Definitions**

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

"Carrier" means any entity that provides health insurance in this State. For the purposes of this regulation, carrier includes a health insurance company, health service corporation, health maintenance organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any 3rd-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

"Days" means calendar days.

"Institutional Provider" means a hospital, nursing home, or any other medical or health-related service facility caring for the sick or injured or providing care or other coverage which may be provided in a health insurance policy. An entity must be a Provider under this Regulation in order to be an Institutional Provider.

"Policyholder," "Insured," or "Subscriber" means a person covered under a health insurance policy or a representative (other than a provider) designated by such person and entitled to make claims on his behalf.

"Provider" means any entity or individual licensed, certified, or otherwise permitted by law pursuant to Titles 16 or 24 of the Delaware Code to provide health care services, irrespective of whether the entity or the individual is a participating provider pursuant to a written agreement with the carrier. When used alone, the term "provider" shall include individual providers and institutional providers.

### **4.0 Clean Claim Defined**

4.1 A nonelectronic claim by a provider, other than an institutional provider, is a clean claim if the claim is submitted using the Centers for Medicare and Medicaid Services (CMS) Form 1500 or, if approved by the Commissioner or CMS, a successor to that form. Data for all relevant fields must be provided in the format called for by the form in order for the claim to constitute a clean claim.

4.2 A nonelectronic claim submitted by an institutional provider is a clean claim if the claim is submitted using the CMS Form UB-92, or, if approved by the Commissioner or CMS, a successor to that form. Data for all relevant fields must be provided in the format called for by the form in order for the claim to constitute a clean claim.

4.3 An electronic claim by a provider, including an institutional provider, is a clean claim if the claim is submitted using the appropriate ASC X12N 837 format in compliance with the standards specified at 45 CFR §162.1102.

4.4 If allowed by federal law, a carrier and provider may agree by contract to use fewer data elements than are required by the relevant form or format.

4.5 An otherwise clean claim submitted by a provider that includes additional fields, data elements, or other information not required by this Regulation is considered to be a clean claim for the purposes of this Regulation.

4.6 A claim by a policyholder that is submitted in the carrier's standard form using information called for by said forms, with all of the required fields completed, is a clean claim.

4.7 Any claim submitted by a provider or policyholder that includes an unspecified, unclassified or miscellaneous code or data element to constitute a clean claim shall also include appropriate supporting documentation or narrative which explains the unspecified, unclassified or

miscellaneous code and describes the diagnosis and treatment or service rendered.

4.8 A claim for the same health care service provided to a particular individual on a particular date of service that was included in a previously submitted claim is a duplicate claim and does not constitute a clean claim.

## **5.0 Means of Submission of Clean Claim**

5.1 A provider or policyholder may, as appropriate, make delivery of a claim to a carrier as follows:

5.1.1 mail a claim by United States mail, first class;

5.1.2 submit a claim by delivery service;

5.1.3 submit a claim electronically;

5.1.4 fax a claim; or

5.1.5 hand delivery of a claim.

## **6.0 Processing of Clean Claim**

6.1 No more than 30 days after receipt of a clean claim from a provider or policyholder, a carrier shall take one of the following four actions:

6.1.1 if the entire claim is deemed payable, pay the total allowed amount of the claim;

6.1.2 if a portion of the claim is deemed payable, pay the allowable portion of the claim that is deemed payable and specifically notify the provider or policyholder in writing why the remaining portion of the claim will not be paid;

6.1.3 if the entire claim is deemed not payable, specifically notify the provider or policyholder in writing why the claim will not be paid;

6.1.4 if the carrier needs additional information from a provider or policyholder who is submitting the claim to determine the propriety of payment of a claim, the carrier shall request in writing that the provider or policyholder provide documentation that is relevant and necessary for clarification of the claim.

6.2 The request pursuant to section 6.1.4 must describe with specificity the clinical information requested and relate only to information the carrier can demonstrate is specific to the claim or the claim's related episode of care. A provider is not required to provide information that is not contained in, or is not in the process of being incorporated into, the patient's medical or billing record maintained by the provider whose services are the subject of inquiry. A carrier may make only one request under this subsection in connection with a claim. A carrier who requests information under this subsection shall take action under sections 6.1.2 through 6.1.3 within 15 days of receiving properly requested information.

6.3 A carrier shall be limited to one request on the same claim beyond that provided for in section 6.2 as may be necessary to:

6.3.1 administer a coordination of benefits provision; or

6.3.2 determine whether a claim is a duplicate.

## **7.0 Unfair Practice**

Within a 36 month period, three instances of a carrier's failure to comply with Section 6 of this Regulation shall give rise to a rebuttable presumption that the carrier has engaged in an unfair practice in violation of 18 Del.C. §2304.

## **8.0 Interest**

The Commissioner may order a carrier found to have violated Section 6 of this Regulation to pay to a provider or policyholder the amount of the claim or bill plus interest at the maximum rate allowable to lenders under Delaware law. Such interest shall be computed from the date the claim or bill for services was first required to be paid. The remedy permitted by this Section is in addition to, and does not supplant, any other remedies available to the Commissioner or the provider.

## **9.0 Waiver**

The provisions of this regulation may not be waived, voided, or nullified by contract.

## **10.0 Causes of Action**

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

## **11.0 Separability**

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

## **12.0 Effective Date**

This regulation, as amended shall become effective for all claims submitted for payment on or after November 1, 2005. All claims for payment submitted for payment prior to November 1, 2005 shall be governed by this regulation amended effective August 1, 2003.

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

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

**PUBLIC NOTICE****Regulations Governing the Control of Water Pollution****1. Brief Synopsis of the Subject, Substance and Issues:**

The Department of Natural Resources and Environmental Control, The Department of Agriculture and the Delaware Nutrient management Commission are re-proposing general permit regulations for concentrated animal feeding operations (CAFOs). The proposed CAFO regulations will amend section 9 (The General Permit Program) of the *Regulations Governing the Control of Water Pollution*. The Clean Water Act and recent revisions to federal regulations define a CAFO. The draft regulations were developed cooperatively with the involvement of the Department of Agriculture, Delaware Nutrient Management Commission, Department of Natural Resources and Environmental Control, Natural Resource Conservation Service and the University of Delaware.

**2. Possible Terms of the Agency Action:**

N/A

**3. Statutory Basis or Legal Authority to Act:**

7 Del.C. Chapter 60 and 3 Del C. Chapter 22.

**4. List of Other Regulations That May be Impacted or Affected by the Proposal:**

*Regulations Governing the Control of Water Pollution*  
(Amended May 14, 2003)

**5. Notice of Public Comment**

The Department of Natural Resources and Environmental Control, the Department of Agriculture and the Delaware Nutrient Management Commission will hold public hearings on June 22, 2005 at 7 PM at the Delaware Department of Agriculture and June 23, 2005 at 6 PM at the Gumboro Fire Hall to receive comments on proposed amendments to the *Regulations Governing the Control of Water Pollution*. Comments should be sent in writing to Peder Hansen, Surface Water Discharges Section, Division of Water Resources, DNREC, 89 Kings Hwy., Dover, DE 19901.

**9.0 The General Permit Program**

## Introduction

This section of the regulations, the General Permit Program, is designed to provide NPDES permit coverage to a specified group, category or class of discharges that are substantially similar in nature or type of pollutants discharged. These regulations outline the general provisions or requirements that apply to all discharges within the specified category. This approach eases the administrative burden of developing and issuing a large number of individual NPDES permits for essentially the same type of discharge. By issuing general permits, the Department can provide a quicker and less expensive mechanism for the regulated community to obtain permit coverage. It also allows staff resources to concentrate on discharges that may have more significant potential for impacting the quality of Delaware's surface waters.

General NPDES Permits as defined by federal regulations in 40 C.F.R. §122.28, authorize a category of discharges from sources within a defined area that share certain similarities. General NPDES Permits are self-implementing standards applicable to multiple dischargers that the DNREC has determined can best be regulated as a class. Conversely, individual NPDES permits are issued to a potential discharger who applies for a permit with special conditions specifically tailored to the discharger. Thus, a General NPDES Permit is an agency statement of general applicability and future effect that implements and prescribes law and as such is a regulation.

Although no individual permits will be issued to the categories of dischargers covered by this section of the regulations, the subsections dealing with each category may be referred to as "General NPDES Permits" and the entire Section of these regulations may be referred to as the "General NPDES Permit Program."

In order to obtain coverage under this section of these regulations (the General NPDES Permit Program), most persons will be required to file with the Department a Notice of Intent to be covered in accordance with 40 C.F.R. §122.28(b)(2). The Department will consider this the equivalent of an NPDES Permit application for a General NPDES Permit.

§9.1 provides NPDES permit coverage for storm water discharges associated with industrial activity. Industrial activity is that which is directly related to manufacturing, processing, raw material handling or waste handling. The regulations in §1 seek to define a program for controlling material handling and other industrial activities such that the potential for exposing significant materials to precipitation and the subsequent transport of such materials via storm water runoff or infiltration is eliminated or minimized to the maximum extent practicable. Significant materials are those substances, products or wastes that become exposed to

precipitation as a result of the industrial activity and potentially contribute pollutants to storm water runoff or storm water infiltration. The types of activities or categories of industries covered under this subsection are listed in §9.1.1.1, as well as in the federal regulations, 40 CFR Part 122.26(b)(14).

§9.1 consists of general provisions that apply to each category of industrial activity specified in §9.1.1.1. Part 2 outlines specific provisions applicable to storm water discharges associated with land disturbing activities (i.e. construction activities). The regulations in Part 2 are designed to mesh NPDES permit program requirements with existing provisions for sediment and erosion control under 7 **Del.C.** Ch. 40 and the Delaware Sediment and Stormwater Regulations. The remaining Parts under Subsection 1 outline category-specific storm water requirements that are tailored to the activity conducted.

§§9.2 through 9.6 provide NPDES permit coverage for the following categories of discharges: discharges from aquaculture or aquatic animal production facilities; discharges from the clean up of gasoline and fuel oil released from underground storage tanks; discharges from feedlot or concentrated animal feeding operations; discharges associated with car washes and other motor vehicle washing operations; and discharges associated with the operation of swimming pools and spas.

9.1 Regulations Governing Storm Water Discharges Associated with Industrial Activities

Part 1 - Baseline General Permit (§9.1.1)

Part 2 - Special Conditions for Storm Water Discharges Associated with Land Disturbing Activities (§9.1.2.)

Part 3 - Special Conditions for Storm Water Discharges Associated with Concrete Manufacturing Activities (§9.1.3)

Part 4 - Special Conditions for Storm Water Discharges Associated with Asphalt Manufacturing Activities (§9.1.04.)

Part 5 - Special Conditions for Storm Water Discharges Associated with Chemical Manufacturing Activities (§9.1.05.)

Part 6 - Special Conditions for Storm Water Discharges Associated with Activities Regulated by the Delaware Regulations Governing Solid Waste (§9.1.06.)

Part 7 - Special Conditions for Storm Water Discharges Associated with Automotive Salvaging Activities (§9.1.07.)

Part 8 - Special Conditions for Storm Water Discharges Associated with Scrap Recycling Activities (§9.1.08.)

Part 9 - Special Conditions for Storm Water Discharges Associated with Watercraft Maintenance Activities (§9.1.09.)

Part 10 - Special Conditions for Storm Water Discharges Associated with Air Transportation Maintenance and De-icing Activities (§9.1.10.)

Part 11 - Special Conditions for Storm Water Discharges Associated with Rail Transportation Maintenance Activities (§9.1.11.)

Part 12 - Special Conditions for Storm Water Discharges Associated with Automotive Transportation Maintenance Activities (§9.1.12.)

Part 13 - Special Conditions for Storm Water Discharges Associated with Food Processing Activities (§9.1.13.)

Part 14 - Special Conditions for Storm Water Discharges Associated with Metals Manufacturing Activities (§9.1.14.)

## APPENDIX -Water Priority Chemicals

9.2 Regulations Governing Discharges from Aquaculture or Aquatic Animal Production Facilities (Reserved)

9.3 Regulations Governing Discharges from the Clean Up of Gasoline and Fuel Oil Released from Underground Storage Tanks (Reserved)

9.4 The Concentrated Animal Feeding Operation (CAFO)

### **PREAMBLE**

These regulations have been developed pursuant to 3 **Del.C.** §2201-2290 and 7 **Del.C.** §6000 et.al., 40 Code of Federal Regulations (C.F.R) §122.23 and 40 C.F.R. §122. Appendix B and 40 CFR part 412. These statutory and regulatory authorities establish the requirement that a National Pollutant Discharge Elimination System (NPDES) permitting program for Concentrated Animal Feeding Operations (CAFOs) be implemented. These regulations will function as the baseline CAFO standards for compliance of NPDES permits applicable to certain farms. The Delaware Department of Agriculture (DDA) will administer these regulations, while the legal framework and authority is maintained by the Delaware Department of Natural Resources and Environmental Control. In general, NPDES general permits, as provided in these regulations, are effective for five years. After five years, new or updated CAFO General Permit regulations will be promulgated. These regulations were developed by the Delaware Nutrient Management Commission, the Delaware Department of Agriculture and the Delaware Department of Natural Resources and Environmental Control. They are to be adopted with the guidance, advice and consent of the Commission.

#### 9.4.1 Authority.

These regulations are promulgated pursuant to the authority provided by 3 **Del.C.** §2200 et.al. and 7 **Del.C.** §6000 et.al.

#### 9.4.2 Purpose.

The purpose of these regulations is to establish requirements for certain animal feeding operations defined as a Concentrated Animal Feeding Operation (CAFO) in order to protect water quality from activities associated with CAFO management sustain and provide a profitable agricultural industry and to help meet or exceed Federal and State mandated water quality standards.

#### 9.4.3 Definitions.

For purposes of these regulations, the following words or terms shall have the meanings as indicated:

##### **“Agricultural Storm Water Exemption”**

means an exempt discharge of manure, litter or process wastewater provided the manure or process wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater.

##### **“Animal Feeding Operation” or “AFO”**

means a lot or facility (other than an aquatic animal production facility) where the animals have been, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth or post-harvest residues in the normal growing season. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals in an operation, if the production areas adjoin each other or if the AFOs use a common area or system for the disposal of wastes. (For example, facilities or production areas that are commonly managed, co-located and share manure storage systems are considered a single AFO. A poultry operation with many facilities in a single location or address is deemed a single AFO).

**“Animal Waste Management Plan”** means a plan written by a certified nutrient management consultant that documents and recommends a combination of conservation practices and management measures for the handling, storage, treatment and management of any or all of the following for use on cropland and pastureland: animal wastes, manures, composted dead animals, or process wastewater from any animal feeding operation.

**“Applicant”** means any person seeking and or required to obtain an individual CAFO permit or coverage under a general permit.

**“Application Area”** means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, or which manure, litter or process wastewater from the production area is or may be applied.

**“Apply,” “applying,”** or any variation of the word “apply,” as it relates to the application of nutrients, means the human controlled mechanical conveyance of

nutrients to land for the purpose of applying organic and/or inorganic nutrients.

**“Best Management Practices” or “BMP”** means those practices that have been approved by the Delaware Nutrient Management Commission.

**“Catastrophic Mortalities”** means any mortality that exceeds the approved disposal system capacity to accommodate losses within 24 hours. Most disposal systems are designed to handle the normal anticipated mortality. If enough animals are lost and the disposal system cannot hold them all without causing serious disruption in the disposal process, then it is a catastrophic loss.

**“Concentrated Animal Feeding Operation”** or **“CAFO”** is an animal feeding operation that is subject to the terms and conditions of these regulations. A CAFO is designated by the confinement of the number of animals specified in Section 9.4.4 of these regulations.

**“Delaware Nutrient Management Commission,” “DNMC,”** or **“Commission”** means the Commission established by 3 Del.C. §2220 “or its designee.”

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

**“Discharge of a Pollutant”** means the addition of any pollutant or combination of pollutants, to state waters or contiguous zones, or the ocean, from any source or activity other than a vessel or other floating craft when being used as a means of transportation and in compliance with §312 of the Act. This definition includes additions of pollutants into State waters from:

Surface runoff that is collected or channeled by man;

Discharges through pipes, sewers, and other conveyances which do not lead to a treatment works; and

Discharges through pipes, sewers, or other conveyances, leading into a treatment works other than a publicly owned treatment works (POTW).

**“Drainage Ditch”** is defined as a constructed or reconstructed watercourse with a drainage area less than 800 acres. A constructed or reconstructed watercourse with a drainage area greater than 800 acres is considered a stream.

**“Effluent Limitation”** means any restrictions, prohibitions, or permit requirements established under State or Federal law, including but not limited to, standards of performance for new sources, best management practices or BMPs, effluent standards and ocean discharge criteria on the quantities, rates, and concentrations of the chemical, physical, biological, or other constituents discharged into State waters.

**“Freeboard Action Level”** is the liquid level within a lagoon or other liquid storage structure that indicates the structure is full and implies that immediate

steps be taken to transfer liquid out of the waste storage structure.

**“General Permit”** means an authorization granted to a category of point sources discharges pursuant to §9.0 of the Regulations Governing the Control of Water Pollution.

**“Ground Water”** means any water naturally found under the surface of the earth.

**“Inorganic Fertilizer(s)”** means a fertilizer comprised of chemically synthesized plant nutrient elements that are essential for plant growth and include at least nitrogen or phosphorus.

**“Liquid Manure”** means usually less than 8.0% solids. Wash water, runoff, precipitation, and so forth are added, if needed to dilute the manure and lower the solids content.

**“Liquid Manure Handling System”** means an operation where animals are raised outside with swimming areas or ponds, or with a stream running through an open lot, or in confinement buildings where water is used to flush the manure to a lagoon, pond, or some other liquid storage structure.

**“Manure”** is defined to include fecal and urinary defecations of livestock and poultry; may include spilled feed, bedding, soil, compost and raw materials if commingled with manure.

**“NPDES”** (National Pollutant Discharge Elimination System) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of any pollutant or combination of pollutants and imposing and enforcing pretreatment and sludge requirements pursuant to §307, 402, 318, and 405 of the Act.

**“Notice of Intent (NOI)”** means the form used to serve as a notification of the intention of the facility identified on the form to adhere to the provisions of The Concentrated Animal Feeding Operation Regulations.

**“Nutrient Management Plan”** or **“Plan”** means a plan by a certified nutrient consultant to manage the amount, placement, timing and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turf grass.

**“Nutrients”** means nitrogen, nitrate, phosphorus, organic matter and any other elements necessary for or helpful to plant growth.

**“Phosphorus Site Index or PSI”** means the assessment tool developed by the University of Delaware designed to evaluate the site characteristics and management factors in determining Phosphorus loss to the environment.

**“Person”** means any individual, partnership, association, fiduciary, corporation, or any organized group of persons, whether incorporated or not.

**“Pollutant”** means any substance, which causes or contributes to, or may cause or contribute to, pollution.

**“Process Wastewater”** means any process-generated wastewater directly or indirectly used in the operation of an AFO (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits; direct contact swimming, washing, or spray cooling of animals; and dust control) or any precipitation (rain or snow) which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

**“Production Area”** means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw material storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility and any area used in the storage, handling, treatment or disposal of mortalities.

**“Secretary”** means the Secretary of the Delaware Department of Agriculture or his/her designee.

**“Sinkhole”** is defined as a depression in the landscape where limestone has been dissolved.

**“Soil Productivity”** means the capacity of a soil, in its normal environment, to produce a specified plant or sequence of plants under a specified system of management. The “specified” limitations are needed because no soil can produce all crops with equal success and a single system of management cannot achieve the same effect on all soils. Productivity means the capacity of soil to produce crops and is expressed in terms of yields.

**“State Nutrient Management Program”** or **“SNMP”** means all the nutrient management program elements developed by the Commission, whether or not reduced to rules or regulations.

**“State Waters”** or **“Waters of the State”** means all water, on the surface and under the ground, wholly or partially within, or bordering the State, or within its jurisdiction including but not limited to:

Waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean;

All interstate waters, including interstate wetlands;

All other waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sand flats, wetlands, sloughs, or natural or impounded ponds;

All impoundments of waters otherwise defined as waters of the State under this definition;

Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in the above four statements.

Waste and storm water treatment systems or waste storage structures including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds which otherwise meet the requirements of this definition) are not "State waters" or "waters of the State." This exclusion applies only to manmade bodies of water, which neither were originally created in waters of the State nor resulted from the impoundment of waters of the State

"Realistic Yield Goals" are defined as the expected crop yields based on the best 4 out of 7 years of recorded data. Without yield records, one shall use soil productivity classes. Yield goals higher than the average, require written justification from a certified consultant.

"Vegetated Buffer" means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"25-Year, 24-Hour Rainfall Event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", equivalent to regional or state rainfall probability information developed there from, or a rain event greater than 5.7 inches for New Castle county, 5.9 for Kent county and 6.3 for Sussex county. "Water Quality Standard" means any rule or limit established by the Secretary of the Department of Natural Resources and Environmental Control which consists of a designated use or uses for waters of the State and the water quality criteria for such waters based upon such designated uses.

"100-Year, 24-Hour Rainfall Event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 100 years, as defined by the

National Weather Service Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", equivalent to regional or state rainfall probability information developed there from, or a rain event greater than 7.3 inches for New Castle county, 7.6 for Kent county and 7.9 for Sussex county.

#### 9.4.4 Applicability

9.4.4.1 Any person who owns or operates a CAFO (Concentrated Animal Feeding Operation) may request general or individual CAFO NPDES permit coverage under these regulations.

9.4.4.2 These NPDES permit requirements shall apply to any person who engages in the management of a CAFO where animal manure is, has been or will be generated and the AFO (Animal Feeding Operation) is not currently compliant with the State Nutrient Management Law and Regulations. An AFO is a CAFO if the number of animals equal or exceed the following criteria:

9.4.4.2.1 More than the numbers of animals specified in any of the following categories:

9.4.4.2.1.1 1,000 beef cattle or heifers,

9.4.4.2.1.2 700 mature dairy cattle (whether milked or dry cows),

9.4.4.2.1.3 2,500 swine each weighing over 55 pounds,

9.4.4.2.1.4 10,000 swine weighing under 55 pounds,

9.4.4.2.1.5 500 horses,

9.4.4.2.1.6 10,000 sheep or lambs,

9.4.4.2.1.7 55,000 turkeys,

9.4.4.2.1.8 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system,

9.4.4.2.1.9 125,000 chickens except laying hens (if other than a liquid manure handling system),\*

9.4.4.2.1.10 82,000 laying hens (if other than a liquid manure handling system),

9.4.4.2.1.11 1,000 veal calves.

\*Note: An alternative criterion for square footage calculations may be utilized and adopted as policy that qualifies a CAFO based on the area within the confined facility. For example the animal density of 0.75 square feet per bird calculates to 93,750 square feet and can be defined as a CAFO. This alternative may not supersede the actual number of chickens maintained.

9.4.4.2.2 Provided one of the following conditions are met and the number of animals is equal to or greater than the number specified below, the operator has a duty to apply:

9.4.4.2.2.1 Pollutants are discharged into waters of the State through a man-made ditch, flushing system, or other similar man-made device; or

9.4.4.2.2.2 Pollutants are discharged directly into waters of the State, which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation;

9.4.4.2.2.3 Pollutants are discharged into waters of the State caused by the improper handling of animal mortalities or improper manure management as identified by standards adopted by NRCS and or the commission; or

9.4.4.2.2.4 Pollutants are discharged into waters of the State from the application area as agricultural storm water, except for agricultural storm water exemption.

9.4.4.2.2.4.1 300 beef cattle or heifers,

9.4.4.2.2.4.2 210 mature dairy cattle (whether milked or dry cows),

9.4.4.2.2.4.3 750 swine each weighing over 55 pounds,

9.4.4.2.2.4.4 3,000 swine weighing under 55 pounds,

9.4.4.2.2.4.5 150 horses,

9.4.4.2.2.4.6 3,000 sheep or lambs,

9.4.4.2.2.4.7 6,500 turkeys,

9.4.4.2.2.4.8 9,000 laying hens or broilers, if the AFO uses a liquid manure handling system,

9.4.4.2.2.4.9 37,500 chickens except laying hens (if other than a liquid manure handling system),\*

9.4.4.2.2.4.10 24,600 laying hens (if other than a liquid manure handling system),

9.4.4.2.2.4.11 300 veal calves.

9.4.4.2.2.3 These General NPDES permit requirements shall apply to any person notified in writing by the Secretary and covered by the Nutrient Management Law (3 **Del.C.** §2200 et.al.) as specified in §9.4.7 of these regulations or anyone requesting coverage.

#### 9.4.5 Application for Coverage

9.4.5.1 Any one who owns or operates a CAFO or is designated as a CAFO must submit a Notice of Intent (NOI) on a form provided by the Department, to the Secretary within 120 calendar days of the effective date of these regulations or upon operation of a new facility. Anyone who expands their operation and becomes a CAFO must submit a NOI within 90 days of becoming a CAFO. The NOI will serve as a formal commitment by the CAFO applicant to comply with the standards established in these regulations. The NOI shall include, but not be limited to, the following information:

9.4.5.1.1 The name of the farm/facility, mailing address, manager or applicant, contact information

to include emergency address or closest road name intersection of the CAFO.

9.4.5.1.2 The name, address and contact information of the farm/facility owner if different than the applicant.

9.4.5.1.3 Annual operation data to include, animal type(s), number of animals confined, estimated manure generation by type per year, manure storage capacity, manure storage system, animal mortality system, process waste water (quantity where applicable), and total number of acres under control and available for land application.

9.4.5.1.4 The NOI must be signed by the owner or other person who performs similar policy-making or decision-making functions for the facility. Any person signing documents in accordance with this subsection shall certify that the information submitted is, to the best of his/her knowledge and belief, true, accurate and complete. Such person is advised that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for willful violations.

9.4.5.1.5 A copy of the Nutrient Management Plan, containing at a minimum the following components:

9.4.5.1.5.1 Field maps showing reference points (such as building, stream, irrigation equipment, etc.), number of acres and soil types:

9.4.5.1.5.2 Soil and organic nutrient analyses:

9.4.5.1.5.3 Current and planned crop rotations:

9.4.5.1.5.4 Expected yields based on best 4 out of 7 years data or, in absence thereof, soil productivity charts:

9.4.5.1.5.5 Recommended rates, timing and methods of nutrient applications. This information must accompany the NOI and shall be submitted to the Delaware Department of Agriculture, Nutrient Management Program, 2320 S. DuPont Highway, Dover, DE 19901.

9.4.5.1.6 A person's obligation to independently seek and secure an NPDES permit is not conditioned upon or qualified by having received a notice that an NPDES permit is required from the Secretary.

9.4.5.2 Effective date of coverage: Permit coverage under these regulations begins at the time when the NOI is received by the Department.

9.4.5.3 Expiration date of coverage: Permit coverage for a CAFO under these regulations will continue until an individual NPDES permit is issued to the CAFO or until the deadline for notices of intent to be filed under new general permit regulations that are promulgated for CAFOs.

These regulations shall expire five years from the effective date.

9.4.5.4 Duty to maintain permit coverage: No later than 180 days before the expiration of the permit, the permittee must submit an application to renew its permit, unless the facility has ceased operation or is no longer a CAFO.

9.4.6 Requirements For General CAFO NPDES Permits. Each person covered by these regulations shall meet or exceed the minimum standards of a general permit that consists of the following and applicable contents:

9.4.6.1 A nutrient management plan or animal waste management plan required by the Commission and developed by a Delaware certified consultant. A required nutrient management plan or animal waste management plan consists of the following applicable contents:

9.4.6.1.1 Plan Identification:

9.4.6.1.1.1 Applicant name, mailing address, county road number or name, telephone number and watershed designation of operation.

9.4.6.1.1.2 The name of the farm/facility, mailing address, manager or applicant, contact information to include emergency address or closest road name intersection of the CAFO.

9.4.6.1.1.3 Nutrient consultant's name and company:

9.4.6.1.1.3.1 Address and telephone number.

9.4.6.1.1.3.2 Nutrient management consultant certification number.

9.4.6.1.1.3.3 Date of plan and duration of animal waste or nutrient management plan (not to exceed 3 years).

9.4.6.1.1.4 Total acres under control (owned, rented or leased) of the CAFO represented in the nutrient management plans and a brief description of agricultural commodities produced within the operation.

9.4.6.1.1.5 Certification statement signed by the applicant documenting the intention to implement the nutrient management and/or animal waste management plan.

9.4.6.1.2 Field maps or aerial photographs that include the following:

9.4.6.1.2.1 Individual field identification and boundaries for all owned, rented or leased fields under control of the CAFO.

9.4.6.1.2.2 A copy of soil survey map showing all soil types on each field or the soil texture identification of all pertinent soils.

9.4.6.1.2.3 The location of all surface waters including drainage ditches, streams, ponds, etc.

9.4.6.1.2.4 Irrigation systems where applicable.

9.4.6.1.3 Crop and Nutrient Information:

9.4.6.1.3.1 The total number and type of animals, annual quantity estimate of waste generation and storage methods.

9.4.6.1.3.2 Description and method of temporary outside storage/stockpiling of manure.

9.4.6.1.3.3 Total acres (controlled by the CAFO, owned, rented or leased) represented by the animal waste management plan and/or nutrient management plan and summary of needed nutrients.

9.4.6.1.3.4 Realistic yield goal determined (average yield for the best 4 of the last 7 years).

9.4.6.1.3.5 Without yield records use soil productivity classes or provide written justification if realistic yield goals are higher than average.

9.4.6.1.3.6 Soil test (no older than 3 years) from an agronomic laboratory approved by the Commission.

9.4.6.1.3.7 Current and planned crop rotation.

9.4.6.1.3.8 Determine nitrogen rate based on realistic yield goal of crop(s) to be grown.

9.4.6.1.3.9 The application rate of phosphorus to high soil phosphorus levels, as defined by the Commission, cannot exceed a three-year crop removal rate. Optionally, a University of Delaware approved Phosphorus Site Index (PSI) may be performed and Phosphorus may be added as indicated by the PSI value.

9.4.6.1.3.10 Manure analysis (annually) results or a nutrient value average with written justification.

9.4.6.1.3.11 Estimate residual nitrogen (organic nutrients, fertilizer, or legume crops from prior year) in absence of a Pre-sidedress Soil Nitrate Test (PSNT).

9.4.6.1.3.12 Nutrient source(s) selected, rates and approximate timing of application(s).

9.4.6.1.4 Best Management Practices (BMPs) are recommendations to enhance agronomic and environmental practices should be recommended to better advise and educate persons and are not to be interpreted as mandatory implementation actions of a plan (e.g., Pre-sidedress Soil Nitrate Test, cover crops, vegetative buffer strips, litter additives, manure incorporation, timing/method, etc.) unless specified in site-specific practices covered in §9.4.6.2 below.

9.4.6.2 Site-specific management requirements that supplement the animal waste management plan and/or nutrient management plan by addressing the following site-specific measures to protect waters of the State shall include:

9.4.6.2.1 An overall manure balance budget that clearly identifies available manure, intended manure use, manure storage capacity, and excess manure determined by the animal waste management plan and/or nutrient management plan. This budget must identify intended use to include land application, exportation, or other described uses. Operations must account for excess manure in the Annual Nutrient Management Report.

9.4.6.2.2 A description of manure storage capacity and general schedule or timeframe when manure is removed or transported from storage site to include but not be limited to:

9.4.6.2.2.1 Management practices to prevent storage, collection, and conveyance systems from leaking pollutants to ground or surface water.

9.4.6.2.2.2 For liquid storage: storage must be conducted to prevent a discharge and must include a calendar plan for liquid and sediment removal, with a freeboard action level of not less than one foot, with a depth marker.

9.4.6.2.2.3 For solid storage: permanent and temporary storage must be conducted to prevent a discharge and be consistent with standards adopted by NRCS and/or the Commission.

9.4.6.2.2.4 Emergency actions for spills and catastrophic events for existing CAFO liquid storage systems to include the volume of water generated and collected by a 25-year, 24-hour rainfall event or as specified in Section 9.4.14.2.1.1.

9.4.6.2.3 A description and action plan to divert or segregate all clean water as appropriate from the production area and/or for collecting all water coming in contact with the production area to include but not limited to the following categories:

9.4.6.2.3.1 Roof runoff control to prevent contact of clean runoff with production areas where animal manures are present;

9.4.6.2.3.2 Direct contact between animals and waters of the State; and

9.4.6.2.3.3 Runoff coming into contact with animal waste.

9.4.6.2.4 A detailed animal mortality plan indicating as outlined. Burial of dead animals is prohibited except with approval and under special circumstances such as serious bio-security circumstances as approved by the state veterinarian.

9.4.6.2.4.1 Daily handling and disposal of dead animals in a manner that prevents contamination of ground/surface waters as recommended by the BMPs approved by the Commission.

9.4.6.2.4.2 Methods for handling catastrophic mortalities as recommended by the BMPs approved by the Commission.

9.4.6.2.5 Manure and processed wastewater application setbacks. These setbacks are defined as the distance between the application area and any down-gradient surface waters, open tile line, intake structures, sinkholes or other conduits to surface waters. The direct application of manure or processed wastewater to ditches or surface waters is prohibited. These setback standards are provided as three options:

9.4.6.2.5.1 100-foot application setback, or

9.4.6.2.5.2 35-foot vegetated buffer where applications of manure, litter, and process wastewater are prohibited, or

9.4.6.2.5.3 Alternative compliance practices as follows:

9.4.6.2.5.3.1 For surface waters other than drainage ditches:

9.4.6.2.5.3.1.1 50-foot application setback for the field under the conservation practice of incorporation or planting a winter cover crop following the crop receiving manure, litter or process wastewater.

9.4.6.2.5.3.1.2 15-foot application setback for the field under the conservation practice of incorporation within 2 days of application and planting a winter cover crop following the crop receiving manure, litter or process wastewater.

9.4.6.2.5.3.2 For drainage ditches:

9.4.6.2.5.3.2.1 20-foot application setback for the field under the conservation practice of incorporation or planting a winter cover crop following the crop receiving manure, litter or process wastewater.

9.4.6.2.5.3.2.2 10-foot application setback for the field under the conservation practice of incorporation within 2 days of application and planting a winter cover crop following the crop receiving manure, litter or process wastewater.

9.4.6.2.5.3.3 Any alternative compliance practice approved by the Commission.

9.4.6.2.6 Chemicals and other contaminants handled on-site are not to be disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and contaminants.

9.4.6.3 A nutrient management plan and/or animal waste management plan and site-specific management requirements shall be updated a minimum of every three years or upon significant alteration to include, but not be limited to, a 25 percent increase in animal units or acres of crops grown. Such plans shall be reported to the Commission no later than December 15 of the year in which they must be updated.

**9.4.7 Requirements for Individual CAFO NPDES Permit**

9.4.7.1 With the guidance, advice and consent of the Commission, the Secretary may require any person covered by these regulations and the Nutrient Management Law (3 Del.C. §2248) to apply for and obtain an individual NPDES permit. Cases where an individual NPDES permit may be required include but not limited to the following:

9.4.7.1.1 There is noncompliance with the provisions of these regulations, the Nutrient Management Law (3 Del.C. §2200 et.al.), or the SNMP.

9.4.7.1.2 There is evidence indicating that a person is a significant contributor of a pollutant to waters of the State as specified in Section 9.4.4.2.2.

9.4.7.1.3 There is a request for coverage by an applicant who is not required to obtain coverage.

9.4.7.2 Each person designated to need an individual CAFO permit will be notified in writing by the Secretary. Such notice shall include a brief statement of the reasons for the decision, an application form, a deadline for submission of the application and a statement regarding the effective date of coverage.

9.4.7.3 A CAFO Individual NPDES Permit will establish standards for mitigating or preventing pollutants from entering waters of the State and will consist of, but not be limited to, the following information:

9.4.7.3.1 All applicable contents found in a General Permit (§9.4.6).

9.4.7.3.2 Conditions and compliance measures to mitigate or prevent pollutants from entering waters of the State.

9.4.7.3.3 The time line for implementation requirements and an expiration date not to exceed five years.

**9.4.8 Reporting and Emergency Notification Requirements**

9.4.8.1 Reporting Requirements: Each person covered by these regulations shall submit to the Department and the Commission by March 1 of every calendar year, on a form developed and supplied by the Commission, a report detailing, at a minimum, the following:

9.4.8.1.1 Annual plan identification to include:

9.4.8.1.1.1 Applicants name, mailing address and telephone number.

9.4.8.1.1.2 Nutrient consultant's name and company.

9.4.8.1.1.3 Date Nutrient Management plan was prepared and duration of plan not to exceed 3 years.

9.4.8.1.1.4 Total acres represented by the nutrient management plan and a brief description of agricultural commodities produced within the operation.

9.4.8.1.2 The annual operating data to include animal type(s), number of animals confined and manure generation by type.

9.4.8.1.3 The quantity of animal manure in tons or thousand gallons applied to land managed within operation and the quantity of land to which applied.

9.4.8.1.4 The quantity of inorganic fertilizers applied to the land and the quantity of land to which applied.

9.4.8.1.5 The quantity and type of manure exported from operation; and the name, address and organization of person(s) responsible for utilizing the manure.

9.4.8.1.6 All reports submitted under this subsection shall not be considered public records under the Delaware Freedom of Information Act and shall not be disclosed. Such data may be used for data compilation.

9.4.8.1.7 A statement indicating that the current nutrient management plan was developed by a certified Nutrient Consultant.

9.4.8.2 Emergency Notification: If for any reason, there is a discharge from a CAFO the applicant shall verbally notify the Department within 24 hours of becoming aware of the discharge and document the incident in writing within five (5) days. In general, discharges occur when manure is conveyed by means of surface flow from a confinement facility, holding area, manure storage structure. The information to be provided shall include:

9.4.8.2.1 A description of the discharge and cause, including a description of the flow path to the receiving waters, an estimate of the flow and volume discharged.

9.4.8.2.2 The period of discharge, including exact dates and times and if not corrected, the anticipated time the discharge is expected to continue and the steps being taken to reduce, eliminate and prevent recurrence of the discharge.

9.4.8.2.3 If the discharge was caused by a precipitation event(s), the amount of rainfall, as measured with a rain gauge at the site.

9.4.8.2.4 Results of any sampling and analysis of the discharge, if available.

9.4.8.2.5 For further questions or assistance, call the Delaware Department of Agriculture at 1-800-282-8685, (Nutrient Management Program), or DNREC Emergency at 1-800-662-8802.

**9.4.9 Record Keeping**

9.4.9.1 Those persons requiring coverage by these regulations must maintain records of implementation for six years. All animal waste management plans, nutrient management plans, site-specific management requirements and records of implementation shall be kept by the landowner or person responsible for the plans or records.

Animal waste management plans, nutrient management plans and records of implementation shall not be considered as public records under the Delaware Freedom of Information Act and shall not be disclosed, except, however, that they shall be made available for inspection as specified in Section 9.4.10. Records of implementation shall include:

9.4.9.1.1 Soil test results and recommended nutrient application rates or the nutrient management plan.

9.4.9.1.2 Quantities, analyses and sources of all nutrients applied to fields.

9.4.9.1.3 Dates, weather conditions (as specified by the Commission) and methods of nutrient application(s).

9.4.9.1.4 Crops planted, yields, and plant matter (grain, silage, etc.) removed from the land.

9.4.9.1.5 The annual report and supporting documents.

9.4.9.2 Off site use of manure

9.4.9.2.1 If the manure is sold or given to other persons for disposal and/or utilization, the following applicant information shall be maintained at the facility generating the waste or manure:

9.4.9.2.1.1 The date of manure removal.

9.4.9.2.1.2 Name of receiver and contact information.

9.4.9.2.1.3 Quantity (tons/gallons) of waste removed.

9.4.9.2.1.4 A copy of the manure nutrient analysis shall be given to the receiver.

9.4.9.3 Corrective actions taken as a result of visual inspections of storm water diversion devices, water lines, manure, litter, and process wastewater impoundments.

9.4.10 Entry and Evaluation

9.4.10.1 The Secretary or the Commission, or authorized designee shall be authorized to evaluate implementation of these regulations and furthermore be allowed to:

9.4.10.1.1 Enter and inspect the facility subject to these regulations following proper notification.

9.4.10.1.2 Have access to and the right to copy, at reasonable times, any records that must be kept under the conditions of these regulations.

9.4.10.1.3 Sample or monitor any discharges from the site.

9.4.10.2 Facility applicant and/or the landowner shall be notified 48 hours in advance. Entry and evaluation shall be in accordance with any biosecurity requirements of the individual or commodity industry involved.

9.4.10.3 In cases where there is a probable blatant violation, in the sole judgment of the Secretary to these regulations, no advanced notice is required.

9.4.10.4 The implementation of these regulations shall not deny any property rights of either real or personal property, nor shall it authorize any injury to private property or any invasion of personal rights.

9.4.11 Duty to Comply. All practices required by these regulations shall be consistent with the terms and conditions of these regulations. The discharge of any pollutant more frequently than, or at a level in excess of, that identified and authorized herein shall constitute a violation of these regulations and shall be grounds for enforcement action as provided in 3 Del.C. §2200 et.al. and 7 Del.C. §6000 et.al.; for loss of authorization to discharge pursuant to these regulations; or for denial of a permit renewal application. The Department may seek voluntary compliance with a warning, notice or other educational means. However, the law does not require that such voluntary means be used before proceeding with enforcement.

9.4.12 Transfer of Ownership

9.4.12.1 In the event of any pending change in ownership of facilities covered by a CAFO general or individual permit, the new owner or applicant shall submit either an application for an individual NPDES permit or Notice Of Intent (NOI) to the Department as outlined in 9.4.5. (Application for Coverage).

9.4.12.2 Such written notice shall include the proposed date of transfer. The new owner is encouraged to provide notice at least 30 days prior to the proposed transfer to avoid any lag in coverage.

9.4.12.3 The Secretary per 3 Del.C. §2248(d) may require the new owner to apply for and obtain an individual NPDES permit, as provided in 9.4.7.

9.4.13 Effluent Standards and Limitations. Discharge limitations: No discharges of process wastewater from any animal feeding operation subject to these regulations may enter waters of the United States. The requirements do allow a discharge caused by a rainfall event, provided the following conditions are met:

9.4.13.1 The production area must be designed, built, operated and maintained to handle all of the process wastewater, plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event.

9.4.13.2 The discharge may consist only of overflows caused by the rainfall event. Dry weather discharges are not permitted. Discharges caused by poor management are never permitted.

9.4.14 Criteria for New Facilities. New CAFO facilities permitted after the effective date of these regulations shall meet the following criteria:

9.4.14.1 Siting of Control Facilities.

9.4.14.1.1 Waste storage structures shall not be located in the 100-year flood plain unless the facility is designed and constructed such that the manure from a facility is protected from floodwaters from a storm of 24 hours duration having a one (1) percent chance of recurrence within a given year. Such events are defined as 100-year 24-hour rainfall event. Waste storage structures and treatment lagoons are to be designed as essentially watertight structures in accordance with NRCS practices and standards.

9.4.14.1.2 Waste storage structures shall not be located closer than 300 feet from a public water well nor 200 feet from domestic water well.

9.4.14.1.3 No waters of the State shall come into direct contact with the animals confined at the facility. Fences or other practices may be used to restrict such access.

9.4.14.1.4 Animal confinement areas shall not be located:

9.4.14.1.4.1 In the 100 year flood plain unless they are protected from inundation and damage that may occur during that flood event.

9.4.14.1.4.2 Closer than 300 feet from a public water well, nor 200 feet from a domestic water well.

9.4.14.1.5 The handling, treatment, and management of AFO wastes shall not:

9.4.14.1.5.1 Result in the inadvertent destruction or adverse modification of the critical habitat of endangered or threatened species of plant, fish, or wildlife.

9.4.14.1.5.2 Create a public health hazard.

9.4.14.1.5.3 Result in groundwater contamination.

9.4.14.2 Effluent Limitations

9.4.14.2.1 No discharges of process wastewater from any animal feeding operation subject to these regulations may enter waters of the United States. The requirements do allow a discharge caused by a rainfall event, provided the following conditions are met:

9.4.14.2.1.1 The production area for horse, sheep, duck, dairy and beef (other than veal) must be designed, built, operated and maintained to handle all of the process wastewater, plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event.

9.4.14.2.1.2 The production area for swine, veal calf, turkey and chickens must be designed, built, operated and maintained to handle all of the process wastewater, plus the runoff and direct precipitation from a 100-year, 24-hour rainfall event.

9.4.14.2.1.3 The discharge may consist only of overflows caused by the rainfall event. Dry weather discharges are not permitted. Discharges caused by poor management are never permitted.

9.4.15 Enforcement, Fines, and Penalties

9.4.15.1 Whoever violates these regulations shall be subject to the following fines and penalties:

9.4.15.1.1 A civil penalty shall be imposed by the Justice of the Peace Court of not less than \$25 nor more than \$1,000 for each violation. Each day of continued violation shall be considered as a separate violation up to a limit of \$10,000. The Justice of the Peace Court shall have jurisdiction of a violation in which a civil penalty is sought. In setting penalty amounts under this section, consideration shall be given to offsetting any economic benefit from non-compliance or any delayed or avoided costs to any person. Further, penalty assessments shall be sufficient to deter recurrence of non-compliance. If there is a substantial likelihood that non-compliance will reoccur, the Commission may recommend that the Secretary also seek a permanent or preliminary injunction or temporary restraining order in the Court of Chancery. Civil penalties imposed under this section may not be suspended.

9.4.15.1.2 In its discretion, the Commission may recommend that the Secretary impose an administrative penalty of not more than \$1,000 for each violation. Prior to assessment of an administrative penalty, written notice of the Secretary's proposal to impose such penalty shall be given to the violator and the violator shall have 30 days from receipt of said notice to request a public hearing. Any public hearing, if requested, right of appeal and judicial appeal shall be conducted pursuant to this section. Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation or violations, ability of the violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any), resulting from the violation and such other matters as justice may require.

9.4.15.2 Any expenses or civil administrative penalties collected by the Department under this section are hereby appropriated to the Department for use in assisting persons in achieving compliance or to demonstrate the application of research that may be of substantial benefit to any individuals seeking compliance with this section.

9.4.15.3 Any person wishing to file a complaint against any person regarding an alleged violation of these regulations shall follow the process established by *Regulations Governing the Processing of Complaints and Violations published in the January 1, 2001 Register of Regulations.*

9.4.16 Effective Date. These regulations shall become effective \_\_\_\_\_.

9.5 Regulations Governing Discharges Associated with Car Washes and Other Motor Vehicle Washing Operations (Reserved)

9.6 Regulations Governing Discharges Associated with the Operation and Maintenance of Swimming Pools and Spas (Reserved)

---

---

# PROPOSED REGULATIONS

---

---

## DEPARTMENT OF TRANSPORTATION

### DIVISION OF PLANNING AND POLICY

17 Delaware Code, Section 190

(17 Del.C. §190)

#### Delaware Bicycle Facility Master Plan

##### Background

The Delaware Department of Transportation through its Planning Division –has developed a Draft Statewide Bicycle Facility Master Plan. (Draft Plan)

DelDOT initiated the development of the Draft Plan to determine a statewide network of on-road bicycle routes to fulfill its mission to provide infrastructure for bicycle travel as a transportation option. It is DelDOT's goal to designate and maintain these routes for riders seeking both long touring and utilitarian trips. The effort would build on the success of Delaware Bicycle Route 1.

The Draft Plan was developed in order to define and implement a statewide system of designated, on-road bicycle routes. By designating a system of routes, DelDOT will take advantage of the existing system of roadways to provide improved bicycle travel options. The Draft Plan provides specific guidance as to the location and nature of “appropriate accommodations” along DelDOT maintained roadways.

The overall purpose of the Plan is to recognize bicycling as an integral part of the transportation system and provide for suitable accommodations for bicycles on the statewide roadway network. Implementation of the plan will achieve the following goals:

- Integrate existing bicycle routes and trails to a larger, statewide bicycle network.
- Establish bicycle routes between municipalities, activity centers, and recreational areas throughout the state.
- Link communities and employment centers, provide access between tourism destinations, and provide travel options for shorter trips (to parks, urban centers, etc.)

Attached to this announcement is a copy of the Draft Plan and Draft Executive Summary, which summarizes the major points of the Draft Plan, including the proposed routes and their associated design guidelines.

The Department will take comments on the Executive Summary and Draft Plan from June 1, 2005 through June 30, 2005.

Any requests for copies of the Draft Executive Summary and/or Draft Plan, or any questions or comments regarding these documents should be directed to:

Joseph Cantalupo, Assistant Director of Planning  
Delaware Department of Transportation  
PO Box 778  
Dover, DE 19903  
(302) 760-2121 (telephone)  
(302) 739-2251 (fax)  
[joseph.cantalupo@state.de.us](mailto:joseph.cantalupo@state.de.us)

**PDF Version of Executive Summary**

**PDF Version of Draft Plan**

**(Adobe Acrobat Reader required)**

##### Introduction

The Bicycle Facility Master Plan was developed in order to define and implement a statewide system of designated, on-road bicycle routes. By designating a system of routes, DelDOT will take advantage of the existing system of roadways to provide improved bicycle travel options. The Bicycle Facility Master Plan provides specific guidance as to the location and nature of “appropriate accommodations” along DelDOT-maintained roadways.

The overall purpose of the Plan is to recognize bicycling as an integral part of the transportation system and provide for suitable accommodations for bicycles on the statewide roadway network. Implementation of the plan will achieve the following goals:

- Integrate existing bicycle routes and trails to a larger, statewide bicycle network.
- Establish bicycle routes between municipalities, activity centers, and recreational areas throughout the state.

**Role of the Plan**

The Bicycle Facilities Master Plan provides DelDOT with three tools with which to design and construct a continuous statewide network of bicycle facilities:

- **A statewide network of on-road bikeways.** The plan designates a set of on-road bikeways which connect Delaware's municipalities, activity centers, and recreational destinations.
- **A set of design recommendations for each type of bikeway.** These will guide DelDOT and developers, letting them know what types of facilities are expected along each DelDOT-maintained roadway.
- **An implementation plan that identifies roles for stakeholders.** Interviews with state agency staff and other stakeholders allowed DelDOT to distinguish DelDOT agency roles and roles for other stakeholders (Refer to Page 10 outline).

The Bicycle Facility Master Plan will be considered in conjunction with several other policies and programs including:

- DelDOT Rails-to-Trails Program
- Local and regional bicycle master plans
- DNREC's Greenways and Trails Master Plan

**Bicycle Facility Needs**

In order to understand the specific needs of bicyclists in Delaware, a public outreach program was undertaken for this Plan. As part of this process, participants identified a set of basic facility needs which influence their decision whether or not they are willing to bicycle (or let their children ride bicycles) on roadways.

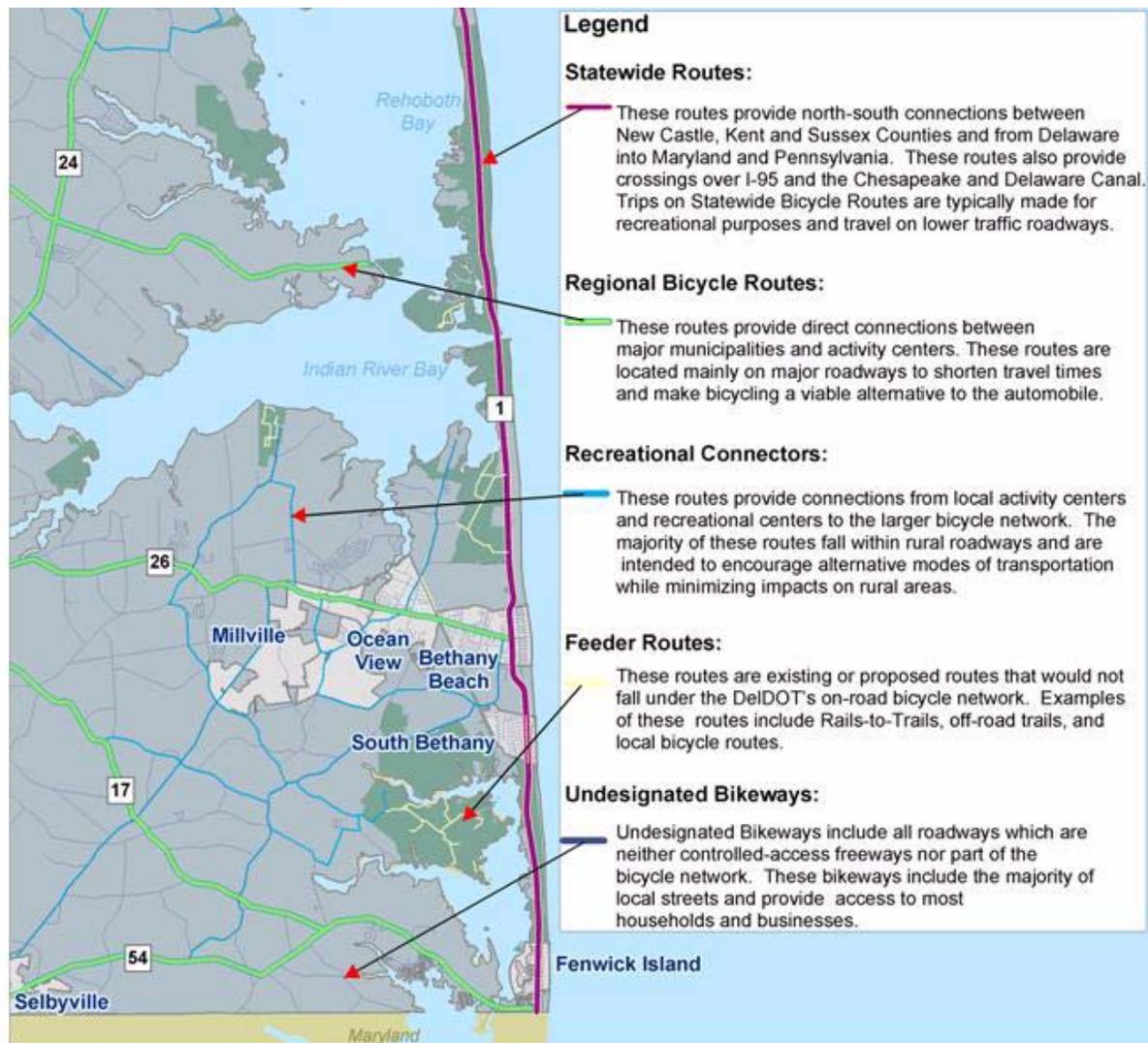
Those basic needs were:

- Clearly identified routes with consistently designed bikeways and signage.
- A continuous network of bikeways connecting to residences, activity centers and recreational destinations.
- Provision of safe crossings
- Additional consideration for the needs of children

**Facility Recommendations****Route Recommendations**

The proposed network will consist of a hierarchy of bikeways, covering a range of mobility needs.

# PROPOSED REGULATIONS



## Design Recommendations

The routes in the statewide bicycle network will be improved incrementally as part of the regular cycle of DelDOT road construction and maintenance. Roadway projects with planned bicycle facilities will be based on the new bicycle facility design guidelines established in both the Facility Plan and the Road Design Manual. Some of the facilities which will be improved include:

- **Bikeways.** For each type of designated bicycle route there are required and preferred bicycle facility features which should be installed. (See below) In satisfying the required features, Statewide, Regional, and Recreational Connectors bicycle routes can be built as bike lanes, shared shoulders, or wide outside travel lanes as determined by DelDOT staff. Refer to Page 4 for descriptions of bikeway types.
- **Traffic Controls.** Traffic Controls may include signage, lane striping, bike lane symbols, and traffic signals. The Plan provides specific guidance as to the usage and placement of traffic controls along bikeways.
- **Intersection Treatments.** The Plan details how striping, signage, and other bicycle facility improvements should be treated at intersections.
- **Bridge Treatments.** Delaware's bridges represent one of largest challenges to providing continuous bicycle routes. The design recommendations for bridge treatments are intended to enhance the safety of bicyclists.

- **Interchange Treatments.** Bikeways crossing interchanges should be designed to minimize the conflict points between automobile traffic and bicyclists.
- **Other Design Considerations.** The Plan also establishes guidance on drainage inlet grates, utility covers, and railroad crossings that are compatible with bicycling.

Bicycle Facility Features by Facility Master Plan Route Type	Type of Bicycle Routes	Statewide Bicycle Route	Regional Bicycle Route	Recreational Connector
R = Required P = Preferred				
<b>Minimum Facility Width</b>		5'	5'	5'
<b>Facility Improvements</b>				
Bike Route Number Signs		R	R	n/a
Warning & Regulatory Signs		R	R	R
Bicycle Symbols		R	R	P
Bicycle Friendly Drainage Grates		R	R	R
Right angles railroad crossings		R	R	R
Utility Covers out of path or flush		R	R	R

**Description of Bikeways:**

**Bike Lane.** Design guidelines include a 5 foot minimum lane width with striping, bike symbols, and route designation. Warning and regulatory signage shall be provided. The guidelines for Bike Lanes establish preferential use by bicyclists. This type of facility is most beneficial for less experienced riders (Group C) but difficult to fit within existing roadways.



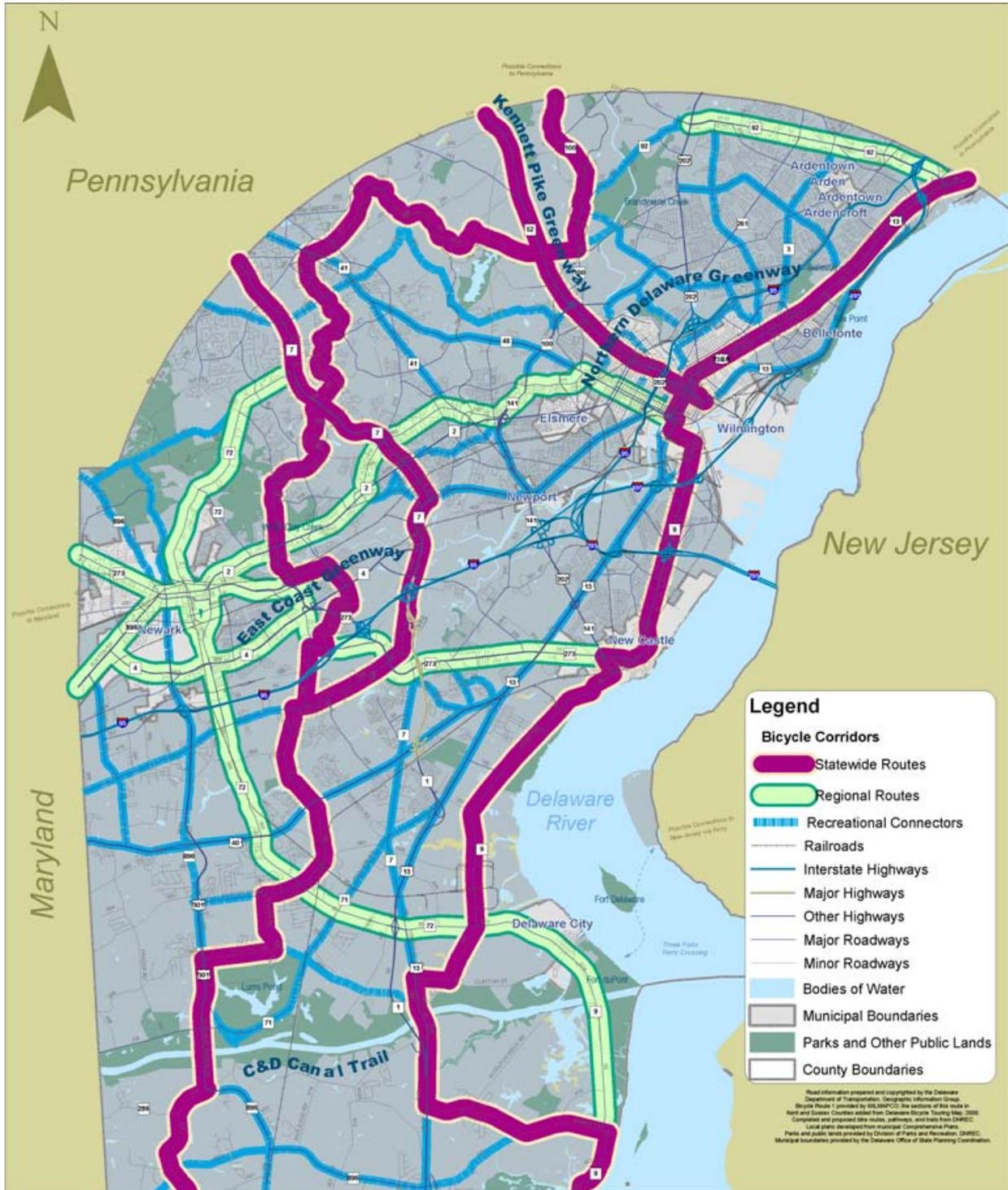
**Shared Shoulders.** The paved shoulder should be a minimum of 5 feet wide. Includes some signage and bicycle symbols. This bicycle facility is intended to be shared by bicyclist and motorists. A shared bikeway maintains emergency use of the shoulder for motorist breakdowns/emergencies while providing a facility for bicyclists separated from the travel lane. Parking on shoulders should be prohibited. This type of facility is suitable for Type B or basic bicyclists.



**Wide Outside Travel Lane.** The guidelines include a 12 foot wide outside travel lane to be shared by motorists and bicyclists. Warning and regulatory signage may be included but no striping shall be provided. This bikeway is most applicable for roadways with low speeds and lower traffic volumes and is intended for more advanced bicyclists.



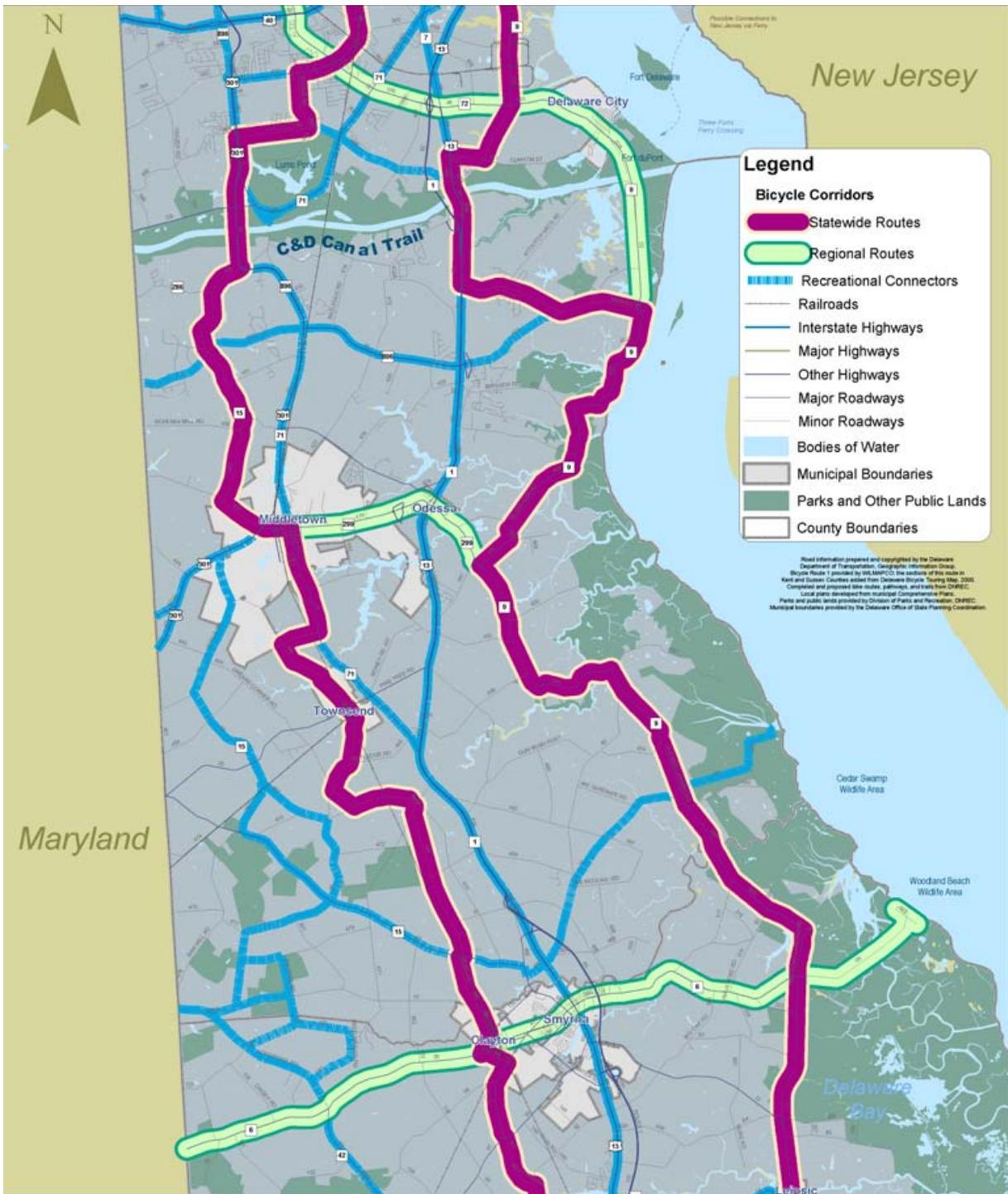
Northern New Castle County  
Statewide Bicycle Routes, Regional Bicycle Routes, and Recreational Connectors



The Plan recommends 126 miles of Statewide Bicycle Routes, 71 miles of Regional Bicycle Routes, and 301 miles of Recreational Connectors in New Castle County.

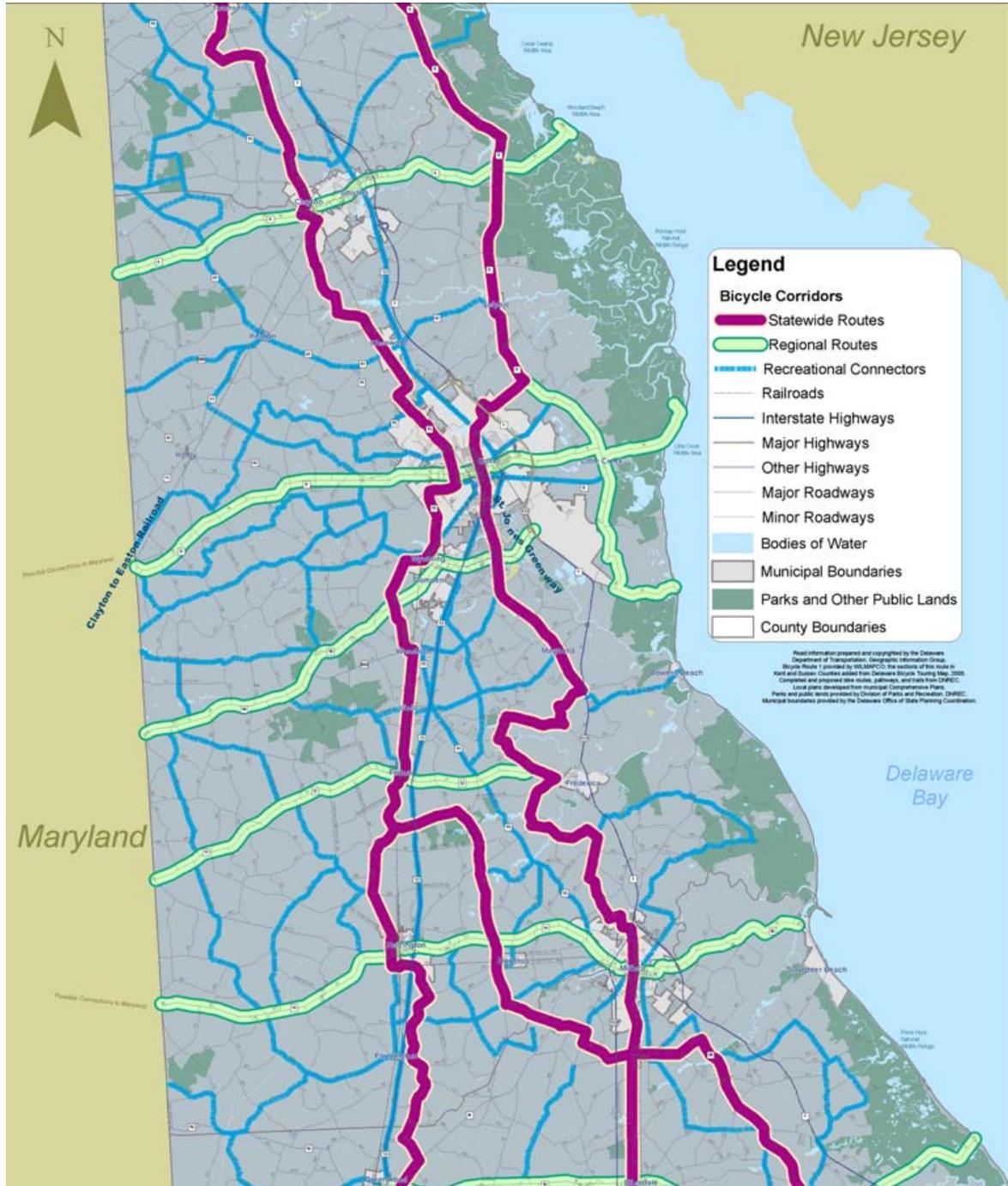
# PROPOSED REGULATIONS

## Southern New Castle County Statewide Bicycle Routes, Regional Bicycle Routes, and Recreational Connectors



The Plan recommends 126 miles of Statewide Bicycle Routes, 71 miles of Regional Bicycle Routes, and 301 miles of Recreational Connectors in New Castle County.

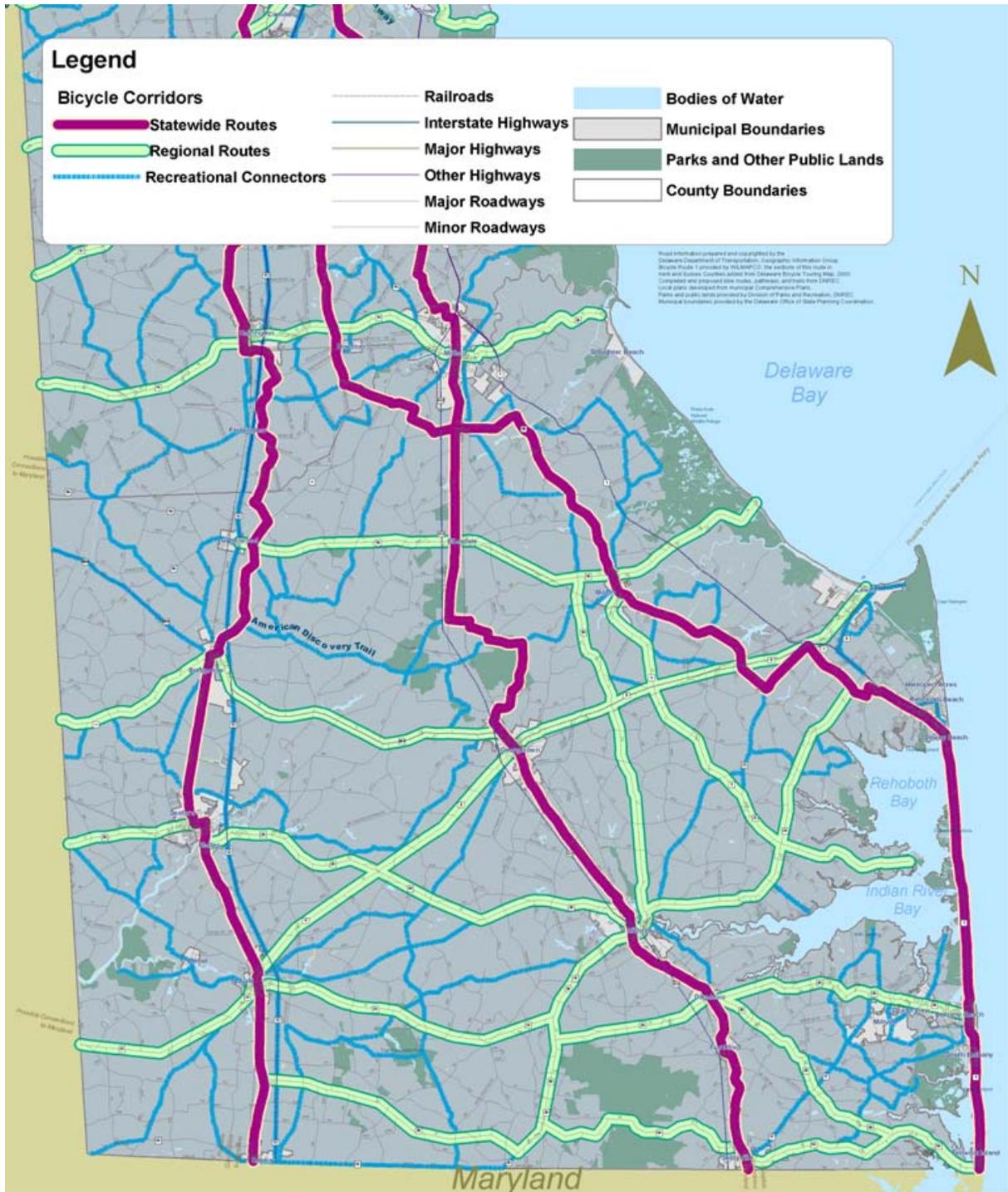
Kent County  
Statewide Bicycle Routes, Regional Bicycle Routes, and Recreational Connectors



The Plan recommends 92 miles of Statewide Bicycle Routes, 102 Regional Bicycle Routes, and 307 miles of Recreational Connectors in Kent County.

# PROPOSED REGULATIONS

## Sussex County Statewide Bicycle Routes, Regional Bicycle Routes, and Recreational Connectors



The Plan recommends 117 miles of Statewide Bicycle Routes, 227 miles of Regional Bicycle Routes, and 366 miles of Recreational Connectors in Sussex County.

**Plan Implementation**

The key to implementing the Bicycle Facility Master Plan will be to integrate the recommendations into the regular cycle of roadway planning, design, construction, and maintenance.

**Planning.** DelDOT staff will be aware of the designated bicycle routes early, so that they can begin to evaluate bicycle facilities' impacts on design and right-of-way requirements for a roadway project.

**Design.** The DelDOT *Road Design Manual* notes that the selection of a facility type should be determined in part by the presence of state and local bicycle master plans. This Facility Plan fulfills that role. Therefore, where a roadway project occurs along a route designated by the Bicycle Facility Master Plan, the project team should apply the appropriate design guidelines for the planned route.

**Construction.** Making DelDOT construction staff aware of the designated bikeways in the Bicycle Facility Master Plan will improve their understanding of the significance of site-specific bicycle improvements.

**Maintenance.** The DelDOT *Road Design Manual* provides guidance on pavement treatments regarding the transitions between the travel lane, shoulder, and gutter pan which should be taken into consideration during repaving projects to improve bicycling conditions.

The chart summarizes stakeholder roles in the plan's implementation.

Stakeholder	Role in Plan Implementation		
	Planning and Development	Design	Construction
DelDOT	Planning -	<sup>2</sup> Use Bicycle Facility Master Plan	<sup>2</sup> Ensure developers
	Transportation Solutions		<sup>2</sup> Apply Bicycle Facility Master Plan design standards to designated routes
	Maintenance & Operations		<sup>2</sup> Ensure improvements developed in planning and design properly implemented in the field
	Traffic Engineering		<sup>2</sup> Consider bicycle crossings when determining timing of signals
	Delaware	<sup>2</sup> Identify transit facilities suitable	
Local Municipalities	<sup>2</sup> Develop local network of Feeder Routes which connect into statewide bicycle network <sup>2</sup> Nominate transportation enhancement (TE) projects to tie Feeder Routes into Statewide and Regional Bicycle Routes	<sup>2</sup> Assist DelDOT in identifying local constraints, opportunities along designated bikeways	
Delaware Department of Natural Resources and Environmental Control (DNREC)	<sup>2</sup> Provide feedback to DelDOT through Council on Greenways and Trails		
Delaware Bicycle Council	<sup>2</sup> Pass along feedback from cyclists using the statewide bicycle network <sup>2</sup> Advise DelDOT on areas requiring improvements <sup>2</sup> Conduct bicycle safety programs		

**PROPOSED REGULATIONS**

Metropolitan Planning Organizations (Dover-Kent MPO, WILMAPCO)	<sup>2</sup> Review projects submitted for the Transportation Improvement Project, ensure projects take into account bicycle mobility		
Delaware State Police Department	<sup>2</sup> Provide DelDOT with accurate bicycle accident data to identify conditions and locations requiring bicycle facility improvements		
Delaware Office of Highway Safety & Homeland Security	<sup>2</sup> Pass along feedback from public regarding bicycle safety on DelDOT roadways <sup>2</sup> Conduct bicycle safety programs		
Delaware Department of Education	<sup>2</sup> Work with DelDOT in identifying schools for Safe Routes to School pilot project		

**\*PLEASE NOTE: DUE TO THE SIZE OF THE PROPOSED REGULATION IT IS NOT BEING PUBLISHED HERE. TO OBTAIN A COPY CONTACT EITHER THE DEPARTMENT OF TRANSPORTATION OR THE REGISTRAR'S OFFICE.**

**PDF Version (Adobe Acrobat Reader required)**

**Symbol Key**

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

**Final Regulations**

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

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

---

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
1900 BOARD OF NURSING  
Statutory Authority: 24 Delaware Code,  
Section 1906(1) (24 Del.C. §1906(1))  
24 DE Admin. Code 1900**

**ORDER**

Pursuant to due notice of the time and place of hearing published in the *News Journal* and in the *Delaware State News* in compliance with the requirements of 29 Del.C. §10115, the Delaware Board of Nursing ("Board") under its authority to enact rules and regulations specified in 24 Del.C. §1906(1), conducted a public hearing concerning proposed modifications to the Rules and Regulations of the Board. The proposed modifications and additions were published in the *Delaware Register of Regulations* Volume 8, Issue 9, Tuesday, March 1, 2005 beginning at Page 1219. Notice of the hearing was also published in two newspapers of general circulation. (Hearing Exhibit No. 1)

The public hearing was held on April 13, 2005 as scheduled in the Auditorium of the Carter Partnership Building, Delaware Technical and Community College, Owens Campus, Georgetown, Delaware. A quorum of the Board was present for the hearing.

**Summary of the Evidence**

Pursuant to 29 Del.C. §10118, the following is a summary of the evidence and information provided at the hearing.

There were no public oral comments at the hearing.

The Executive Director of the Board Iva Boardman, RN, MSN, provided sworn testimony concerning the basis for the adoption of the proposed Regulations. Ms. Boardman recounted a short history of the development of the Regulations concerning the insertion and removal of epidural catheters culminating in the determination that the public protection was best served by permitting the insertion and removal of epidural catheters by Certified Registered Nurse Anesthetists (CRNAs) and removal of such catheters by Advanced Practice Nurses with specialized training. Ms. Boardman also described the collaborative effort which went into the development of the list of health care tasks which are to be exempted by Nursing Board Regulation from delegation by certain competent individual as contemplated and permitted by Senate Bill No. 261.

Written comments were received by the Board of Nursing concerning the proposed Regulations. The State Council for Persons with Disabilities submitted a Memorandum dated March 29, 2005 endorsing the proposed regulation changes and making some editorial observations. (Hearing Exhibit No. 2).

### Findings of Fact and Conclusions

The Board finds that the procedures required by the Administrative Procedures Act for the modification of Rules and Regulations of the Board of Nursing have been met and that the proposed changes further the public purposes of the Board of Nursing. The list of excluded healthcare acts required by Senate Bill No. 261 is set forth in the new Section 7.9 and the final position of the Board on the insertion/removal of epidural catheters is contained in Sections 8.7.16 and 8.7.17.

### Decision and Order

Based upon the findings and conclusions set forth above, the undersigned, constituting a quorum of the Delaware Board of Nursing, adopt the proposed modification to the Rules and Regulations published in the *Register of Regulations* in Volume 8, Issue 9, Tuesday, March 1, 2005, beginning at page 1219 as a modification to the Rules and Regulations of the Board, effective ten (10) days after the publication of this Order in the *Delaware Register of Regulations* (See Attached EXHIBIT A). The reference to 8 **Del. Reg.** 864 (12/01/04) at the end of Section 7.9 should be omitted from the final version of the Regulation to be published in the *Delaware Register of Regulations*.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

BY ORDER OF THE BOARD OF NURSING

### 1900 Board of Nursing

#### 7.0 Standards of Nursing Practice

##### 7.1 Authority

“Standards of Nursing Practice” means those standards of practice adopted by the Board that interpret the legal definitions of nursing, as well as provide criteria against which violations of the law can be determined. Such standards of nursing practice shall not be used to directly or indirectly affect the employment practices and deployment of personnel by duly licensed or accredited hospitals and other duly licensed or accredited health care facilities and organizations. In addition, such standards shall not be assumed the only evidence in civil malpractice litigation, nor shall they be given a different weight than any other evidence.

##### 7.2 Purpose

The purpose of standards is to establish minimal acceptable levels of safe practice for the Registered and Licensed Practical Nurse, and to serve as a guide for the Board to evaluate safe and effective nursing care.

7.3 Standards of Practice for the Registered and Licensed Practical Nurse

7.3.1 Standards related to the Registered Nurse.

7.3.1.1 The Registered Nurse shall conduct and document nursing assessments of the health status of individuals and groups by:

7.3.1.1.1 Collecting objective and subjective data from observations, examinations, interviews and written records in an accurate and timely manner. The data include but are not limited to:

7.3.1.1.1.1 Biophysical and emotional status and observed changes;

7.3.1.1.1.2 Growth and development;

7.3.1.1.1.3 Ethno-cultural, spiritual, socio-economic and ecological background;

7.3.1.1.1.4 Family health history;

7.3.1.1.1.5 Information collected by other health team members;

7.3.1.1.1.6 Ability to perform activities of daily living;

7.3.1.1.1.7 Consideration of client’s health goals;

7.3.1.1.1.8 Client knowledge and perception about health status and potential, or maintaining health status;

7.3.1.1.1.9 Available and accessible human and material resources;

7.3.1.1.1.10 Patterns of coping and interaction.

7.3.1.1.2 Sorting, selecting, reporting, and recording the data.

7.3.1.1.3 Analyzing data.

7.3.1.1.4 Validating, refining and modifying the data by using available resources including interactions with the client, family, significant others, and health team members.

7.3.1.1.5 Evaluating data.

7.3.1.2 Registered Nurses shall establish and document nursing diagnoses that serve as the basis for the strategy of care.

7.3.1.3 Registered Nurses shall develop strategies of care based on assessment and nursing diagnoses. This includes, but is not limited to:

7.3.1.3.1 Prescribing nursing intervention(s) based on the nursing diagnosis.

7.3.1.3.2 Initiating nursing interventions through

7.3.1.3.2.1 Giving care.

7.3.1.3.2.2 Assisting with care.

7.3.1.3.2.3 Delegating care.

7.3.1.3.3 Identifying to the identification of priorities in the strategies of care.

7.3.1.3.4 Setting realistic and measurable goals for implementation.

7.3.1.3.5 Identifying measures to maintain comfort, to support human functions and responses,

to maintain an environment conducive to well being, and to provide health teaching and counseling.

7.3.1.3.6 Supervising the caregiver to whom care is delegated.

7.3.1.4 Registered Nurses shall participate in the implementation of the strategy of care by:

7.3.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.3.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the direction and supervision of a recognized authority.

7.3.1.4.3 Providing an environment conducive to safety and health.

7.3.1.4.4 Documenting nursing interventions and client outcomes.

7.3.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.3.1.5 Registered Nurses shall evaluate outcomes, which shall include the client, family, significant others and health team members.

7.3.1.5.1 Evaluation data shall be appropriately documented; and

7.3.1.5.1.1 Be communicated to the client, family, significant others and appropriate members of the health care team; and

7.3.1.5.1.2 Used as a basis for modifying outcomes by reassessing client health status, modifying nursing diagnoses, revising strategies of care or prescribing changes in nursing interventions.

7.4 Standards of Practice for the Licensed Practical Nurse

7.4.1 Standards related to the Licensed Practical Nurse's contributions to the nursing process.

7.4.1.1 The Licensed Practical Nurse shall contribute to and document nursing assessments of the health status of individuals and groups by:

7.4.1.1.1 Sorting, selecting, reporting, and recording the data.

7.4.1.1.2 Collecting objective and subjective data from observations, examinations, interview and written records in an accurate and timely manner. The data include but are not limited to:

7.4.1.1.2.1 Biophysical and emotional status and observed changes;

7.4.1.1.2.2 Growth and development;

7.4.1.1.2.3 Ethno-cultural, spiritual, socio-economic, and ecological background;

7.4.1.1.2.4 Family health history;

7.4.1.1.2.5 Information collected by other health team members;

7.4.1.1.2.6 Ability to perform activities of daily living;

7.4.1.1.2.7 Consideration of client's health goals;

7.4.1.2 Licensed Practical Nurses shall participate in establishing and documenting nursing diagnoses that serve as the basis for the strategy of care.

7.4.1.3 Licensed Practical Nurses shall participate in developing strategies of care based on assessment and nursing diagnoses.

7.4.1.3.1 Contributing to setting realistic and measurable goals for implementation.

7.4.1.3.2 Participating in identifying measures to maintain comfort, to support human functions and responses to maintain an environment conducive to well-being, and to provide health teaching and counseling.

7.4.1.3.3 Contributing to setting client priorities.

7.4.1.4 Licensed Practical Nurses shall participate in the implementation of the strategy of care by:

7.4.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.4.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the directions and supervision of a recognized licensed authority.

7.4.1.4.3 Providing an environment conducive to safety and health.

7.4.1.4.4 Documenting nursing interventions and client outcomes.

7.4.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.4.1.5 Licensed Practical Nurses shall contribute to evaluating outcomes by appropriately documenting and communicating to the client, family, significant others and the health care team members.

7.5 Standards Related to the Registered and Licensed Practical Nurse's Competencies and Responsibilities.

7.5.1 Registered and Licensed Practical Nurses shall:

7.5.1.1 Have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of professional and practical nursing practice.

7.5.1.2 Accept responsibility for competent nursing practice.

7.5.1.3 Function as a member of the health team:

7.5.1.3.1 By collaborating with other members of the health team to provide optimum care, or

7.5.1.3.2 As an LPN under the direction and supervision of a recognized licensed authority.

7.5.1.4 Consult with nurses, other health team members and community agencies for continuity of care and seek guidance as necessary.

7.5.1.5 Obtain instruction and supervision as necessary when implementing nursing techniques.

7.5.1.6 Contribute to the formulation, interpreting, implementing and evaluating of the objectives and policies related to professional and practical nursing practice within the employment setting.

7.5.1.7 Participate in evaluating nurses through peer review.

7.5.1.8 Report unsafe nursing practice to the Board and unsafe practice conditions to recognized legal authorities.

7.5.1.9 Practice without discrimination as to age, race, religion, sex, sexual orientation, national origin, or disability.

7.5.1.10 Respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.

7.5.1.11 Respect the client's right to privacy by protecting confidentiality unless obligated by law to disclose the information.

7.5.1.12 Respect the property of clients, their families and significant others. In addition to the proceeding, the Registered Nurse shall:

7.5.1.13 Delegate to others only those nursing interventions that those persons are prepared or qualified to perform.

7.5.1.14 Supervise others to whom nursing interventions are delegated.

7.5.1.15 Retain professional accountability for care when delegating.

7.5.1.16 Teach safe practice to other health care workers as appropriate.

## 7.6 Dispensing

### 7.6.1 Definitions

7.6.1.1 **"Dispensing"** means providing medication according to an order of a practitioner duly licensed to prescribe medication. The term shall include both the repackaging and labeling of medication from bulk to individual doses.

7.6.1.2 **"Prescription Label"** - a label affixed to every prescription or drug order which contains the following information at a minimum.

7.6.1.2.1 A unique number for that specific drug order.

7.6.1.2.2 The date the drug was dispensed.

7.6.1.2.3 The patient's full name.

7.6.1.2.4 The brand or established name and manufacturer and the strength of the drug to the extent it can be measured.

7.6.1.2.5 The practitioner's directions as found on the prescription order.

7.6.1.2.6 The practitioner's name.

7.6.1.2.7 The initials of the dispensing nurse.

7.6.1.2.8 The name and address of the facility or practitioner from which the drug is dispensed.

7.6.1.2.9 Expiration date.

7.6.1.3 **"Standing order"** - An order written by the practitioner which authorizes a designated registered nurse or nurses to dispense prescription drugs to his/her patients(s) according to the standards listed below.

### 7.6.2 Authority to Dispense

7.6.2.1 Registered Nurses may assume the responsibility of dispensing as defined in the Nurse Practice Act.

7.6.2.2 Licensed Practice Nurses may assume the responsibility of dispensing as authorized by the Nurse Practice Act and defined in these Regulations, Section 7.6.2.2.1., 7.6.2.2.2, and 7.6.2.2.3

7.6.2.2.1 Licensed Practical Nurses may provide to a patient pre-packaged medications in accordance with the order of a practitioner duly licensed to prescribe medication where such medications have been pre-packaged by a person with lawful authority to dispense drugs.

7.6.2.2.2 Licensed Practical Nurses, per written order of a physician, dentist, podiatrist, advanced practice nurse, or other practitioner duly licensed to prescribe medication, may add the name of the client to a preprinted label on a pre-packaged medication.

7.6.2.2.3 Licensed Practical Nurses in a licensed methadone clinic may apply a preprinted label to a pre-packaged medication.

### 7.6.3 Standards for Dispensing

7.6.3.1 All licensed nurses engaged in dispensing shall adhere to these standards.

7.6.3.1.1 The medication must be prepackaged by a pharmaceutical company or prepared by a registered pharmacist.

7.6.3.1.2 The nurse shall be responsible for proper drug storage of the medication prior to dispensing.

7.6.3.1.3 The practitioner who originated the prescription or drug order must be on the premises or he/she or their designated coverage shall be available by telephone during the act of dispensing.

7.6.3.1.4 Once a drug has been dispensed it shall not be returned for reuse by another or the same patient in an institutional setting.

7.6.3.1.5 The nurse may not delegate any part of the dispensing function to any other individual who is not licensed to dispense.

7.6.3.1.6 The dispensing nurse must assure compliance to the state generic substitution laws when selecting the product to be dispensed.

7.6.3.1.7 The nurse-dispensed prescription may not be refillable; it requires the authority of the prescriber with each dispensing.

7.6.3.1.8 A usage review process must be established for the medicines dispensed to assure proper patient usage.

7.6.3.1.9 All dispensed drugs must be labeled as defined above and dispensed in proper safety closure containers that meet the standards established by the United States Pharmacopoeia for stability.

7.6.3.1.10 Record keeping must include the maintenance of the original written prescription of drug order for at least three years, allow retrospective review of accountability, and provide an audit trail. All dispensing records must be maintained on site, and available for inspection by authorized agents of the Board of Health, Pharmacy, and Nursing.

7.6.3.1.11 The dispensing nurse shall assume the responsibility of patient counseling of drug effects, side-effects, desired outcome, precautions, proper storage, unique dosing criteria, drug interactions, and other pertinent data, and record evidence of patient education.

7.6.3.1.12 Conformance to paragraphs 6 through 11 are not necessary if the original prescription was dispensed by a pharmacist for that specific patient.

## 7.7 Delegation

### 7.7.1 Definitions

7.7.1.1 **“Accountability”** - The state of being accountable, answerable, or legally liable for actions and decisions, including supervision.

7.7.1.2 **“Delegation”** - Entrusting the performance of selected nursing duties to individuals qualified, competent and legally able to perform such duties while retaining the accountability for such act.

7.7.1.3 **“Supervision”** - The guidance by a registered nurse (RN) for the accomplishment of a function or activity. The guidance consists of the activities included in monitoring as well as establishing the initial direction, delegating, setting expectations, directing activities and courses of action, critical watching, overseeing, evaluating, and changing a course of action.

7.7.1.4 **“Unlicensed Assistive Personnel”** - Individuals not licensed to perform nursing tasks that are employed to assist in the delivery of client care. The term "unlicensed assistive personnel" does not include members of the client's immediate family, guardians, or friends; these individuals may perform incidental care of the sick in private homes without specific authority from a licensed nurse (as established in 24 **Del.C.** §1921(a)(4) of the Nurse Practice Act).

### 7.7.2 Conditions

7.7.2.1 The following conditions are relevant to delegation:

7.7.2.1.1 Only RNs may delegate.

7.7.2.1.2 The RN must be knowledgeable regarding the unlicensed assistive

personnel's education and training and have opportunity to periodically verify the individual's ability to perform the specific tasks.

7.7.2.1.3 The RN maintains accountability for determining the appropriateness of all delegated nursing duties and responsibility for the delivery of safe and competent care. Unlicensed assistive personnel may not reassign a delegated act.

### 7.7.3 Criteria

7.7.3.1 The RN may delegate only tasks that are within the scope of sound professional nursing judgment to delegate.

7.7.3.2 Determination of appropriate factors include, but are not limited to:

7.7.3.2.1 stability of the client's condition

7.7.3.2.2 educational background, skill level, or preparation of the individual

7.7.3.2.3 nature of the nursing act that meets the following:

7.7.3.2.3.1 task is performed frequently in the daily care of a client

7.7.3.2.3.2 task is performed according to an established sequence of steps

7.7.3.2.3.3 task may be performed with a predictable outcome

7.7.3.2.3.4 task does not involve ongoing assessment, interpretation or decision making that cannot be logically separated from the task itself.

7.7.3.3 The RN must be readily available in person or by telecommunication.

### 7.7.4 Exclusions

7.7.4.1 The following activities require nursing knowledge, judgment, and skill and may not be delegated by the RN to an unlicensed assistive person. These exclusions do not apply to Advanced Practice Nurses.

7.7.4.2 Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

7.7.4.3 Development of nursing diagnosis and care goals;

7.7.4.4 Formulation of the plan of nursing care and evaluation of the effectiveness of the nursing care provided;

7.7.4.5 Specific tasks involved in the implementation of the plan of care which require nursing judgment, skill, or intervention, that include, but are not limited to: performance of sterile invasive procedures involving a wound or anatomical site; nasogastric, newly established gastrostomy and jejunostomy tube feeding; nasogastric, jejunostomy and gastrostomy tube insertion or removal; suprapubic catheter insertion and removal; (phlebotomy is not considered a sterile, invasive procedure);

7.7.4.6 Administration of medications, including prescription topical medications; and

7.7.4.7 Receiving or transmitting verbal orders.

**1 DE Reg. 1888 (6/1/98)**

**6 DE Reg. 1195 (3/1/03)**

## 7.8 Intravascular Therapy by Licensed Nurses

Intravascular therapy encompasses several components, some of which require primarily skill proficiency with a minimum of critical judgement. Other aspects of intravascular therapy require skill proficiency and more importantly a high degree of knowledge, critical judgement and decision making to perform the function safely.

### 7.8.1 Definition of Terms

7.8.1.1 **Vascular system** - is composed of all peripheral and central veins and arteries.

7.8.1.2 **Intravascular therapy (IV)** - is the broad term including the administration of fluids and medications, blood and blood derivatives into an individual's vascular system.

7.8.1.3 **Intravenous fluids** - include solutions, vitamins, nutrient preparations, and commercial blood fractions designed to be administered into an individual's vascular system. Whole blood and blood components, which are administered in the same manner, are considered intravenous fluids in this definition.

7.8.1.4 **Intravenous and intra-arterial medications** - are drugs administered into an individual's vascular system by any one of the following methods:

7.8.1.4.1 By way of infusion diluted in solution or suspended in fluid and administered over a specified time at a specified rate.

7.8.1.4.2 Through an established intravascular needle or catheter (referred to as "IV push").

7.8.1.4.3 By venipuncture carried out for the sole purpose of administering the medication. This method is referred to as direct medication injection (direct IV push).

7.8.1.5 Vascular access - Utilization of an established device or the introduction of a needle or catheter into an individual's vascular system.

7.8.1.6 Venipuncture - Introduction of a needle or catheter into an individual's peripheral vein for the purpose(s) of withdrawing blood or establishing an infusion or administering medications.

7.8.1.7 Intravascular therapy maintenance - Monitoring of the therapy for changes in patient's condition, appropriate flow rate, equipment function, the hanging of additional fluid containers and the implementation of site care.

7.8.1.8 Termination of intravascular therapy - Cessation of the therapy either by withdrawing a needle or

catheter from an individual's vascular system or by discontinuing the infusion and maintaining the device as a reservoir.

7.8.1.9 Supervision - a registered nurse, licensed physician or dentist is physically present in the unit where the patient is being provided care, or within immediate electronic/telephone contact.

7.8.2 Conditions of Performing Intravascular Therapy Procedures by Licensed Nurses

7.8.2.1 Intravascular therapy must be authorized by a written order from a state licensed and authorized prescriber.

7.8.2.2 The performance of any procedures of intravascular therapy by a licensed practical nurse will be done under the supervision of a registered nurse, APN, or person licensed to practice medicine, surgery, or podiatry.

7.8.2.3 Admixed intravascular solutions documented and instituted by one licensed nurse and subsequently interrupted may be re-instituted by another licensed nurse after confirmation with the state licensed and authorized prescriber's order.

7.8.2.4 Admixed intravascular solutions documented and prepared by one licensed nurse may be initiated or continued by another licensed nurse after confirmation with the state licensed and authorized prescriber's order.

7.8.2.5 Intradermal or topical anesthetics may be used by the RN or LPN when initiating vascular access therapy in various situations or settings, provided there is an authorized prescriber's order and organizational policy/procedure to support use of these medications. All RNs and LPNs must have documented educational preparation according to the employing agency's policies and procedures. Documented evidence must include both theoretical instruction including anatomy and physiology, pharmacology, nursing management and education of patients and demonstration of clinical proficiency in performance of the task.

7.8.3 Functional Scope of Responsibility for Intravascular Therapy Procedures

7.8.3.1 Registered Nurses bear the responsibility and accountability for their nursing practice under the license granted by the Board of Nursing and are permitted to perform the following:

7.8.3.1.1 Assessment of the patient and the prescribed intravascular therapy before, during and after the therapy is carried out.

7.8.3.1.2 Acceptance and confirmation of intravascular therapy order(s).

7.8.3.1.3 Calculation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.1.4 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.1.5 Addition of prescribed medications in intravascular solution, labeling and documenting appropriately.

7.8.3.1.6 Start initial solution or add replacement fluids to an existing infusion as prescribed.

7.8.3.1.7 Vascular access for establishing an infusion or administering medications.

7.8.3.1.8 Administration of medications by "IV push".

7.8.3.1.9 Intravascular therapy maintenance.

7.8.3.1.10 Termination of intravascular therapy, including the removal of subclavian and PICC lines.

7.8.3.1.11 Access the vascular system for the purpose of the withdrawal of blood and to monitor the patient's condition before, during, and after the withdrawal of blood.

7.8.3.2 Licensed Practical Nurses bear the responsibility and accountability for their nursing practice under the license granted by the Board of Nursing and are permitted to perform the following for peripheral lines:

7.8.3.2.1 Acceptance of intravascular therapy order(s).

7.8.3.2.2 Calculation of medication dosage and infusion rate of intravascular medications prescribed. This does not include titration.

7.8.3.2.3 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.2.4 Addition of medications in intravascular solutions, label and document appropriately.

7.8.3.2.5 Venipuncture with needle device to establish access to the peripheral vascular system.

7.8.3.2.6 Start initial solution or add replacement fluids to an existing infusion as prescribed.

7.8.3.2.7 Intravascular therapy maintenance including the flushing of peripheral lines with Heparin and/or saline solution.

7.8.3.2.8 Termination of peripheral intravascular therapy.

7.8.3.2.9 Performance of venipuncture for the purpose of the withdrawal of blood and to monitor the patient's condition before, during and after the withdrawal of blood.

7.8.3.3 The Licensed Practical Nurse is permitted to perform the following procedures for central lines:

7.8.3.3.1 Acceptance of intravascular therapy order(s).

7.8.3.3.2 Calculation of medication dosage and infusion rate of intravascular medications prescribed. This does not include titration.

7.8.3.3.3 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.3.4 Addition of medications in intravascular solutions, label and document appropriately.

7.8.3.3.5 Intravascular therapy maintenance, including the flushing of central lines with Heparin and/or saline solution.

7.8.3.3.6 Dressing and tubing changes, including PICC lines.

7.8.3.3.7 Addition of replacement fluids to an existing infusion as prescribed.

7.8.4 Special Intravascular Procedures by Registered Nurses

7.8.4.1 Chemotherapy - Only intravascular routes are addressed in these rules. Review of the Oncology Nursing Society's current guidelines is recommended before the administration of anti-neoplastic agents.

7.8.4.1.1 Definition of Terms

7.8.4.1.1.1 **Cancer Chemotherapy** - is the broad term including the administration of anti-neoplastic agents into an individual's vascular system.

7.8.4.1.1.2 **Anti-neoplastic agents** - are those drugs which are administered with the intent to control neoplastic cell growth.

7.8.4.1.2 The Registered Nurse who administers cancer chemotherapy by the intravascular route must have documented educational preparation according to the employing agency's policies and procedures.

7.8.4.1.3 The Registered Nurse must have documented evidence of knowledge and skill in the following:

Pharmacology of anti-neoplastic agents

Principles of drug handling and preparation

Principles of administration

Vascular access

Side effects of chemotherapy on the nurse, patient, and family

7.8.4.2 Central Venous Access Via Peripheral Veins

7.8.4.2.1 Definition of Terms

7.8.4.2.1.1 **Central venous access** - is that entry into an individual's vascular system via the insertion of a catheter into a peripheral vein threaded through to the superior vena cava with placement confirmed by x-ray.

7.8.4.2.2 The Registered Nurse who performs central venous access via peripheral veins must have documented educational preparation according to the employing agency's policies and procedures.

7.8.4.2.3 Documented evidence must include, but is not limited to, evidence of both theoretical instruction and clinical proficiency in performance of the task.

7.8.4.2.3.1 Theoretical instruction must include, but is not limited to, anatomy and physiology, pharmacology, nursing management, and education of patients as they relate to central venous access via peripheral veins.

7.8.4.2.3.2 A preceptor must supervise the learning experience and must document the Registered Nurse's competency in the performance of the procedure.

7.8.4.3 Pain Management via Epidural Catheter

7.8.4.3.1 It is within the scope of practice of a Registered Nurse to instill analgesics (opiates)/low dose anesthetics at analgesic levels into an existing catheter under the following conditions/exceptions:

7.8.4.3.1.1 The epidural catheter is in place.

7.8.4.3.1.2 The position of the epidural catheter was verified as correct by a physician at the time of insertion.

7.8.4.3.1.3 Bolus doses and/or continuous infusions, as pre-mixed by anesthesiologists, C.R.N.A.s, or pharmacists, of epidural analgesics/low dose anesthetics at analgesic levels can be administered by the Registered Nurse only after the initial dose has been administered. Changes in medication and/or dosage of the same medication are not defined as the initial dose.

7.8.4.3.1.4 Only analgesics (opiates)/low dose anesthetics at analgesic levels will be administered via this route for acute and chronic pain management.

7.8.4.3.1.5 The Registered Nurse must complete a course that includes, but is not limited to, a) anatomy, physiology, pharmacology, nursing management, assessment, and education of patients as they relate to epidural administration of opiates/low dose anesthetics at analgesic levels; b) a credentialed preceptor must supervise the learning experience and must document the Registered Nurse's clinical competency in the performance of the procedure.

7.8.4.3.1.6 The Registered Nurse may not insert or remove epidural catheters.

## **7.9 Exclusions of Health Care Acts pursuant to 24 Del.C. 1921(a) (19)**

7.9.1 Health care acts that shall not be delegated by a competent individual who does not reside in a medical facility or a facility regulated pursuant to Chapter 11 of Title 16 include the following:

7.9.1.1 original intravenous insertion

7.9.1.2 original suprapubic catheter insertion or removal

7.9.1.3 newly established gastrostomy or jejunostomy tube feeding

7.9.1.4 original nasogastric and gastrostomy tube insertion or removal

7.9.1.5 any jejunostomy tube insertion or removal

7.9.1.6 sterile invasive procedures not normally taught to patients and caregivers by licensed health care professionals

### **8 DE Reg. 864 (12/01/04)**

## **8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Nurse in the State of Delaware**

### 8.1 Authority

These rules and regulations are adopted by the Delaware Board of Nursing under the authority of the Delaware Nurse Practice Act, 24 Del.C. §§1902(d), 1906(1), 1906(7).

### 8.2 Purpose

8.2.1 The general purpose of these rules and regulations is to assist in protecting and safeguarding the public by regulating the practice of the Advanced Practice Nurse.

### 8.3 Scope

8.3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20). The Advanced Practice Nurse is responsible and accountable for her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/or professional nursing in a specialty area.

### 8.4 Definitions

**"Advanced Practice Nurse"** as defined in 24 Del.C. §1902(d)(1). Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

**"Audit"** The verification of existence of a collaborative agreement for a minimum of 10% of the total number of licenses issued during a specified time period.

**"Board"** The Delaware Board of Nursing

**"Certified Nurse Midwife (C.N.M.)"** A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine,

nursing or public health, and passing a certification examination administered by the ACNM Certification Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

**“Certified Registered Nurse Anesthetist (C.R.N.A.)”** A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists’ Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists’ Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

**“Clinical Nurse Specialist (C.N.S.)”** A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master’s degree program in a clinical nurse specialty or post Master’s certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in 8.9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

**“Clinical Nursing Specialty”** a delimited focus of advanced nursing practice. Specialty areas can be identified in terms of population, setting, disease/ pathology, type of care or type of problem. Nursing administration does not qualify as a clinical nursing specialty.

**3 DE Reg. 1373 (4/1/00)**

**“Collaborative Agreement”** Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

**“Guidelines/ Protocols”** Suggested pathways to be followed by an Advanced Practice Nurse for managing a particular medical problem. These guidelines/ protocols may be developed collaboratively by an Advanced Practice Nurse and a licensed physician, dentist or a podiatrist, or licensed Delaware health care delivery system.

**“National Certification”** That credential earned by a nurse who has met requirements of a Board approved certifying agency.

The agencies so approved include but are not limited to:

- American Academy of Nurse Practitioners
- American Nurses Credentialing Center
- American Association of Nurse Anesthetists
- Council on Certification of Nurse Anesthetists

American Association of Nurse Anesthetists  
Council on Recertification of Nurse Anesthetists

National Certification Corporation for the  
Obstetric, Gynecologic and Neonatal Nursing Specialties

National Certification Board of Pediatric Nurse  
Practitioners and Nurses.

ACNM Certification Council, Inc.

**“Nurse Practitioner (N.P.)”** A Registered Nurse with advanced nursing educational preparation who is a provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master’s program or from an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women’s health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

**“Post Basic Program”**

A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

The program must be one offered and administered by an approved health agency and/or institution of higher learning,

Post basic means a program taken after licensure is achieved.

**“Scope of Specialized Practice”** That area of practice in which an Advanced Practice Nurse has a Master’s degree or a post-basic program certificate in a clinical nursing specialty with national certification.

**“Supervision”** Direction given by a licensed physician or Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

**8.5 Grandfathering Period**

**8.5.1** Any person holding a certificate of state licensure as an Advanced Practice Nurse that is valid on July 8, 1994 shall be eligible for renewal of such licensure under the conditions and standards prescribed herein for renewal of licensure.

**8.6 Standards for the Advanced Practice Nurse**

**8.6.1** Advanced Practice Nurses view clients and their health concerns from an integrated multi-system perspective.

**8.6.2** Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner,

including but not limited to those listed in 8.6.2 of these Rules and Regulations:

8.6.2.1 Performs comprehensive assessments using appropriate physical and psychosocial parameters;

8.6.2.2 Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;

8.6.2.3 Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited to psychotherapy, administration of anesthesia, and vaginal deliveries;

8.6.2.4 Functions under established guidelines/protocols and/ or accepted standards of care;

8.6.2.5 Uses the results of scientifically sound empirical research as a basis for nursing practice decisions;

8.6.2.6 Uses appropriate teaching/learning strategies to diagnose learning impediments;

8.6.2.7 Evaluates the quality of individual client care in accordance with quality assurance and other standards;

8.6.2.8 Reviews and revises guidelines/ protocols, as necessary;

8.6.2.9 Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;

8.6.2.10 Collaborates with members of a multi-disciplinary team toward the accomplishment of mutually established goals;

8.6.2.11 Pursues strategies to enhance access to and use of adequate health care services;

8.6.2.12 Maintains optimal advanced practice based on a continual process of review and evaluation of scientific theory, research findings and current practice;

8.6.2.13 Performs consultative services for clients referred by other members of the multi-disciplinary team; and

8.6.2.14 Establishes a collaborative agreement with a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system to facilitate consultation and/or referral as appropriate in the delivery of health care to clients.

8.6.3 In addition to these standards, each nurse certified in an area of specialization and recognized by the Board to practice as an Advanced Practice Nurse is responsible for practice at the level and scope defined for that specialty certification by the agency which certified the nurse.

8.7 Generic Functions of the Advanced Practice Nurse Within the Specialized Scope of Practice include but are not limited to:

8.7.1 Eliciting detailed health history(s)

8.7.2 Defining nursing problem(s)

8.7.3 Performing physical examination(s)

8.7.4 Collecting and performing laboratory tests

8.7.5 Interpreting laboratory data

8.7.6 Initiating requests for essential laboratory procedures

8.7.7 Initiating requests for essential x-rays

8.7.8 Screening patients to identify abnormal problems

8.7.9 Initiating referrals to appropriate resources and services as necessary

8.7.10 Initiating or modifying treatment and medications within established guidelines

8.7.11 Assessing and reporting changes in the health of individuals, families and communities

8.7.12 Providing health education through teaching and counseling

8.7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public

8.7.14 Delegating tasks appropriately

8.7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20).

8.7.16 Inserting and removing epidural catheters by Certified Registered Nurse Anesthetists

8.7.17 Removing epidural catheters by Nurse Practitioners, Clinical Nurse Specialists and Certified Nurse Midwives after specialized training in collaboration with the facility department of anesthesiology, including population specific advanced life support.

8.8 Criteria for Approval of Certification Agencies

8.8.1 A national certifying body which meets the following criteria shall be recognized by the Board to satisfy 24 Del.C. §1902(d)(1).

8.8.2 The national certifying body:

8.8.2.1 Is national in the scope of its credentialing.

8.8.2.2 Has no requirement for an applicant to be a member of any organization.

8.8.2.3 Has educational requirements which are consistent with the requirements of these rules.

8.8.2.4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.8.2.5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.8.2.5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.8.2.5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.8.2.5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.8.2.5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.8.2.5.5 Examinations are evaluated for psychometric performance;

8.8.2.5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.8.2.5.7 Examination security is maintained through established procedures

8.8.2.6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.8.2.7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.8.2.8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.8.2.9 Has an evaluation process to provide quality assurance in its certification program.

8.9 Application for Licensure to Practice as an Advanced Practice Nurse

8.9.1 Application for licensure as a Registered Nurse shall be made on forms supplied by the Board.

8.9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on forms supplied by the Board.

8.9.2.1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.9.2.2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

8.9.3 Each application shall be returned to the Board office together with appropriate documentation and non-refundable fees.

8.9.4 A Registered Nurse meeting the practice requirement as listed in 8.11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

8.9.4.1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

8.9.4.2 Faculty members teaching in nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 8.11.2.1.

8.9.5 Renewal of licensure shall be on a date consistent with the current Registered Nurse renewal period. A renewal fee shall be paid.

8.9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 Del.C. Ch. 19, or the Rules and Regulations promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as provided in 24 Del.C. §1906(20) - (22).

8.10 Temporary Permit for Advanced Practice Nurse Licensure

8.10.1 A temporary permit to practice, pending Board approval for permanent licensure, may be issued provided that:

8.10.1.1 The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or

8.10.1.2 The individual applying holds a current license in Delaware, and

8.10.1.3 The individual submits proof of graduation from a nationally accredited or Board approved

Master's or certificate advanced practice nursing program, and has passed the certification examination, or

8.10.1.4 The individual is a graduate of a Master's program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of at least 1000 hours of clinical nursing practice within the past 24 months.

8.10.1.5 Application(s) and fee(s) are on file in the Board office.

8.10.2 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.5 and;

8.10.2.2 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nurse program, and;

8.10.2.3 The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 8.10.2.4; or,

8.10.2.4 The individual meets 8.10.2.1 and 8.10.2.2 hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

8.10.3 If the certifying examination has been passed, the appropriate form must accompany the application.

8.10.4 A temporary permit may be issued:

8.10.4.1 For up to two years in three month periods.

8.10.4.2 At the discretion of the Executive Director.

8.10.5 A temporary permit will be withdrawn:

8.10.5.1 Upon failure to pass the first certifying examination

8.10.5.1.1 The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:

8.10.5.1.1.1 current employer reference,

8.10.5.1.1.2 supervision available,

8.10.5.1.1.3 job description,

8.10.5.1.1.4 letter outlining any extenuating circumstances,

8.10.5.1.1.5 any other information the Board of Nursing deems necessary.

8.10.5.2 For other reasons stipulated under temporary permits elsewhere in these Rules and Regulations.

### 3 DE Reg. 1373 (4/1/00)

8.10.6 A lapsed temporary permit for designation is equivalent to a lapsed license and the same rules apply.

8.10.7 Failure of the certifying examination does not impact on the retention of the basic professional Registered Nurse licensure.

8.10.8 Any person practicing or holding oneself out as an Advanced Practice Nurse in any category without a Board authorized license in such category shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the Law regulating the Practice of Nursing in Delaware, (24 Del.C. Ch. 19).

8.10.9 Endorsement of Advanced Practice Nurse designation from another state is processed the same as for licensure by endorsement, provided that the applicant meets the criteria for an Advanced Practice Nurse license in Delaware.

8.11 Maintenance of Licensure Status: Reinstatement

8.11.1 To maintain licensure, the Advanced Practice Nurse must meet the requirements for recertification as established by the certifying agency.

8.11.2 The Advanced Practice Nurse must have practiced a minimum of 1500 hours in the past five years or no less than 600 hours in the past two years in the area of specialization in which licensure has been granted.

8.11.2.1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

8.11.2.2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

8.11.3 The Advanced Practice Nurse will be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.11.4 Advanced Practice Nurses who fail to renew their licenses by February 28, May 31, or September 30 of the renewal period shall be considered to have lapsed licenses. After February 28, May 31, or September 30 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

8.11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the

specialty area must be met or the process described in 8.11.4 followed.

8.11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

#### 8.12 Audit of Licensees

8.12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

8.12.1.1 Upon receipt of such notice, the licensee must submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

8.12.1.2 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

8.12.1.3 An unsatisfactory audit shall result in Board action.

8.12.1.4 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

8.12.2 The Board may select licensees for audit throughout the biennium.

#### 8.13 Exceptions to the Requirements to Practice

8.13.1 The requirements set forth in 8.9 shall not apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

#### 8.14 Definitions

##### 8.14.1 Collaborative Agreement - Includes

8.14.1.1 A true collegial agreement between two parties where mutual goal setting, access, authority, and responsibility for actions belong to individual parties and there is a conviction to the belief that this collaborative agreement will continue to enhance patient outcomes and

8.14.1.2 A written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a duly licensed Delaware physician, dentist, podiatrist or licensed Delaware health care delivery system. This document can include, but not be limited to, written verification of health care facility approved clinical privileges or a health care facility approved job description of the A.P.N. If the agreement is with a licensed Delaware health care delivery system, the individual will have to show that the system will supply appropriate medical back-up for purposes of consultation and referral.

8.14.2 National Certification - That credential earned by an Advanced Practice Nurse who has met requirements of a Board of Nursing approved certifying agency.

8.14.3 Pharmacology/Pharmacotherapeutics - refers to any course, program, or offering that would include, but not be limited to, the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their dosages, their side-effects and their interactions. It also encompasses clinical judgement skills and decision making. These skills may be based on thorough interviewing, history taking, physical assessment, test selection and interpretation, patho-physiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non-pharmacologic interventions.

8.14.4 Prescription Order - includes the prescription date, the name of the patient, the name, address, area of specialization and business telephone number of the advanced practice nurse prescriber, the name, strength, quantity, directions for use, and number of refills of the drug product or device prescribed, and must bear the name and prescriber ID number of the advanced practice nurse prescriber, and when applicable, prescriber's D.E.A. number and signature. There must be lines provided to show whether the prescription must be dispensed as written or substitution is permitted.

8.15 Requirements for Initial Independent Practice/prescriptive Authority

An APN who has not had independent prescriptive authority within the past two years in Delaware or any other jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.15.1 Be an Advanced Practice Nurse (APN) holding a current permanent license issued by the Board of Nursing (BON). If the individual does not hold national certification, eligibility will be determined on a case by case basis.

8.15.2 Have completed a post basic advanced practice nursing program that meets the criteria as established in Section 4.7 of Article 7 of the Rules and Regulations of the Delaware Board of Nursing with documentation of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty, advanced patho-physiology and advanced pharmacology/ pharmacotherapeutics. In the absence of transcript verification of the aforementioned courses, applicants shall show evidence of content integration through course descriptions, course syllabi, or correspondence from school officials. If the applicant cannot produce the required documentation, such applicant may petition the Joint Practice Committee for consideration of documented equivalent independent prescriptive authority experience.

8.15.3 Submit a copy of the current collaborative agreement to the Joint Practice Committee (JPC). The collaborative agreement(s) shall include arrangements for

consultation, referral and/or hospitalization complementary to the area of the nurse's independent practice.

8.15.4 Show evidence of the equivalent of at least thirty hours of advanced pharmacology and pharmacotherapeutics related continuing education within the two years prior to application for independent practice and/or independent prescriptive authority. This may be continuing education programs or a three credit, semester long graduate level course. The thirty hours may also occur during the generic APN program as integrated content as long as this can be documented to the JPC. All offerings will be reviewed and approved by the JPC.

8.15.5 Demonstrate how submitted continuing education offerings relate to pharmacology and therapeutics within their area of specialty. This can be done by submitting the program titles to show content and dates attended. If the JPC questions the relevance of the offerings, the applicant must have available program descriptions, and/ or learner objectives, and/or program outlines for submission to the JPC for their review and approval.

8.16 Requirements for Independent Practice/prescriptive Authority by Endorsement

An APN who has had prescriptive authority in another jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.16.1 Show evidence of meeting 8.15.1 and 8.15.3.

8.16.2 Show evidence of having current prescriptive authority in another jurisdiction.

8.16.3 Have no encumbered APN designation(s) in any jurisdiction.

8.16.4 Show evidence of completion of a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure within the past two years.

8.17 Application

8.17.1 Names and credentials of qualified applicants will be forwarded to the Joint Practice Committee for approval and then forwarded to the Board of Medical Practice for review and final approval.

8.18 Prescriptive Authority

8.18.1 APNs may prescribe, administer, and dispense legend medications including Schedule II - V controlled substances, (as defined in the Controlled Substance Act and labeled in compliance with 24 **Del.C.** §2536(C), parenteral medications, medical therapeutics, devices and diagnostics.

8.18.2 APNs will be assigned a provider identifier number as outlined by the Division of Professional Regulation.

8.18.3 Controlled Substances registration will be as follows:

8.18.3.1 APNs must register with the Drug Enforcement Agency and use such DEA number for controlled substance prescriptions.

8.18.3.2 APNs must register biennially with the Office of Narcotics and Dangerous Drugs in accordance with 16 **Del.C.** §4732(a).

8.18.4 APNs may request and issue professional samples of legend, including schedule II-V controlled substances, and over-the-counter medications that must be labeled in compliance with 24 **Del.C.** §2536(C).

8.18.5 APNs may give verbal prescription orders.

8.19 Prescriptive Writing

8.19.1 All prescription orders will be written as defined by the Delaware Board of Pharmacy as defined in 8.14.4.

8.20 Renewal

8.20.1 Maintain current APN licensure.

8.20.2 Maintain competency through a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure per biennium. The pharmacology/pharmacotherapeutics content may be a separate course or integrated within other offerings.

8.21 Disciplinary Proceedings

8.21.1 Pursuant to 24 **Del.C.** §1906(19)(c), the Joint Practice Committee is statutorily empowered, with the approval of the Board of Medical Practice, to grant independent practice and/or prescriptive authority to nurses who qualify for such authority. The Joint Practice Committee is also empowered to restrict, suspend or revoke such authority also with the approval of the Board of Medical Practice.

8.21.2 Independent practice or prescriptive authority may be restricted, suspended or revoked where the nurse has been found to have committed unprofessional conduct in his or her independent practice or prescriptive authority or if his or her mental or physical faculties have changed or deteriorated in such a manner as to create an inability to practice or prescribe with reasonable skill or safety to patients.

8.21.3 Unprofessional conduct, for purposes of restriction, suspension or revocation of independent practice or prescriptive authority shall include but not be limited to:

8.21.3.1 The use or attempted use of any false, fraudulent or forged statement or document or use of any fraudulent, deceitful, dishonest or immoral practice in connection with any acquisition or use of independent practice or prescriptive authority;

8.21.3.2 Conviction of a felony;

8.21.3.3 Any dishonorable or unethical conduct likely to deceive, defraud or harm the public;

8.21.3.4 Use, distribution or prescription of any drugs or medical devices other than for therapeutic or diagnostic purposes;

8.21.3.5 Misconduct, incompetence, or gross negligence in connection with independent or prescriptive practice;

8.21.3.6 Unjustified failure upon request to divulge information relevant to authorization or competence to independently practice or exercise prescriptive authority to the Executive Director of the Board of Nursing or to anyone designated by him or her to request such information.

8.21.3.7 The violation of the Nurse Practice Act or of an Order or Regulation of the Board of Nursing or the Board of Medical Practice related to independent practice or prescriptive authority.

8.21.3.8 Restriction, suspension, or revocation of independent practice or prescriptive authority granted by another licensing authority in any state, territory or federal agency.

8.21.4 Complaints concerning the use or misuse of independent practice or prescriptive authority received by the Division of Professional Regulation or the Board of Nursing shall be investigated in accordance with the provisions of Title 29, Section 8807 governing investigations by the Division of Professional Regulation. As soon as convenience permits, the Board of Nursing shall assign an Investigating Board Member to assist with the investigation of the complaint. The Investigating Board Member shall, whenever practical, be a member of the Joint Practice Committee.

8.21.5 Upon receipt of a formal complaint from the Office of the Attorney General seeking the revocation, suspension or restriction of independent practice or prescriptive authority, the Committee Chairperson shall promptly arrange for not less than a quorum of the Committee to convene for an evidentiary hearing concerning such complaint upon due notice to the licensee against whom the complaint has been filed. Such notice shall comply with the provisions of the Administrative Procedures Act (29 Del.C. Ch. 101).

8.21.6 The hearing shall be conducted in accordance with the Administrative Procedures Act (29 Del.C. §101), and after the conclusion thereof, the Joint Practice Committee will promptly issue a written Decision and Order which shall be based upon the affirmative vote of a majority of the quorum hearing the case.

8.21.7 Any written Decision and Order of the Joint Practice Committee which imposes a restriction, suspension or revocation of independent practice or prescriptive authority shall not be effective prior to the approval of the Board of Medical Practice.

**4 DE Reg. 296 (8/1/00)**

**5 DE Reg. 1606 (2/1/02)**

**\*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 Nursing is available at:**

**<http://dpr.delaware.gov/boards/nursing/index.shtml>**

---

**DIVISION OF PROFESSIONAL REGULATION**  
**2100 BOARD OF EXAMINERS IN OPTOMETRY**  
Statutory Authority: 24 Delaware Code,  
Section 2104(a)(1) (24 Del.C. §2104(a)(1))  
24 DE Admin. Code 1900

**ORDER**

Pursuant to 29 Del.C. §10118 and 24 Del.C. §2104(a)(1) and for the reasons stated hereinafter, the Delaware Board of Examiners in Optometry (“the Board”) issues this Order adopting its proposed amendment to Board Rule 3.4.

**Nature of the Proceedings**

The Board proposes to amend Rule 3.4 to strike the limitation on the number of interns or externs permitted in a practice at any period of time. Notice of the public hearing on the Board’s proposal was published in the *Delaware Register of Regulations* on April 1, 2005, and in two Delaware newspapers of general circulation, all in accordance with 29 Del.C. §10115. The public hearing was held as noticed on May 12, 2005. The Board deliberated on the proposed amendment following the public hearing and unanimously voted to adopt the rule revision as published.

**Summary of Evidence**

The Board received no written comments in response to the notice of its intention to amend Rule 3.4 regarding the number of interns permitted in a practice. No public comment was received at the May 12, 2005 public hearing.

**Findings of Fact and Conclusions**

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission’s Rules. The Commission received no written or verbal comments on the proposed amendment.

The Board finds that the proposed amendment to the Rule 3.4 is necessary to clarify that the purpose of rule 3.4 is to ensure that supervisors provide one-on-one supervisions of interns and externs. The rule already provides that no

supervisor may be a supervisor for more than one intern of extern at a time. The amendment clarifies that the one intern or extern per supervisor limitation is for the duration of the internship or externship. This requirement is in the best interests of the public as it ensures that the work performed by the intern or extern is overseen by a Delaware licensed optometrist or ophthalmologist who will take responsibility for that work.

The Board finds that the requirement of one-on-one supervision and the limitation of one intern or extern per supervisor during the period of internship are sufficient to ensure that the interns and externs are adequately supervised. The Board further finds that there is no rationale for limiting the number of interns or externs in a given practice where multiple optometrists may be employed and available to provide individual supervision to an intern or extern provided that the supervisory limitations of the rule are met.

The Board is further persuaded that the amendment will not adversely affect the public and ensures that an intern's or extern's clinical experience is in keeping with the standard of care in Delaware.

**NOW, THEREFORE**, by a unanimous vote of a quorum of the Board of Examiners of Optometry,

**IT IS HEREBY ORDERED this 12<sup>th</sup> day of May, 2005 that:**

1. The proposed amendment to the Board's Rules and Regulations is approved and adopted in the exact text attached hereto as Exhibit "A".
2. The effective date of this Order is ten (10) days from the date of its publication in the *Register of Regulations*, pursuant to 29 **Del.C.** §10118(e).
3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

**BY ORDER OF THE BOARD OF EXAMINERS IN OPTOMETRY (as authenticated by a quorum of the Board)**

Dr. Carl Maschauer, President  
 Dr. Sonja Biddle, Professional Member  
 Nichole Anderson-Easton (Not present), Professional Member  
 Dr. Allan Tocker (Not present), Professional Member  
 Ruth Banta, Public Member

**The amendment to Rule 3.4. is as follows:**

**3.0 Internship**

3.1 An internship is a course of study in which applicants receive part of their clinical training in a Board approved private practice setting in Delaware, or other Board approved setting, under the supervision of a licensed optometrist or ophthalmologist. An active, licensed

Optometrist or Ophthalmologist may act as a supervisor. Any applicant's participation in such an internship program must be approved by the Board and is subject to the following terms and conditions:

3.1.1 A letter from the practitioner with whom the applicant will be interning stating the goals, duties and the number of hours he/she will be working. If the applicant is not doing his/her internship with a therapeutically certified optometrist or ophthalmologist, he/she must also complete an additional one hundred (100) hours of clinical internship with a therapeutically certified Optometrist, Medical doctor or Osteopathic physician.

3.1.2 Each applicant who will be participating in the internship program must provide the name and address of the supervisor and the dates of the internship for approval by the Board before the internship may begin provided that, in the event an applicant has made a good faith effort to submit all necessary licensure materials for approval of the internship, and in the event that the Board is unable to meet to review said licensure materials due to the absence of a sufficient number of statutorily appointed Board members, as occurred in July-August, 2003, the Board may approve said internship starting as of the date when the applicant has submitted all licensure materials.

3.1.3 A letter must be received by the Board from the supervisor verifying the completion of the internship.

3.1.4 For purposes of this Section and 29 **Del.C.** §2110, the term "duration" shall be defined as "a period of no less than six (6) months and no greater than the period ending on the date of the next Board meeting following the end of the six (6) month period." No intern may practice on a temporary license beyond the duration of the internship.

3.2 Subject to the approval requirements stated above, a candidate's internship requirements may be satisfied while the candidate is a member of the Armed Forces if he/she:

3.2.1 Functions as a fully credentialed therapeutically certified optometric practitioner; and (for purposes of this Section equivalent to the Air Force regulations).

3.2.2 Performs his optometric duties on a full-time basis in a completely equipped eye clinic.

3.3 Full-time: minimum of 35 hours per week.

3.4 All supervisors must supervise the interns on a one-to-one basis whenever an applicant performs a task which constitutes the practice of optometry. No supervisor may be a supervisor for more than one intern, or student extern, ~~at a time.~~ during the period of the internship or externship. ~~Only one intern shall be permitted in any practice for any period of time.~~

3.5 All acts which constitute the practice of optometry under 24 **Del.C.** §2101(a) may be performed by the intern only under the following conditions:

3.5.1 The supervisor shall be on the premises and immediately available for supervision at all times;

3.5.2 All intern evaluations of any patient shall be reviewed by the supervisor prior to final determination of the patient's case before the patient leaves the premises; and

3.5.3 A supervisor shall at all times effectively supervise and direct the intern.

3.6 A violation of any of the conditions enumerated in this rule may be grounds for the Board to revoke their approval of an internship program. The Board may also revoke its approval of an internship program if it determines that either the supervising optometrist or the intern has engaged in any conduct described by 24 Del.C. §2113(a). Furthermore, any violation of the terms of this rule by a supervising optometrist who is a licensed optometrist shall be considered unprofessional conduct and a violation of 24 Del.C. §2113(a)(7).

2 DE Reg 85 (5/1/99)

7 DE Reg. 912 (1/1/04)

8 DE Reg. 536 (10/01/04)

**\*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 Examiners in Optometry is available at:**

**<http://dpr.delaware.gov/boards/optometry/index.shtml>**

---

## **DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION**

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

### **ORDER**

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on April 30, 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 April 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 15.0 and 19.3.1.1 to permit the Commission to blood gas test, outlining quarantine procedures for positive tests, clarifying the current rules regarding furosemide, and to raise the appeal bond from \$250 to \$400 to cover the increased administrative costs

including court reporter costs associated with appeals brought before the commission.

2. The Commission received no written comments during April 2005. The Commission held a public hearing on April 30, 2005 and received public comments from William Fasy, Bessie Gruwell and Dr. Ed Odor. Mr. Fasey's comments were as follows: i) 15.10.1.1 "a consistent time" should be more clearly defined; ii) Rule 15.14 does not state that the horse will be scratched; iii) Rule 15.15.3.3 references a "liability waiver form" that will have to be developed.

3. Ms. Gruwell related that a horse in New York opted not to go to the testing barn and went straight to the paddock and was not scratched. The new rules should account for this scenario. Dr. Odor asked who should notify the Stewards that the horse is testing high? He suggested the technician be responsible for this.

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

4. 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.

5. The Commission has considered the public comments at the April 30, 2005 hearing. The Commission does not find those comments require further revisions of the proposed rules. The Commission finds that the new Rule 15.14.2 defines a prohibitive Base Excess level as a violation. Pursuant to Rule 18.1, the Stewards may "declare ineligible for racing or disqualify in a race any Thoroughbred or person" upon a finding of a violation of these rules. The new blood gas testing rule then permits a Steward to scratch a horse before a race when the new Rule 15.14.2 is read in conjunction with the old Rule 18.1. The issue of the liability waiver form will be developed by the Commission, in partnership with the track, at a later date. The issue of refusing to report to the testing barn will be addressed with subsequent rule changes.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on February 1, 2005.

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

Bernard J. Daney, Chair

Edward J. Stegemeier, Commissioner

H. James Decker, Commissioner

W. Duncan Patterson, Jr., Commissioner

Debbie Killeen, Commissioner

#### **15.0 Medication; Testing Procedures**

15.1 Prohibition and Control of Medication:

15.1.1 ~~It shall be the intent of these Rules to protect the integrity of horse racing, to guard the health of~~

~~the horse and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs and medications or substances foreign to the natural horse. Horses should not compete under the influence of drugs or therapeutic medications. However, horses, in training, like all athletes, may require the administration of therapeutic medications at times to diagnose or treat illness or injury. Certain drugs have no therapeutic use in horses in training, and these drugs should not be administered to horses in training, nor should they be permitted at any concentration in post-race samples.~~ In this context:

15.1.1.1 No horse participating in a race shall carry in its body any substance foreign to the natural horse, except as hereinafter provided.

15.1.1.2 No foreign substance shall be administered to a horse (entered to race) by injection, oral administration, rectal infusion or suppository, or by inhalation within twenty-four (24) hours prior to the scheduled post time for the first race, except as hereinafter provided.

15.1.1.3 No person other than a veterinarian shall have in his possession any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which can be administered internally to a horse by any route, except for an existing condition as prescribed by a veterinarian.

15.1.1.4 Notwithstanding the provisions of Rule 15.1.1.3 above, any person may have in his possession within a race track enclosure, any chemical or biological substance for use on his own person, provided that, if such chemical substance is prohibited from being dispensed by any Federal law or law of this State without a prescription, he is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to him.

15.1.1.5 Notwithstanding the provisions of Rule 15.1.1.3 above, any person may have in his possession within any race track enclosure, any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to himself, provided that he has notified the Stewards: (1) of his possession of such device; (2) of the size of such device; and (3) of the chemical substance to be administered by such device and has obtained written permission for possession and use from the Stewards.

#### 15.1.2 Definitions:

The following terms and words used in these Rules are defined as:

15.1.2.1 Hypodermic Injection shall mean any injection into or under the skin or mucous, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection and intraocular (intraconjunctival) injection.

15.1.2.2 Foreign Substances shall mean all substances except those which exist naturally in the

untreated horse at normal physiological concentration, and shall also include substances foreign to a horse at levels that cause interference with testing procedures.

15.1.2.3 Veterinarian shall mean a veterinary practitioner authorized to practice at the race track.

15.1.2.4 Horse includes all horses registered for racing under the jurisdiction of the Commission and for the purposes of these Rules shall mean stallion, colt, gelding, ridgling, filly or mare.

15.1.2.5 Chemist shall mean the Commission's chemist.

15.1.2.6 Test Sample shall mean any body substance including, but not limited to, blood or urine taken from a horse under the supervision of the Commission's Veterinarian and in such manner as prescribed by the Commission for the purpose of analysis.

15.1.2.7 Race Day shall mean the 24-hour period prior to the scheduled post time for the first race.

#### 15.1.3 Foreign Substances:

15.1.3.1 No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.1.3.1.3:

15.1.3.1.1 A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.

15.1.3.1.2 A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.1 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.

15.1.3.1.3 A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission. Aminocaproic acid may be present in a horse's body while it is participating in a race, subject to all the provisions of these Rules.

15.1.3.1.4 The only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxyphenbutazone in the level stated in 15.1.3.1.5 or 15.1.3.1.6. The presence of any other NSAID at any test level is forbidden.

Revised: 1/6/92.

15.1.3.1.5 The test level of phenylbutazone under this Rule shall not be in excess of two

point five (2.5) micrograms (mcg) per milliliter (ml) of plasma without penalties in the following format:

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense-\$250.00 fine
2.6 to 4.9	Second Offense within 365 days \$500.00 fine
2.6 to 4.9	Third Offense within 365 days \$500.00 fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

15.1.3.1.6 The test level for oxphenbutazone under this Rule shall not be in excess of two (2) micrograms (mcg) per milliliter (ml) of plasma.

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense-\$250.00 fine
2.6 to 4.9	Second Offense within 365 days \$500.00 fine
2.6 to 4.9	Third Offense within 365 days \$500.00 fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

15.1.3.1.7 No bleeder medication otherwise permissible under this Rule may be administered to a horse within one hour of the scheduled post time of the horse's race. The administration of salix to a horse on race day will be governed by Rule 15.2.

15.1.3.1.8 If a horse is to receive one or more bleeder medications, aminocaproic acid and/or salix, the trainer shall declare said use at the time of entry.

15.1.3.1.9 A veterinarian administering bleeder medications shall report the administration of such medications on the same form that is used to report the administration of salix.

15.1.3.1.10 The race program shall denote what medication(s) have been administered to a horse in the race and the past performance lines in the program, if any, shall denote any medications administered to said horse in those races.

15.1.3.1.11 Any horse running on permissible bleeder medication under these Rules shall

remain on the medication for a period of not less than sixty (60) days before being permitted to race without the permissible bleeder medication.

15.1.3.1.12 The detection of permissible bleeder medications (salix and/or aminocaproic acid) in a horse following the running of a race which was not declared or reported to the Stewards, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian. Conversely, the absence of bleeder medication following the running of a race in which was declared and reported by a trainer and/or veterinarian, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian.

15.1.3.1.13 Erythropietin (EPO)

A finding by the official chemist that the antibody of Erythropietin (EPO) was present in a post-race test specimen of a horse shall be promptly reported in writing to the Stewards. The Stewards shall notify the owner and trainer of the positive test result for Erythropietin antibodies. The Stewards shall notify the Commission Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 5.32, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO antibodies from a laboratory approved by the Commission provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

Notwithstanding any inconsistent provision of these Rules, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be subject to application of trainer's responsibility based on the finding by the laboratory that the antibody of Erythropietin was present in the sample taken from that horse.

15.2 Bleeder Medication:

15.2.1 Notwithstanding anything in the Rules of Racing to the contrary, the Stewards may permit the administration of Furosemide (~~Lasix~~ Salix) to control epistaxis (bleeding) to horses under the following conditions:

15.2.1.1 A horse which, during a race or workout at a duly licensed race track in this State or within the first hour immediately following such a race or workout, is observed by the Commission's Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Commission's Veterinarian at the detention barn within one (1) hour of workout or race.)

15.2.1.2 A horse which has been certified as a bleeder in another jurisdiction may be placed on the bleeder list provided that the other jurisdiction qualified it as a bleeder using criteria satisfactory to the Commission's Veterinarian and the Stewards. It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Commission's Veterinarian or Stewards on official forms from that State prior to entry.

15.2.1.3 The Commission's Veterinarian shall be responsible to maintain an up-to-date "bleeder" list and the list shall be available in the Racing Secretary's office.

15.2.1.4 A horse in the Bleeder Program shall be required to be brought to an area designated by the Licensee and approved by the Commission not later than three and one-half (3 ½) hours before post time for the race in which it is entered. During the 3 ½ hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

15.2.1.5 (Deleted.)

15.2.1.6 A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. A positive endoscopic examination shall be classed as a first time bleeder.

Revised: 6/19/92.

15.2.1.7 Dosage. Furosemide (~~Lasix~~ Salix) shall be administered intravenously, or intramuscularly as permitted under Rule 15.02.1.8, to horses in the Bleeder Program by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

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

15.2.1.9 Restrictions. No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track

complex, and no horse is to receive furosemide (~~Lasix~~ Salix) in oral or intramuscular form, except that the stewards may approve intramuscular administration for a horse based on written documentation from the Commission veterinarian and the trainer's veterinarian.

15.2.1.10 Post-Race Quantification. As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of furosemide (~~Lasix~~ Salix) per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower.

15.2.1.10.1 If post-race analysis indicates that the specific gravity of a horse's urine is less than 1.010 and the concentration of furosemide in the blood plasma is greater than 100 nanograms per milliliter, the stewards shall take the following action (for each horse):

15.2.1.10.1.1 If such overage is the first violation of this rule for this horse, the trainer and/or attending veterinarian shall be issued a warning and be required to participate in a review of all pertinent Commission rules and subsequent penalties at a time scheduled by the stewards. If the trainer wishes to contest the overage, the trainer shall follow a specific procedure under which all of the following conditions must be met:

15.2.1.10.1.2 the horse in question must report to the detention barn four hours prior to post time.

15.2.1.10.1.3 the same handler/groom must stay with the horse at all times.

15.2.1.10.1.4 a blood sample shall be taken by the Commission veterinarian before the administration of furosemide.

15.2.1.10.1.5 the trainer's veterinarian must administer furosemide at a dosage not to exceed 500 milligrams.

15.2.1.10.1.6 the Commission veterinarian must witness the administration of furosemide.

15.2.1.10.1.7 the horse must return to the detention barn after the race for the taking of post-race blood and urine testing by the Commission veterinarian or assistant, no matter how the horse finishes in the race.

15.2.1.10.2 If, after all of the above conditions are met, the post race tests reveal that the specific gravity of the horse's urine is again below 1.010 and the concentration of furosemide in the blood plasma is greater than 100 nanograms per milliliter of plasma, and the blood sample taken in the detention barn before the administration of furosemide tests negative for furosemide, the horse will be placed on an "exempt" list and the first offense will be removed, provided further that any horse on the "exempt" list will be required to have all future prerace ~~Lasix~~ Salix treatments administered pursuant to the procedure set forth in Rules 15.2.1.9.1.2 through 15.2.1.9.1.7 set forth above. Any horse that is placed on the "exempt" list and later fails to

follow the prerace procedure for ~~Lasix~~ Salix administration set forth in Rules 15.2.1.9.1.2 through 15.2.1.9.1.7 above will be removed from the "exempt" list, disqualified from the race, and subject to the penalties in this Rule for subsequent offenses.

15.2.1.10.3 If such overage is the second violation of this rule for the same horse, the trainer and/or attending veterinarian shall be fined a minimum of \$100.00 and a maximum of \$500.00.

15.2.1.10.4 If such overage is the third violation of this rule for the same horse, the trainer and/or attending veterinarian shall be issued a minimum suspension of seven (7) days and a maximum suspension of fifteen (15) days and shall be fined a minimum of \$100.00 and a maximum of \$1,000.00, and the stewards in their discretion may order loss of purse as an additional penalty.

15.2.1.10.5 If such overage is the fourth violation for the same horse, the trainer and/or attending veterinarian shall be issued a suspension of fifteen (15) days to thirty (30) days, and shall be fined \$250.00 to \$1,000.00, and the stewards will order loss of purse as a mandatory penalty.

#### 15.3 Responsibility for Prohibited Administration:

15.3.1 Any person found to have administered or authorized a medication, drug or substance which caused or could have caused a violation of Rules 15.1 or 15.2, or caused, participated or attempted to participate in any way in such administration, shall be subject to disciplinary action.

15.3.2 The registered Trainer of a horse found to have been administered a medication, drug or substance in violation of Rules 15.1 or 15.2 shall bear the burden of proof to show freedom from negligence in the exercise of a high degree of care in safeguarding such horse from being tampered with and, failing to prove such freedom from negligence (or reliance on the professional ability of a licensed Veterinarian), shall be subject to disciplinary action.

15.3.3 The Assistant Trainer, groom, stable watchman or any other person having the immediate care and custody of a horse found to have been administered a medication, drug or substance in violation of Rules 15.1 or 15.2, if found negligent in guarding or protecting such horse from being tampered with, shall be subject to disciplinary action.

15.3.4 A licensed Veterinarian shall be responsible for any medication, drug or substance that he administers, prescribes or causes to be administered by his direction on a horse. If found to have made an error in type or quantity of same administered and if in reliance upon the correctness thereof a Trainer races such treated horse in violation of Rules 15.1 and 15.2, such licensed Veterinarian shall be subject to disciplinary action.

#### 15.4 Reports of Administration:

15.4.1 Before a licensed Veterinarian administers or prescribes any drug or restricted substance for a horse, he

shall ascertain by reasonable inquiry whether the horse has been entered to race at any track and, if the horse has been entered, he shall not administer or prescribe any drug or restricted substance within the time or manner restricted by these Rules.

15.4.2 If, however, an emergency exists involving the life or health of the horse, he may proceed to treat or prescribe for the horse but shall report the matter as promptly as practicable to the Commission Veterinarian and Stewards.

15.4.3 Any Veterinarian practicing at any Delaware race track shall file a daily report with the Stewards and the Commission Veterinarian as to any medication prescribed or administered or professional service performed. This report shall be filed in person or postmarked within a period of forty-eight (48) hours from the time of treatment. Detection of any unreported medication, drug or substance by the Commission's Chemist in a pre-race or post-race test may be grounds for disciplinary action against such Veterinarian.

15.4.4 Such daily reports shall accurately reflect the identity of the horse treated, diagnosis, time of treatment, type and dosage of medication, drug or substance and method of administration.

15.4.5 Such daily reports shall remain confidential except that the Commission's Veterinarian may compile general data therefrom to assist the Commission in formulating policies or rules and the Stewards may review the same in investigating a possible violation of these rules. See Rule 11.2.8 respecting a public list of horses declared to race on medication.

15.4.6 When making an entry, it shall be the duty of the Trainer or his representative, as required by Rule 11.02(d), to disclose and declare to the Racing Secretary or his representative whether said horse will race on any medication permitted by these rules.

#### 15.5 Report Prior to Race of Cessation or Reduction of Medication:

15.5.1 For any horse entered to run in a race, a timely report of the elimination or reduction since its last race in the level of Phenylbutazone and/or similar medications administered to it at the time of such last race shall be made to the Commission's Veterinarian by the horse's Owner, Trainer, attending Veterinarian and/or any other person having supervision over, or custody of, such horse.

Violation of this Rule will constitute grounds for disciplinary action.

#### 15.6 Bettors' Safeguard:

15.6.1 To help protect against inconsistent performances, a horse which last raced after having been administered Phenylbutazone and/or similar medication shall not be permitted to race without having been administered the same or similar medication at a comparable

level, unless the Commission's Veterinarian grants his prior, express approval that such horse may race notwithstanding that the medication program to which it was subjected at the time of its last race has subsequently been eliminated or reduced.

15.6.2 Violation of any aspect of this Rule by an Owner, Trainer, attending Veterinarian or any other person having supervision or custody of the horse will constitute grounds for disciplinary action as provided by these Rules.

15.7 Commission List:

15.7.1 As a guide to Owners, Trainers and Veterinarians, the Commission may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. Such list shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Rule 15.1.

15.8 Detention Area:

15.8.1 Each Licensee may provide and maintain on its grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing; such detention area shall be under the supervision and control of the Commission's Veterinarian.

15.9 Horses to be Tested:

15.9.1 The Stewards may at any time order the taking of a blood, urine, or saliva specimen for testing from any horse entered. Any Owner or Trainer may at any time request that a specimen be taken from a horse he owns or trains by Commission's Veterinarian and be tested by Commission's Chemist, provided the costs of such testing are borne by the Owner or Trainer requesting such test.

15.9.1.1 Every effort shall be made to collect both blood and urine samples from all horses selected for post-race testing. Blood samples shall be tested:

15.9.1.1.1 For determination of those drugs with regulatory thresholds;

15.9.1.1.2 For those drugs not detectable in urine; and

15.9.1.1.3 To determine, when possible, whether a positive test result is consistent with the documented administration of the drug.

15.10 Procedure for Taking Specimens:

15.10.1 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 hotwalker of horses to be tested shall be admitted to the detention area without permission of the Commission veterinarian.

15.10.1.1 Blood samples must be collected at a consistent time, preferably not later than one hour post-race.

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

15.10.2.1 Buckets and water shall be furnished by the Commission veterinarian.

15.10.2.2 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.

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

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

15.10.3.1 The owner;

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

15.10.3.3 A stable representative designated by such owner or trainer.

15.10.4 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 Rule 15.10.3.

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

15.10.6 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.

15.10.6.1 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.

15.10.6.2 The Commission Veterinarian shall:

15.10.6.2.1 Identify the horse from which the specimen was taken.

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

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

15.10.6.3 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.

15.10.6.3.1 Laboratories conducting post-race sample analysis must have access to LC/MS instrumentation for screening and/or confirmation purposes.

15.10.6.4 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.

15.10.6.5 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.

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

15.10.6.7 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.

15.10.6.8 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.

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

15.10.6.10 In the event of an initial finding of a prohibited drug or in violation of these Rules, the Commission chemist shall notify the Commission, both orally and in writing, and an oral 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.

15.10.6.10.1 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.

15.10.6.10.2 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.

15.10.6.11 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.

15.10.6.11.1A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules 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.

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

15.10.6.11.3 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 to the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

15.10.6.12 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 the possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

15.10.6.13 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.

#### 15.11 Commission Chemist:

15.11.1 The Commission's Chemist, who shall be a member of the Association of Official Racing Chemists, shall conduct tests on specimens provided him in order to detect and identify prohibited substances therein and report on such in such a manner, and according to such procedures, as the Commission from time to time may approve and/or prescribe.

#### 15.12 Prohibited Practices

15.12.1 The following conduct shall be prohibited for all licensees:

15.12.1.1 The possession and/or use of a drug, substance, or medication, specified below, on the premises of a licensed race track under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance including but not limited to Erythropietin, darbepietin, and perfluorcarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing.

15.12.1.2 The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the regulatory body that has not

been approved by the United States Food and Drug Administration (FDA) for use in the United States.

15.12.1.3 The practice, administration, or application of Intermittent Hypoxic Treatment by External Device which is performed on the premises of a facility under the jurisdiction of the Commission, and which may endanger the health, safety, and welfare of the horse or endanger the safety of the jockey, or the use of which may adversely affect the integrity of racing. Intermittent Hypoxic Treatment is the administration of hypoxic gas to a horse for the purpose of enhancing aerobic metabolism by simulating training at a high altitude.

15.12.1.4 The use of a nasogastric tube (a tube longer than six inches, inserted in a horse's nostril) for the administration of any substance within the 24-hour period considered raceday is forbidden without prior permission of the Commission.

15.12.1.5 The possession and/or use of blood doping agents, including but not limited to the following list, on the premises of a facility under the jurisdiction of the Commission is forbidden: Erythropietin; Darbepietin; Oxyglobin; Hemopure.

#### 15.13 Shock Wave Therapy/Instruments

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

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

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

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

#### 15.14 Blood Gas Testing

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

15.14.2 Under this protocol, the prohibitive Base Excess concentrations are as follows: Base Excess level of 10.0 mmol/l (mEq/l) or higher for non-furosemide (Salix) treated horses and Base Excess (BE) level of 12.0 mmol/l (mEq/l) or higher for furosemide (Salix) 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 non-furosemide (Salix) treated horse and Base Excess (BE) level of 12.4

mmol/l (mEq/l) or higher for furosemide (Salix) treated horse, in order for a violation to be reported under this Rule.

15.14.3 A licensee has the right, pursuant to the quarantine procedure outlined at 15.15, or by such other procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels.

#### 15.15 Quarantine Procedure for Carbon Dioxide Positive Tests (Prerace Or Postrace)

15.15.1 Detention/Quarantine of Horses: The owner or trainer must request use of the quarantine procedure by sending written notice to the Stewards within forty-eight (48) hours of notification of the positive carbon dioxide test report. The owner or trainer will then be permitted, totally at his/her own expense, to make the necessary scheduling arrangements with the Stewards and the Commission Veterinarian. The horse in question will be quarantined on the grounds for periodic blood gas testing by the DTRC (up to three days) at the trainer's expense. All caretaker activities for the horse in question will be the responsibility of the horse's trainer.

15.15.2 Procedure: The owner or trainer will be responsible for providing the DTRC with a minimum check for \$1,500.00 to cover the costs for the quarantine. A professionally trained Track Security Officer must be with the horse at all times, and the Security Officer must be knowledgeable about the importance of monitoring all activity pertaining to the quarantined horse.

15.15.3 The quarantine of a horse is subject to the following mandatory requirements:

15.15.3.1 The owner or trainer will be required to deposit sufficient funds with the DTRC Stewards to cover the costs of the quarantine of the horse. The minimum quarantine cost will be \$1,500, and this figure may be higher if additional special circumstances are required for a particular horse. None of these procedures will be initiated until the Commission has in its possession a certified check or other method of payment acceptable to the Commission. The owner or trainer is responsible for all costs for the quarantine, including but not limited to, the costs of: stall bedding, daily cleaning of the stall, feed and hay, stall rent, hourly guard salary, portable toilet rental, veterinary charge, courier or shipping charges to the laboratory, laboratory analysis costs. Unused funds will be returned to the trainer.

15.15.3.2 The expected period of the quarantine will be seventy-two hours.

15.15.3.3 The owner or trainer is required to execute a reasonable liability waiver form if requested to do so by the track for the quarantine of the horse on track grounds.

15.15.3.4 The owner or trainer is obligated to reimburse the track if the racing association is required to purchase additional insurance to cover risks from the

quarantine of the trainer's horse. The owner or trainer is also responsible for any additional costs required by the track to pad or otherwise specially equip the quarantine stall.

15.15.3.5 All activity of the quarantined horse is observed, documented, and recorded by security officers for the track and the DTRC.

15.15.3.6 The Commission will be responsible for arranging for and providing for bedding, feed, water, and daily cleaning of the stall, all of which are at the owner's expense. Feed for the horse will be purchased by DTRC officials as specified by the owner or trainer. Samples of the feed will be retained by the DTRC designated official.

15.15.3.7 Each bale of hay/straw will be intact and uncut for inspection of contraband. Four small samples of hay are to be taken from the bale of hay used to feed the animal (one from each end of the bale of hay and two from the middle of the bale of hay). These samples with the ingredient tags from the bag of feed used by the horse will be retained by the DTRC designated official.

15.15.3.8 Every trainer, groom, or caretaker is subject to continuous observation and may be searched when with the horse for contraband.

15.15.3.9 Horses may be trained, but if leg paints or salves are used, they must be new and in unopened containers, and the track Security Officer must monitor the preparation of the horse.

15.15.3.10 A Security Officer must observe the horse during training and ensure that it does not leave the track except to return to the quarantine stall.

15.15.3.11 A sick horse must only be determined ill by the Commission's Veterinarian and the quarantine of the horse will be terminated. Any bills incurred for the quarantine of the horse prior to the illness and termination of the detention will be prorated.

15.15.3.12 Stalls for the quarantine of horses are designated by the Stewards of the DTRC, in cooperation with the racetrack.

15.15.3.13 Trainers can restrict water based on previous pre-race preparation schedules.

15.15.3.14 Trainers are expected to train their horse in the same manner as the horse was trained on previous racing events. The horse will be equipped with all the items that it would normally carry, taken to the paddock, and handled in a manner similar to previous racing events.

15.15.3.15 Blood samples will be taken from the quarantined horse by the Commission Veterinarian, as he or she deems appropriate and necessary during the quarantine period. A blood sample should be taken when the horse first enters the quarantine stall and again at the pre-arranged time between sixty (60) and seventy-two (72) hours. At the discretion of the Commission, another sample may be taken between the initial sample and the sample taken at the cessation of the quarantine period. Blood samples will only be taken from the horse that is at rest for a

period of time approved by the Commission Veterinarian. The owner or trainer or his/her representative must be present and witness the collection of the blood samples. Blood samples will be shipped promptly to the Commission's designated testing laboratory, pursuant to the Commission's standard chain-of-custody procedures.

15.15.3.16 At the conclusion of the quarantine period, the party requesting the quarantine will be provided timely notice of the test results from the DTRC. The trainer may present such evidence at a hearing before the Stewards if he or she attempts to prove that the horse has a naturally high carbon dioxide level.

**1 DE Reg. 508 (11/1/97)**

**1 DE Reg. 1184 (2/1/98)**

**3 DE Reg. 754 (12/1/99)**

**4 DE Reg. 179 (7/1/00)**

**4 DE Reg. 1131 (1/1/01)**

**4 DE Reg. 1821 (5/1/01)**

**6 DE Reg. 641 (11/1/02)**

**6 DE Reg. 1205 (3/1/03)**

**7 DE Reg. 766 (12/1/03)**

**7 DE Reg. 1540 (5/1/04)**

## **19.0 Hearings, Reviews and Appeals**

### **19.1 Procedure Before Stewards:**

19.1.1 Before holding any Stewards' hearing provided for under these Rules, notice in writing must be given to any party charged with a violation, other than a routine riding offense occurring in a race, unless such notice is waived in writing by the person charged.

19.1.2 The notice required by the preceding subsection shall include:

19.1.2.1 Identification of the specific Rule or Rules involved, the infraction for which he is charged and a brief statement of the facts supporting such charge.

19.1.2.2 The time and place of hearing.

19.1.2.3 The statement that the party charged may be represented by legal counsel or by a representative of any racing trade organization of which he is a member.

19.1.3 All Stewards' hearings shall be closed and the Stewards shall cause no public announcement to be made concerning a matter under investigation until the conclusion of the hearing and the party charged has been notified of the decision.

19.1.4 The hearing shall be conducted by no less than two of the Stewards in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence. In emergencies during the live racing meet or during periods when there is no live racing, a hearing may be conducted by only one Steward.

**7 DE Reg. 316 (9/1/03)**

19.1.5 All testimony at such hearings shall be given under oath. A record shall be made of the hearing,

either by use of a tape recorder or by court reporter's transcript, or otherwise, if funds for such are made available from any source. The Stewards will not be required to receive testimony under oath in cases where their ruling is based upon a review of the video tapes of a race.

19.1.6 If, at the conclusion of their hearing, the Stewards find that a Rule has been violated, they promptly shall issue a written ruling which sets forth the name of every person charged with a violation, the Rule violated, their finding as to the violation of such Rule and the penalty affixed. Copies of such rulings shall be delivered to each party in interest and to the Commission and the Licensee, and posted in the Racing Secretary's office.

19.2 Review and Appeal:

19.2.1 Any party who is penalized by any order or ruling of the Stewards may apply to the Commission for a review of such Stewards' order or ruling.

19.3 Application for Review:

19.3.1 An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or oral notice and shall:

19.3.1.1 Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee of \$250 plus an additional fee of \$150 to cover the cost of administrative expenses including court reporter costs. The Commission, for just cause, may refund the \$250 portion of the filing fee. In no event shall the advance payment of the court reporter's fee be refunded.

19.3.1.2 Contain the signature of the applicant and the address to which notices may be mailed to applicant;

19.3.1.3 Set forth the order or ruling requested to be reviewed and the date thereof;

19.3.1.4 Succinctly set forth the reasons for making such application;

19.3.1.5 Request a hearing;

19.3.1.6 Briefly set forth the relief sought; and

19.3.1.7 Provide assurance to the Commission that all expenses occasioned by the appeal will be borne by the applicant; and

19.3.1.8 Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.

19.4 Disposition of Review Application:

19.4.1 After consideration of any such application for review, the Commission may grant the application, defer it or reject it. The applicant shall be advised of the Commission's disposition of his application for review.

19.5 Commission Hearing:

19.5.1 If the Commission grants any such application for review, before holding any hearing thereon, it shall:

19.5.1.1 Give written notice forthwith to the applicant and all other necessary parties personally or by mail, including:

19.5.1.1.1 Time and place of such hearing as designated by the Commission Chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing.

19.5.1.1.2 Except to applicant, a copy of the application for review.

19.5.2 The Commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a Rule violation if the matter involves a Rule violation and requires a proceeding of an adversary nature, such prosecutor being an attorney who has had no prior participation in the matter on review.

19.5.3 The Commission may request the Attorney General, or a member of his staff other than the special prosecutor, to serve as law officer for the Commission to assist the presiding officer in rendering decisions of a judicial nature.

19.5.4 The Commission shall permit all parties that so desire to be represented by counsel and, to the extent it deems necessary or appropriate, shall permit all parties to respond and present evidence and argument on all issues involved.

19.5.5 The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents, before the Commission, and may administer oaths or affirmations to the witnesses whenever, in the judgment of the Commission, it may be necessary for the effectual discharge of its duties.

19.5.6 If any person refuses to obey any subpoena or to testify or produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or produce any books, papers or documents.

19.5.7 Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.

19.5.8 False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

19.5.9 All tape recordings or stenographic recordings taken and transcriptions made of the hearing or any part thereof shall be paid for by such parties as request that such a tape or stenographic record be made of the hearing, except that additional transcripts thereof shall be paid for by the person desiring such copies.

19.5.10 The Commission may exclude evidence that is irrelevant, immaterial or unduly repetitious and may admit evidence that would be inadmissible under the Civil

Rules of Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

19.5.11 All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.

19.5.12 The Commission may take official notice of technical facts or customs or procedures common to racing.

19.5.13 The Commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order or default.

19.5.14 Upon conclusion of the hearing, the Commission shall take the matter under advisement, shall render a decision as promptly as possible and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth the name of every person charged with a Rule violation; the Rule number and pertinent parts of the Rule alleged to have been violated; a separate statement of reasons for the decision; and penalties fixed by the Commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the Racing Secretary's office of the Licensee where the matter arose and forwarded to the national office of the National Association of State Racing Commissioners.

19.5.15 The Commission, for just cause, may refund the filing fee to the applicant.

Added: 9/27/94

19.6 Continuances:

19.6.1 All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefor and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

19.6.2 When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

19.6.3 An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour

period will not be granted except for extraordinary reasons. The Commission will not consider any request for a continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.

19.6.4 If the Commission approves the application for continuance, it shall, concurrently with such postponement, set a date for the continued hearing.

**3 DE Reg. 1541 (5/1/00)**

**8 DE Reg. 1289 (3/1/05)**

**\*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 Thoroughbred Racing Commission is available at:**

**<http://www.state.de.us/research/AdminCode/title3/1000/index.shtml#TopOfPage>**

---

## **DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 503

### **ORDER**

#### **503 Instructional Program Requirements**

##### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 503 Instructional Program Requirements by removing section 5.0 Functional Life Skills Curriculum. The reference to the Standards for the Functional Life Skills was removed from 14 DE Admin. Code 501 State Content Standards in September 2004 because federal regulations no longer allow the use of separate functional standards that are aligned to academic content standards. In order to align 14 DE Admin. Code 503 Instructional Program Requirements with 14 DE Admin. Code 501 State Content Standards the reference to the Functional Life Skills Curriculum in 5.0 of 14 DE Admin. Code 503 Instructional Program Requirements must be removed.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 18, 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 Department has declined to make any changes now except to remove the reference to the

Functional Life Skills Curriculum as 14 **DE Admin. Code** 503 refers to instructional program requirements and reference to academic standards in this section would be inappropriate. There continue to be federal requirements regarding appropriate alternate assessments and alternate achievement standards that will address the curriculum needs of students eligible for the Delaware Alternate Portfolio Assessment (DAPA).

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** in order to align 14 **DE Admin. Code** 503 Instructional Program Requirements with 14 **DE Admin. Code** 501 State Content Standards by removing the reference to the Functional Life Skills Curriculum in 5.0 of 14 **DE Admin. Code** 503 Instructional Program requirements.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 503. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 503 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 503 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 503 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 503 in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 19, 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 19<sup>th</sup> day of May 2005.

### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this day 19<sup>th</sup> day May 2005

### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Richard M. Farmer, Jr.  
Mary B. Graham, Esquire  
Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith

## 503 Instructional Program Requirements

### 1.0 English Language Arts

1.1 Local school districts and each charter school shall provide instructional programs in English Language Arts for each grade K-12.

1.2 All public school students in each grade K-8 shall be enrolled in an English language arts program.

1.3 All public school students in grades 9-12 shall complete the credits in English language arts necessary to graduate from high school.

### 2.0 Mathematics

2.1 Local school districts and each charter school shall provide instructional programs in mathematics for each grade K-12.

2.2 All public school students in each grade K-8 shall be enrolled in a mathematics program.

2.3 All public school students in grades 9-12 shall complete the credits in mathematics necessary to graduate from high school.

### 3.0 Science

3.1 Local school districts and each charter school shall provide instructional programs in science for each grade K-12.

3.2 All public school students in each grade K-8 shall be enrolled in a science program.

3.3 All public school students in grades 9-12 shall complete the credits in science necessary to graduate from high school.

### 4.0 Social Studies

4.1 Local school districts and each charter school shall provide instructional programs in social studies for each grade K-12.

4.2 All public school students in each grade K-8 shall be enrolled in a social studies program.

4.3 All public school students in grades 9-12 shall complete the credits in social studies necessary to graduate from high school.

**5.0 Functional Life Skills Curriculum**

5.1 Local school districts and each charter school shall provide instructional programs for students for whom a functional life skills curriculum is appropriate.

5.2 Public school students in the Functional Life Skills Curriculum shall participate in health, physical education, visual and performing arts and vocational technical programs as directed by their Individual Education Program (IEP).

**6.0 Physical Education**

6.1 Local school districts and each charter school shall provide instructional programs in physical education for each grade K-12 with the exception of the James H. Groves High School program.

6.2 All public school students in each grade 1-8 shall be enrolled in a physical education program.

6.3 All public school students in grades 9-12 shall complete the credit in physical education necessary to graduate from high school.

6.4 In addition to the one credit required for high school graduation, only one additional elective credit in physical education may be used to fulfill the graduation requirements.

6.5 The physical education requirements may be waived only for students who have an excuse from a qualified physician or objections based on religious beliefs. The local school district shall have the authority to grant such waivers.

**7.0 Visual and Performing Arts**

7.1 Local school districts and each charter school shall provide instructional programs in the visual and performing arts for each grade K-12 with the exception of the James H. Groves High School program.

7.2 All public school students in each grade 1-6 shall be enrolled in a visual and performing arts program.

**8.0 Vocational Technical Education**

8.1 Local school districts and charter schools, when consistent with the charter school's approved program, shall provide instructional programs in two or more vocational technical education areas in grades 7 and 8.

**5 DE Reg. 865 (10/1/01)**

---

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

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

**DSSM 20330.9 Long Term Care Program****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 Long Term Care Program. The proposal gives direction on counting gifts to minors under Uniform Gifts to Minors Act (UGMA) for the eligibility process. 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 April 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 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 Change****Citation**

- SSA Program Operations Manual - SI 01120.205
- DSSM 20330.9 - Adds a new rule that addresses Uniform Gifts to Minors Act (UGMA) and how this resource counts towards the eligibility process. The rule clarifies when UGMA assets are counted or excluded as a resource.

**Summary of Comments Received with Agency Response**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following summarized endorsement:

- DSS notes that the UGMA permits an individual to make an irrevocable gift of property to a minor. DSS treats the asset and earnings based on the asset as non-income to the minor until actual disbursement to the minor. Moreover, when the minor reaches the age of majority, the property becomes a countable asset. We endorse the proposed regulation.

*Agency Response: DSS thanks you for your endorsement.*

*Additional comments were received from Roger Waters, DSS Hearing Officer. His suggested changes are intended to make the language of the rules simpler, easier to understand and, to clarify that Delaware has adopted the Uniform Gifts to Minors Act. As a result of the suggestions, DSS made non-substantive grammatical and clarifying language changes throughout the regulation indicated by [bracketed bold type].*

### Findings of Fact

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation relating to the Uniform Gifts to Minors Act under the Long Term Care Program is adopted and shall be final effective June 10, 2005.

Vincent P. Meconi, Secretary, Department of Health and Social Services (DHSS)

May 13, 2005

### DSS FINAL ORDER REGULATIONS #05-26

NEW:

#### DSSM 20330.9 Uniform Gifts to Minors Act

[Most States Delaware has] have adopted the Uniform Gifts to Minors Act (UGMA) which permits making gifts to minors that are free of tax burdens. The UGMA is sometimes called the Uniform Transfers to Minors Act (UTMA).

Under [Delaware] UGMA [law legislation]:

- An individual [may] make[st] an irrevocable gift of money or other property to a minor[. If such a gift is made, then;]
- The gift, plus any earnings it generates, is under the control of a custodian until the child reaches the age of majority established by State law;
- The custodian has discretion to provide to the minor or spend for the minor's support, maintenance, benefit or education as much of the assets as he/she deems equitable; and
- The child automatically receives control of the assets upon [reaching the] age of majority (~~through~~ his/her 18<sup>th</sup> birthday). At this time, the UGMA property becomes a countable asset [for the purpose of program eligibility].

UGMA property including any additions or earnings is not income to the minor. However, any disbursements from the UGMA account to the minor will be considered income to the minor.

#### **Verification**

[Verify DSS will verify] all allegations of existence of a UGMA gift by obtaining a copy of the document of ownership (e.g., deed, certificate of deposit, savings account, etc.) or other written document from the issuing source. If there is no document designating a UGMA gift, then the asset ~~is~~ will be] considered a countable resource.

### DIVISION OF SOCIAL SERVICES

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

#### DSSM 3024 Citizens and Aliens Eligible for TANF & 9007.1 Citizenship & Alien Status

#### 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 and the Cash Assistance Program in the Division of Social Services Manual (DSSM) as it relates to trafficking victims. 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 April 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 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

##### Citation

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003

The following changes are made in DSSM 3024 and DSSM 9007.1: Eligible family members of victims of severe trafficking can now receive a Derivative T Visa and are now eligible to receive food stamp and cash benefits the same as refugees.

**Summary of Comments Received with Agency Response**

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC), and the State Council for Persons with Disabilities (SCPD) provided the following comments summarized below.

The proposed regulations clarify and expand eligibility standards for Food Stamps and Cash Assistance programs for qualifying victims and relatives. We endorse the concept of these regulations.

**Agency Response:** DSS thanks you for your endorsement.

**Findings of Fact**

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual as it relates to trafficking victims is adopted and shall be final effective June 10, 2005.

Vincent P. Meconi, Secretary, Department of Health and Social Services (DHSS)  
May 13, 2005

**DSS FINAL ORDER REGULATIONS #05-27 REVISIONS:****3024 Citizens and Aliens**

[233.50]

Only U.S. citizens and qualified aliens, as defined in section 431 of PRWORA, are eligible to receive cash assistance benefits

Citizens are those persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, and Northern Mariana Islands. Children born outside of the United States are citizens if both parents are citizens.

Qualified aliens who entered the United States prior to August 22, 1996 are treated as if they were United States citizens. Qualified aliens are defined as aliens who are:

1. An alien lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under section 208 of the INA;
3. A refugee admitted to the United States under section 207 of the INA;
4. An alien paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year;

5. An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is being withheld under section 241(b)(3) of the INA;

6. An alien granted conditional entry under section 203(a)(7) of the INA as in effect prior to April 1, 1980;

7. An alien who is a Cuban or Haitian entrant; or

8. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

Qualified aliens admitted on or after August 22, 1996, are barred from receiving cash benefits for five (5) years, except for certain excepted groups described below who are not subject to the bar. The following excepted groups of aliens are exempt from the 5-year ban on benefits:

1. Qualified aliens lawfully residing in the State who are honorably discharged veterans and who fulfill minimum active-duty service requirements, or who are on non-training active duty in the U.S. Armed Forces, or who are the spouse, unmarried dependent child, or unremarried surviving spouse of such a veteran or active-duty personnel, provided that, in the latter case, the marriage satisfied the requirements of 38 U.S.C. § 1304;

2. Refugees, for a period of five years after the date they entered the U.S. as refugees;

3. Asylees, for a period of five years after obtaining such status;

4. Aliens whose deportation of removal has been withheld, for a period of five years after obtaining such status;

5. Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, for a period of five years after they obtain such status; and

6. Amerasian immigrants from Vietnam, admitted to the U.S. pursuant to section 84 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, for a period of five years after their admission.

7. Individuals who are eligible due to being lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work;

8. Victims of Severe Trafficking per Public Law 106-386 Trafficking Victims Protection Act of 2000:

Severe forms of trafficking is defined as,

- sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person inducted to perform such an act has not attained 18 years of age; or
- the recruitment, harboring, transportation, provision, or obtaining of a person for labor or

services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Adult victims of severe trafficking will be certified by the U. S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking are treated like refugees. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to be eligible for cash assistance; and

9. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

Documentation:

1. Lawful permanent resident status is verified by:

- INS Form I-551; or
- Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94.

2. Refugee status is verified by:

- INS Form I-94 annotated with stamp showing admission under section 207 of the INA;
- INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(3);
- INS Form I-766 (Employment Authorization Document) annotated "A3"; or
- INS Form I-571 (Refugee travel Document).

3. Asylee status is verified by:

- INS Form I-94 annotated with stamp showing grant of asylum under § 208 of the INA;
- INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(5);
- INS Form I-766 (Employment Authorization Document) annotated "A5";
- Grant letter from the Asylum Office of INS; or
- Order from an immigration judge granting asylum.

4. The status of an alien whose deportation is withheld is verified by:

- INS Form I-688B (Employment

Authorization Card) annotated "274a12(a)(10);

- INS Form I-766 (Employment Authorization Document) annotated "A10"; or
  - Order from an immigration judge showing deportation withheld under §243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under §241(b)(3) of the INA.
5. Cuban/Haitian entrant status is verified by:
- INS Form I-551 (Alien Registration Receipt Card) with the code CU6, CU7, or CH6;
  - An unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code CU6 or CU7;
  - INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" (Status Pending);
  - INS Form I-94 showing parole into the United States on or after October 10, 1980; and
  - Cuban or Haitian passport, identity card, birth certificate, or other reasonable evidence of Cuban or Haitian nationality
6. Amerasian immigrant status is verified by:
- INS Form I-551 with the code AM6, AM7, or AM8; or
  - Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code AM1, AM2, or AM3.

7. The 40 qualifying quarters of work is determined under Title II of the Social Security Act. This includes the quarters of work not covered by Title II of the Social Security Act. Quarters of work not covered by Title II of the Social Security Act is based on the sum of the following:

- quarters the alien worked;
- quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and
- quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased.

NOTE: A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that

time, eligibility is determined without crediting the alien with the former spouse's quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40<sup>th</sup> quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

8. When a victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

- Accept the original certification letter or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT SEND FOR SAVE VERIFICATION.)
- Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Office of Refugee Resettlement (ORR) of the benefits for which the individual has applied.
- Note the "entry date" for the refugee benefit purposes. The individual's "entry date" for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.
- Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.
- Recertification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees; and
- Victims of trafficking are issued T visas by US Immigration and Citizenship Services.
- The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the

parents and siblings of victims of severe trafficking. Under TVPRA, eligible relatives of trafficking victims are entitled to visas designated as T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible like the direct victims of severe trafficking.

- If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse, children, unmarried siblings under 18 years of age, and parents.
- If an alien is awarded a T visa and was age of 21 years or older on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse and children.

9. For aliens who (or whose child or parent) is claiming that they have been battered or subjected to extreme cruelty in the United States and otherwise meets the requirements of 8 U.S.C. 1641(c) call PDU to determine if the documentation provided is satisfactory.

Aliens admitted as temporary residents are not eligible for public assistance benefits. Included are visitors, tourists, diplomats, and students.

Citizenship and alien status are verified at the time of application.

*(Break in Continuity of Sections)*

### **9007.1 Citizens and Qualified Aliens**

[273.4]

#### **Citizens and Qualified Aliens**

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if both parents are citizens;

2. Naturalized citizens or a United States non-citizen national (person born in an outlying possession of the United States, like American Samoa or Sawin's Island, or whose parents are U.S. non-citizen nationals;

3. Individuals who are:

An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply;

A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education

Assistance Act which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

Lawfully residing in the U.S. and was a member of the Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or

An unmarried dependent child of such Hmong or highland Laotian who is under the age of 18 or if a full-time student under the age of 22 of such a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18<sup>th</sup> birthday.

4. Individuals who are eligible indefinitely due to being:

A lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of : quarters the alien worked; quarters credited for the work of a parent the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased. A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouses quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40<sup>th</sup> quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

lawfully living in the U. S. for five (5) years as a qualified alien beginning on the date of entry:

Qualified aliens include lawfully admitted residents (holders of green cards), those granted asylum, refugees, victims of a severe form of trafficking, those paroled in the United States under section 212(d)(5) of the INA for at least one year, those whose deportation is being withheld, those granted conditional entry under section

501(e) of the Refugee Education Assistance Act of 1980, Cuban or Haitian entrants, and under certain circumstances, a battered spouse, battered child or parent or child or battered person with a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA.

lawfully in US and is now under 18 years of age;

lawfully in US and is receiving disability or blind (payments listed under DSSM 9013.1)

lawfully in US and 65 or older on 8/22/96 (born on or before 8/22/31).

An alien with one of the following military connections:

A veteran who was honorably discharged for reasons other than alien status who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service;

A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 389 U.S.C. 107;

An individual on active duty in the Armed Forces of the U.S. other than for training; or

The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18<sup>th</sup> birthday.

5. The following aliens with a seven-year (7) time limit:

(A) refugees admitted under section 207 of the Act;

(B) asylees admitted and granted asylum under section 208 of the Act;

(C) aliens whose deportation or removal has been withheld under section 241(b)(3) and 243 (h) of the INA.

(D) Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and

(E) Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.

The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).

(F) Immigrants who are victims of severe trafficking in persons per Public Law 106-386 Trafficking Victims Protection Act of 2000. Severe forms of trafficking in persons is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Victims of trafficking are issued T visas by US Immigration and Citizenship Services.

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the parents and siblings of victims of severe trafficking. Under TVPRA, eligible relatives of trafficking victims are entitled to visas designated as T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible for food stamps like the direct victims of severe trafficking.

If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse, children, unmarried siblings under 18 years of age, and parents.

If an alien is awarded a T visa and was age of 21 years or older on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse and children.

Adult victims of severe trafficking will be certified by the U. S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking, and eligible relatives awarded a Derivative T Visa, are treated like refugees for food stamp purposes. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to receive food stamps.

When a direct victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

1. Accept the original certification letter for child in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT CALL SAVE.)

2. Call the trafficking verification line at (202) 401-5510 to confirm the validity of

the certification letter or similar letter for children and to notify the Offices of Refugee Resettlement (ORR) of the benefits for which the individual has applied.

3. Note the "entry date" for refugee benefit purposes. The individual's "entry date" for refugee benefit purposes is the certification date, which appears in the body of the certification letter or letter for children.

4. Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.

5. Re-certification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.

6. The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).

7. An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered.

When an eligible relative of a direct victim of severe trafficking applies for benefits:

1. Accept the nonimmigrant T-2, T-3, T-4 or T-5 Derivative Visa and follow the normal procedures for providing services and benefits to refugees.

2. Call the toll-free trafficking verification line at 1 (866) 401-5510 to notify ORR of the benefits for which the individual has applied. (NOTE: the DHS Systematic Alien Verification for Entitlements (SAVE) system does not contain information about victims of a severe form of trafficking or nonimmigrant alien family members. DO NOT CONTACT SAVE concerning victims of trafficking or their nonimmigrant alien family members.)

3. Issue benefits to the same extent as a refugee provided the Derivative T Visa holder meets other program eligibility criteria like income.

4. For an individual who is already present in the United States on the date the Derivative T Visa is issued, the date of entry for food stamp purposes is the Notice Date on the I-797, Notice of Action of Approval of that individual's Derivative T Visa.

5. For an individual who enters the United States on the basis of a Derivative T Visa, the date of entry for food stamp purposes is the date of entry stamped on that individual's passport or I-94 Arrival Record.

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

Statutory Authority: 7 Delaware Code,  
Sections 903(e)(2) (7 Del.C. §§903(e)(2))

**ORDER No. 2005-F-0026**

**Summary of Evidence and Information**

Pursuant to due notice Vol. 8, Issue 10 *Delaware Register of Regulations*, 1412-1416 (April 1, 2005), the Department of Natural Resources and Environmental Control proposes changes to Tidal Finfish Regulation 3504 Striped Bass Possession Size Limit; Exceptions; Tidal Finfish Regulation 3541 Atlantic Sharks; Tidal Finfish Regulation 3512 Winter Flounder Size Limit; and proposes new Tidal Finfish Regulation 3566 Minimum Age for a Commercial Finfish Licensee or a Recreational Gill Net Licensee and new Shellfish Regulation 3701 Minimum Age for a Commercial Shellfishing Licensee or Non-Commercial Clamming Permittee.

A public hearing was held on April 27, 2005 to take comments on the above proposed amendments and new regulations. The comment period remained open until 4:30 PM May 2, 2005 for written, faxed, or e-mailed comments.

**Findings of Fact**

- §903(e)(2)(a) of 7 Delaware Code authorizes the Department of Natural Resources and Environmental Control (DNREC) to promulgate regulations concerning species of finfish that spend part or all their life cycle within the tidal waters of the state provided that such regulations are consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish. §903(f) and §1902(a)(4) gives the Department authority to issue permits and carry out procedures for permits, licenses and applications for fishing for finfish and shellfish.
- The Atlantic States Marine Fisheries Commission recently adopted Amendment 1 to the Interstate Fishery Management Plan for Winter Flounder that requires Delaware to change its winter flounder regulations in order to come into compliance with the amended plan.
- Regulations passed in February 2005 specific to striped bass possession size limits for commercial gill netters during the recently extended commercial seasons in February and May do not spell out specifically what minimum size limits are in effect during the extended season, and clarification is needed on this point. The minimum size in Delaware River and Bay during the March/April season has been 20 inches total length.
- Regulations governing the recreational harvest of sharks taken by shoreline or pier fishermen should be made consistent with existing federal and state regulations governing recreational harvest of sharks from boats. The existing state and federal regulation for recreational fishermen fishing from boats is one large coastal, small coastal or pelagic species of shark (excluding dogfish sharks) per vessel per day, minimum length 54 inches. Allowing shoreline fishermen to keep one shark 54 inches long per day of these same species would be consistent with the language concerning recreational harvest from boats.
- Although Delaware has not had a recreational winter flounder fishery in many years, historically populations of winter flounder were most prevalent in Delaware's Inland Bays from late winter into the early spring. A spring fishery in compliance with Amendment 1 to the Interstate Fishery Management Plan for winter flounder would allow some recreational harvest if the species is ever restored to its former abundance in the Delaware portion of its range.
- Although existing statutes specify that commercial fishing apprentices and anyone receiving a crab pot or crab dredge license through license transfer must be 16 years of age, the Delaware Code is silent on how old someone must be in order to qualify for other types of commercial fishing licenses and permits.
- The Advisory Council on Tidal Finfisheries at the March 6, 2005 meeting voted to support the proposed regulations concerning minimum ages as written.
- The Shellfish Advisory Council voted at their April 21, 2005 meeting to support the proposed regulation regarding minimum age for commercial license holders, except that they recommended that the minimum age for commercial clam tong/rake license holders be 14 years of age instead of 16. They made this recommendation so that 14- and 15-year old teenagers could rake clams on their own and make a few dollars.
- The use of a hand-held clam rake by a person who is wading is a low technology means of harvesting shellfish that could safely be done by someone 14 years of age. Other forms of commercial shellfishing require the use of larger boats and higher technology involving pot winders, winches,

and/or dredges. The only other exception is for commercial horseshoe crab collecting, but no additional licenses are available for this form of harvesting. Teenagers or even children may assist licensed commercial horseshoe crab collectors now.

- All of the hearing attendees spoke in favor of all of the proposed regulations as written. No one expressed a preference in regard to the two options listed for an open season for winter flounder.

### Conclusions

- Setting a minimum size limit of 20 inches total length for striped bass taken from Delaware River and Delaware Bay during the extended drift gill net seasons of February 15-until the end of February and May 1-May 31 would be consistent with the present minimum size limit for March and April and should be permissible within the guidelines established by the Atlantic States Marine Fisheries Commission in Amendment 6 to the Interstate Fishery Management Plan for Striped Bass.
- For large coastal, small coastal, and pelagic shark species exclusive of dogfish sharks, the daily limit for recreational fishermen fishing from shore should be one per person per day and the minimum size should be 54 inches fork length.
- The recreational winter flounder minimum size limit should be raised from 10 inches to 12 inches and the daily harvest limit should be set at 10 per person per day. The open season for recreational harvest of winter flounder should be February 11 until midnight April 10.
- The minimum age for applicants for all commercial fishing and shellfishing licenses and fishing permits should be 16 with the exception of commercial clam tong/rake which should be 14.

### ORDER

It is hereby ordered this \_\_\_\_ of May, 2005 that amendments to Tidal Finfish Regulations 3504, 3541, 3512 and new Tidal Finfish Regulation 3566 and new Shellfish Regulation 3701, copies of which are attached hereto, are adopted pursuant to Sections 903(e)(2)(a), 903(f), and 1902(a)(4) of 7 Del.C. and are supported by the Department's findings of evidence and testimony received. This Order shall become effective on June 10, 2005.

John A. Hughes, Secretary

Department of Natural Resources and Environmental Control

### 3504 Striped Bass Possession Size Limit; Exceptions. (Formerly Tidal Finfish Reg. 7) (Penalty Section 7 Del.C. §936(b)(2))

**1.0** Notwithstanding, the provisions of 7 Del.C. §929(b)(1) ~~or unless otherwise authorized~~, it shall be unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than twenty-eight (28) inches in total length.

**2.0** Notwithstanding, the provisions of 7 Del.C. §929(b)(1) ~~or unless otherwise authorized~~, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from months of February 15 March and April through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through ~~in~~ the month of March.

**3.0** ~~Unless otherwise authorized~~, It shall be unlawful for any person to possess a striped bass that measures less than 28 inches, total length, unless said striped bass is in one or more of the following categories:

3.1 It has affixed, a valid strap tag issued by the Department to a commercial gill net fisherman and was legally taken and tagged by said commercial gill net fisherman from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from months of February 15 March and April through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 ~~in~~ through the month of March; or

3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or

3.3 It entered Delaware ~~is~~ packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or

3.4 It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

4.0 Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

6.0 It shall be unlawful for any person to land any striped bass that measures less than twenty-eight (28) inches in total length at any time, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the period from February 15 months of March and April through May 31 or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries ~~in~~ during the period from February 15 through the month of March.

7.0 It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

**3512 Winter Flounder Size Limit; Possession Limit; Seasons (Formerly Tidal Finfish Reg. 20)**  
(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any person to possess any winter flounder, (*Pseudopleuronectes Pleuronectes americanus*), that measure less than twelve (12) ten (10) inches, total length.

2.0 It shall be unlawful for any recreational fisherman to have in possession more than ten (10) winter flounder per day (a day being 24 hours) at or between the place where said winter flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

3.0 ~~[Option 1 (Preferred)]. It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 10 in any given calendar year.~~

~~[Option 2 It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 30 in any given calendar year. Further, it shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder between 12:01 AM March 1 and 12:00 midnight March 20 in any given calendar year.~~

~~Other options for an open fishing season may be considered as long as they include a 20 day closure during the months of March and April and a 60 day open~~

season as required for compliance with Amendment 1 to the Atlantic States Marine Fisheries Commission Winter Flounder Management Plan.]

**3541 Atlantic Sharks (Formerly Tidal Finfish Reg. 25)**  
(Penalty Section 7 Del.C. §936(b)(2))

**1.0 Definitions:**

"Fillet" shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

"Land or Landing" shall mean to put or cause to go on shore from a vessel.

"Management Unit" shall mean any of the large coastal species, small coastal species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation.

"Large Coastal Species" shall mean any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*  
Scalloped hammerhead, *Sphyrna lewini*  
Smooth hammerhead, *Sphyrna zygaena*  
White shark, *Carcharodon carcharias*  
Nurse shark, *Ginglymostoma cirratum*  
Blacktip shark, *Carcharhinus limbatus*  
Bull shark, *Carcharhinus leucas*  
Lemon shark, *Neqapriion brevirostris*  
Sandbar shark, *Carcharhinus plumbeus*  
Silky shark, *Carcharhinus falciformis*  
Spinner shark, *Carcharhinus brevipinna*  
Tiger shark, *Galeocerdo cuvieri*

"Small Coastal Species" shall mean any of the following species of sharks or parts thereof:

Bonnethead, *Sphyrna tiburo*  
Atlantic sharpnose shark, *Rhizoprionodon terraenovae*  
Blacknose shark, *Carcharhinus acronotus*  
Finetooth shark, *Carcharhinus isodon*

"Pelagic Species" shall mean any of the following species of sharks or parts thereof:

Porbeagle shark, *Lamna nasus*  
Shortfin mako, *Isurus oxyrinchus*  
Blue shark, *Prionace glauca*  
Oceanic whitetip shark, *Carcharhinus longimanus*  
Thresher shark, *Alopias vulpinus*

"Prohibited Species" shall mean any of the following species of sharks or parts thereof:

Basking shark, *Cetorhinidae maximus*  
White shark, *Carcharodon carcharias*  
Bigeye sand tiger, *Odontaspis noronhai*  
Sand tiger, *Odontaspis taurus*  
Whale shark, *Rhincodon typus*  
Bignose shark, *Carcharhinus altimus*  
Caribbean reef shark, *Carcharhinus perezii*

Dusky shark, *Carcharhinus obscurus*  
 Galapagos shark, *Carcharhinus galapagensis*  
 Narrowtooth shark, *Carcharhinus brachyurus*  
 Night shark, *Carcharhinus signatus*  
 Atlantic angel shark, *Squatina dumerili*  
 Caribbean sharpnose shark, *Rhizoprionodon*

*porosus*

Smalltail shark, *Carcharhinus porosus*  
 Bigeye sixgill shark, *Hexanchus vitulus*  
 Sevengill shark, *Heptranchias perlo*  
 Sixgill shark, *Hexanchus griseus*  
 Longfin mako, *Isurus paucus*  
 Bigeye thresher, *Alopias superciliosus*

**3 DE Reg 1088 (2/1/00)**

**2.0** It shall be unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.

**3.0** It shall be unlawful for any person to possess the fins from any shark in the management unit prior to landing said shark unless said fins are naturally attached to the body of said shark.

**4.0** It shall be unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated and the head removed prior to landing said shark.

**5.0** It shall be unlawful to release any shark in the management unit in a manner that will not ensure said sharks maximum probability of survival.

**6.0** It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one shark in the management unit except that two Atlantic sharpnose sharks also may be on board in addition to the one shark in the management unit.

**1 DE Reg. 345 (10/1/97)**

**3 DE Reg 1088 (2/1/00)**

**7.0** It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any large coastal shark, any small coastal shark or any pelagic shark in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce.

**8.0** It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.

**9.0** It shall be unlawful for the operator of any vessel without a commercial foodfishing license to have on board said vessel any large coastal shark, any pelagic shark or any small coastal shark that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes).

**10.0** It shall be unlawful for any person without a commercial foodfishing license to take and reduce to possession any large coastal shark, any small coastal shark or any pelagic shark less than 54 inches.

**11.0** It shall be unlawful for any person without a commercial foodfishing license to take and reduce to possession more than one large coastal shark, small coastal shark or pelagic shark per day (a day being 24 hours).

**3566 Minimum Age for Commercial Food Fish Licensees**

(Penalty Section 7 Del.C. §936(b)(2)

**1.0** An individual must be at least 16 years of age to qualify for a commercial foodfish license as defined in 7 Delaware Code §914 or to qualify for a food fishing equipment permit as defined in 7 Delaware Code §915, including recreational gill net permits and recreational drift gill net permits.

**3701 General**

**1.0** An individual must be at least 16 years of age in order to qualify for any of the following licenses or permits:

- ~~1.1~~ Commercial clam tong/rake license
- ~~1.2~~ 1] Commercial clam dredge license
- ~~1.3~~ 2] Noncommercial clamming permit
- ~~1.4~~ 3] Commercial conch pot license
- ~~1.5~~ 4] Commercial conch dredge license
- ~~1.6~~ 5] Commercial crab pot license
- ~~1.7~~ 6] Commercial crab dredge license
- ~~1.8~~ 7] Commercial horseshoe crab collecting permit
- ~~1.9~~ 8] Horseshoe crab dredge permit
- ~~1.10~~ 9] Commercial lobster pot license
- ~~1.11~~ 10] Oyster harvesting license

[**2.0** An individual must be at least 14 years of age in order to qualify for a commercial clam tong/rake license.]

## DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)

## ORDER No. 2005-W-0025

## 7408 TMDLs for the Murderkill River Watershed

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.

In Secretary's Order No. 2001-A-0044, issued November 15, 2001, the Department promulgated a final regulation for Total Maximum Daily Loads ("TMDLs") for the Murderkill River watershed ("2001 TMDLs"). Kent County Levy Court ("Kent County") appealed the regulation to the state Environmental Appeals Board and Superior Court. The Department agreed to stay the regulation's application to Kent County's wastewater treatment facility pending the outcome of the appeals, and entered into settlement negotiations to resolve the dispute. The negotiations resulted in two agreements with Kent County, the collection of new water quality data, and refinements to the model used to establish the 2001 TMDLs. Based upon the refined model, the Department held a public workshop on August 12, 2004 to review and hear comments on the changes to the TMDLs that it would be proposing. The proposed regulation to amend the TMDLs was published in the *Delaware Register of Regulations* on March 1, 2005.

Based on the record, including the public hearing record reviewed in the May 11, 2005 Hearing Officer's Report ("Report") appended hereto, the proposed regulation is adequately supported and is not arbitrary or capricious. The Report reviews and summarizes the public hearing record, which was developed at the April 7, 2005, public hearing. The Report recommends approval of the proposed regulation as a final regulation without modification. I agree with the Report and adopt it as part of this Order along with its reasons.

The proposed regulation is based upon sound scientific evidence, is consistent with state and federal law, and is a reasoned regulation that will result in improved water quality within the Murderkill River watershed. The improvements will occur through the TMDLs, which will require nonpoint sources to reduce nitrogen by 30% and phosphorous by 50% from their 1997 base line levels. The TMDLs also will require limits on the three point sources that discharge directly into the waters through stream discharge permits. The proposed TMDLs reflect changes since 2001, such as

the elimination of one point source, and the future move by the City of Harrington's wastewater treatment plant away from a direct water discharge and to spray irrigation of its treated wastewater effluent. The TMDLs also result in the resolution of Kent County's appeals, which will allow the TMDLs to apply to the Kent County wastewater treatment plant. Accordingly, the proposed TMDLs should be approved as a final regulation.

The Report discusses the comments submitted by the Mid-Atlantic Environmental Law Clinic. These comments, if adopted, would result in a significant delay in the establishment of amended TMDLs. The proposed regulation reflects a reasonable regulation that should be approved now as it represents a clear improvement over the 2001 TMDLs. The Department has collected updated data and reflected it in a revised model used to evaluate the water quality of the Murderkill River, particularly the lower portion that is influenced by tidal waters. Nothing in the comments supports the further delay. The comments, including Kent County's, may be appropriate for consideration as part of the Department's ongoing regulation of the Murderkill River watershed's water quality. In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulation as a final regulation, 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;

2. The issuance of the proposed regulation as a final regulation will protect and improve the water quality of the Murderkill River watershed, as defined by elevation maps, and allow the Pollution Control Strategy to be developed for the Murderkill River watershed;

3. The issuance of the proposed regulation as a final regulation will allow the appeal of the existing TMDLs by Kent County to be resolved and allow TMDLs to apply to the Kent County wastewater treatment plant that are acceptable to Kent County and will avoid further appeals;

4. 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;

5. 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;

6. The Department's proposed regulation, as published in the March 1, 2005, *Delaware Register of Regulations* and set forth in Appendix B to the Report, is adequately supported, not arbitrary or capricious, is

consistent with the applicable laws and regulations, and should be approved as a final regulation to go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that;

7. 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  
Department of Natural Resources and Environmental  
Control

Date of Issuance: **May 12, 2005**

Effective Date: **June 11, 2005**

### **Introduction and Background**

On December 2001, the Cabinet Secretary of the Delaware Department of Natural Resources and Environmental Control (DNREC) issued Order No. 2001-A-0044 adopting a Total Maximum Daily Loads (TMDLs) Regulation for nutrients and oxygen consuming compounds for the entire Murderkill River Watershed. The TMDLs, which are developed in compliance with requirements of Section 303(d) of the Clean Water Act (CWA), establish maximum amounts of pollutants that can be discharged to a waterbody from point and nonpoint sources while maintaining water quality standards. The TMDLs include Waste Load Allocations (WLAs) for point sources, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

Following adoption of the Murderkill River TMDLs Regulation in December 2001, Kent County Levy Court, which owns and operates the Kent County Facility, appealed the TMDLs Regulation for the lower Murderkill River to the State Environmental Appeal Board and State Superior Court. As a result of settlement negotiations, which have been concluded, and additional technical studies, the Department concluded that the original hydrodynamic and water quality WASP5 model of the Murderkill River needed to be refined. Following refinement of the WASP5 model and evaluation of several loading scenarios, DNREC is proposing to amend the 2001 TMDLs Regulation.

### **7408 TMDLs for the Murderkill River Watershed**

#### **1.0 Introduction and Background**

1.1 Intensive water quality monitoring performed by Delaware Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Murderkill River and several of its tributaries and ponds are impaired as the result of low dissolved oxygen and

high nutrients. Low concentrations of dissolved oxygen are harmful to fish, shellfish, and other aquatic life. With regard to nutrients (nitrogen and phosphorus), although they are essential elements for both plants and animals, their presence in excessive amounts causes undesirable conditions. Symptoms of nutrient overenrichment include frequent phytoplankton blooms, decreased water clarity, dissolved oxygen deficiency, alteration of composition and diversity of economically important native species of plants and animals, and possible human health effects.

1.2 A reduction in the amount of nutrients and oxygen consuming pollutants reaching the waters of the Murderkill River and its tributaries and ponds is necessary to reverse these undesirable impacts. These pollutants and nutrients enter the waters of the Murderkill River from point sources and nonpoint sources. Point sources are end-of-pipe discharges from municipal or industrial wastewater treatment plants. Nonpoint sources include runoff from agricultural and urban areas, septic tank effluent, and ground water discharges.

1.3 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 of concern. 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) to account for uncertainties and future growth.

1.4 DNREC listed the Murderkill River and several of its tributaries and ponds on the Delaware's 1996, 1998, and 2000 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Carbonaceous Biochemical Oxygen Demand (CBOD).

#### **2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Murderkill River Watershed, Delaware**

~~**Article 1.** The total nitrogen load from the four point source facilities in the watershed (City of Harrington, Kent County Facility, Canterbury Crossing Mobile Home Park, and Southwood Acres Mobile Home Park) shall be limited to 406.3 pounds per day. The load allocation for each facility includes: City of Harrington (25 pounds per day), Kent County Facility (375 pounds per day), Canterbury Crossing Mobile Home Park (4.3 pounds per day), and Southwood Acres Mobile Home Park (2.0 pounds per day).~~

~~**Article 2.** The total phosphorous load from the four point source facilities in the watershed shall be limited to 27.3 pounds per day. The load allocation for each facility includes: City of Harrington (2 pounds per day), Kent County Facility (25 pounds per day), Canterbury Crossing~~

Mobile Home Park (0.2 pounds per day), and Southwood Aeres Mobile Home Park (0.1 pounds per day).

**Article 3.** The CBOD5 (5-day Carbonaceous Biochemical Oxygen Demand) load from the four point source facilities in the watershed shall be limited to 672.1 pounds per day. The load allocation for each facility includes: City of Harrington (33 pounds per day), Kent County Facility (625 pounds per day), Canterbury Crossing Mobile Home Park (9.6 pounds per day), and Southwood Aeres Mobile Home Park (4.5 pounds per day).

**Article 4.** The nonpoint source nitrogen load in the entire watershed shall be reduced by 30 percent (from the 1997 base line). This shall result in a yearly-average total nitrogen load of 560 pounds per day.

**Article 5.** The nonpoint source phosphorus load in the entire watershed shall be reduced by 50 percent (from the 1997 base line). This shall result in a yearly-average total phosphorous load of 96 pounds per day.

**Article 6.** Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 5, DNREC has determined that, with an adequate margin of safety, water quality standards and nutrient targets will be met in the Murderkill River and its tributaries and ponds.

**Article 7.** 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 Department's Whole Basin Management Program, Murderkill River Tributary Action Team, and other affected parties.

**Article 1.** The total nitrogen waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 755.3 pounds per day. The waste load allocation for the Kent County Facility will be 751 pounds per day and for Canterbury Crossing Mobile Home Park will be 4.3 pounds per day.

**Article 2.** The total phosphorus waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 62.7 pounds per day. The waste load allocation for the Kent County Facility will be 62.5 pounds per day and for Canterbury Crossing Mobile Home Park will be 0.2 pounds per day.

**Article 3.** The CBOD5 (5-day Carbonaceous Biochemical Oxygen Demand) waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 1010.6 pounds per day. The waste load allocation for Kent County Facility will be 1001 pounds per day and for Canterbury Crossing Mobile Home Park will be 9.6 pounds per day.

**Article 4.** Treated wastewater from the City of Harrington wastewater treatment facility shall be used for spray irrigation. However, during the winter season, as well as during wet weather periods, when spray irrigation of treated wastewater is not practical, the effluent may be

discharged into Browns Branch. During periods of surface discharge, the maximum discharge flow rate shall not exceed 750,000 gallons per day and daily waste loads shall not exceed 140 pounds per day for total nitrogen, 0.75 pounds per day for total phosphorus, and 37.5 pounds per day for CBOD5. Furthermore, the total annual waste load discharged from the City of Harrington wastewater treatment facility to the surface waters of Browns Branch shall not exceed 9125 pounds per year for total nitrogen, 55 pounds per year for total phosphorus, and 3000 pounds per year for CBOD5.

**Article 5.** The nonpoint source nitrogen load in the entire watershed shall be reduced by 30 percent (from the 1997 base-line). This shall result in a yearly-average total nitrogen load of 560 pounds per day.

**Article 6.** The nonpoint source phosphorus load in the entire watershed shall be reduced by 50 percent (from the 1997 base-line). This shall result in a yearly-average total phosphorous load of 96 pounds per day.

**Article 7.** Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 6, DNREC has determined that, with an adequate margin of safety, water quality standards and nutrient targets will be met in the Murderkill River and its tributaries and ponds.

**Article 8.** 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 Murderkill River Tributary Action Team, other stakeholders, and the public.

---

## DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code,  
Section 83 (21 Del.C. §83)

### ORDER

#### Motorcycle Rider Education Courses Provider Requirements

In the February 2005 edition of the *Delaware Register*, 8 DE Reg. 1083-1089, the Department of Transportation, Division of Motor Vehicles proposed various changes to the Division's current Rules and Regulations Governing the Licensing of Commercial Motor Vehicle Training Schools and Instructors, for those schools offering motorcycle training titled Motorcycle Rider Education Courses Provider Requirements. The Division's statutory authority to promulgate these regulations appears at 21 Del.C. Chapter

83.

No public comments were received after the February 2005 publication of the proposed regulations in the *Delaware Register*.

I find that these regulations should be adopted, as they will further the Division's efforts to improve public safety with respect to motorcycle rider education, and are necessary to carry out the intent of Chapter 83 of Title 21 of the Delaware Code.

These regulations shall go into effect no earlier than 10 days after their appearance in final form in an upcoming issue of the *Delaware Register*, as required by the Administrative Procedures Act, 29 Del.C. Chapter 101.

Approved: Nathan Hayward, Secretary  
Department of Transportation  
Date: 5/10/05

Approved as to form:  
Frederick H. Schranck, Deputy Attorney General

### **Motorcycle Rider Education Courses Provider Requirements**

#### **1.0 Definitions**

**"Application for Commercial Driver Training School License (Motorcycle)"** refers to the document which the Provider must sign and present to the Department of Public Safety, Division of Motor Vehicles to teach the motorcycle rider education courses for the State as required by 21 Del.C. Sections 8303 and 8304.

**"Audit"** means an official examination and verification of all accounts, records, books and documents pertaining to the conduct of motorcycle rider education courses by a Provider for the Department under the Program per the Delaware Code.

**"Basic Rider Course" (BRC)** is a motorcycle rider education course for novice or potential riders developed by the Motorcycle Safety Foundation (MSF), National Resource Office, 2 Jenner St., Suite 150, Irvine, CA 92718.

**"Course Section"** means a complete, scheduled set of BRC training modules, including both classroom and range sessions, presented to a class in order for them to satisfactorily complete a specific BRC.

**"Class Participant"** means a person enrolled in a BRC or ERC selection under the Program.

**"Experienced Rider Course" (ERC)** is a motorcycle rider education course for experienced riders with at least 6 months or 3000 miles of recent riding time, developed by the Motorcycle Safety Foundation (MSF), National Resource Office, 2 Jenner St., Suite 150, Irvine, CA 92718.

**"Motorcycle Rider Education"** means education for novice and experienced motorcycle riders practicing street riding techniques in a safe environment.

**"Program"** means the Motorcycle Rider Education Program which was created pursuant to 21 Del.C. Section 2726 and 2727 for the purpose of reducing motorcycle accidents, injuries and fatalities in the State of Delaware.

**"Provider"** means a private instructional service related to the Program they will conduct.

**"Range"** means a paved area set aside for the operations of motorcycles and marked and/or otherwise delineated per the BRC/ERC curricula guidelines for use on a permanent/temporary basis.

#### **2.0 Department of ~~Public Safety~~ Transportation, Division of Motor Vehicle**

2.1 In the interest of providing excellent customer service, promoting a safe driving environment, and protecting consumer interests, the Department hereby allows providers of instructional services to conduct motorcycle rider education courses once they meet the requirements of this document and pay the appropriate fees. This promotes excellent customer service by enhancing the Department's ability to meet public demand for motorcycle safety training. By authorizing and working with independent training centers to deliver motorcycle safety training, the Department is promoting a safe driving environment by adding to the number of riders with heightened knowledge and skills. This also protects the consumer's interests by ensuring that the training opportunity at independent centers maintains the same high level of quality that is found in State sponsored courses.

2.2 The Division of Motor Vehicles (DMV) will provide Chief Instructors / RiderCoach Trainers or Certified Drivers License Examiners to monitor independent motorcycle safety training center's program and to conduct end-of-course testing when feasible. Budget constraints and staff levels may require the students to be given a knowledge and riding skill test at a DMV location. However, when possible, all tests will be conducted at the Provider's location when the class graduates.

2.3 DMV will provide the following positions with listed responsibilities:

2.3.1 Coordinator of the Delaware Motorcycle Safety Program:

- Oversee the application of, and adherence to, these requirements.
- Serve as the main DMV point of contact for independent centers.
- Evaluate all Program applications.
- Monitor all provider programs to ensure they met Division requirements.
- Provide Motorcycle Operator Manuals.

2.3.2 Chief Instructors / RiderCoach Trainers or Certified Drivers License Examiners:

- Before monitoring and conducting end-of-course testing, ensure that students have

completed all classes and exercises required under the Department's approved curriculum.

- Administer the end-of-course written knowledge test and record results at the training location unless budget or staff limitation prevent on-site testing.
- Conduct the end-of-course riding skill test and record results.
- Issue completion certificates to students who have successfully completed their coursework and passed both the end-of-course written knowledge and riding skill tests.

### 3.0 Provider

#### 3.1 Primary requirements include the following:

- Complete license requirements for Commercial Driver Training Schools and Instructors per Chapter 83 of Title 21.
- Administer the Program.
- Select site area.
- Advertise and select qualified instructor candidates for the Program.
- Provide Instructor candidate's names and driver's license numbers to Coordinator, Motorcycle Rider Education Program. If candidate is licensed out of state provide a 5-year driving record.
- Ensure that appropriate equipment is available for use in each course section.
- Assure that proper insurance coverage is maintained.
- Schedule and advertise course dates.
- Teach the Department's approved rider education curriculum and comply with all related requirements.
- Provide course applicants names and drivers license numbers to Coordinator, Motorcycle Rider Education Program.
- Coordinate with the State to provide a Chief Instructor/RiderCoach Trainer or Certified Drivers License Examiner to administer the end-of-course written knowledge test and the riding skill test.
- Provide DMV with course and testing schedules in advance. Notify the DMV at least 48 hours in advance of any changes, cancellations, etc. to scheduled test dates and times.
- Allow the State to monitor the independent training center operations.
- Provide information to the DMV as required for DMV quality assurance, e.g., incident

reports, course surveys, test score sheets, etc.

- Obtain training motorcycles through dealer loan agreement programs or other sources.
- Promote BRC courses throughout the State.

#### 3.2 Other responsibilities include:

- Layout of all range areas
- Maintenance of miscellaneous range equipment and materials
- Scheduling all training sessions
- Supervising instructors
- Ensuring provider instructors teach minimum of 3 State Program Novice classes annually.
- Fill out all program reports completely and accurately.
- Set-up appropriate record keeping for evaluation of the program.
- Send monthly course participation updates to: Coordinator  
Motorcycle Rider Education Program  
Division of Motor Vehicles  
P O Box 698  
Dover, DE 19903

### 4.0 Instructors

4.1 Instructor shall have a high school diploma or the equivalent. Instructor must be at least 18 years of age hold a valid driver's license with a valid motorcycle endorsement and have had at least 2 years of motorcycle riding experience.

4.2 Instructor's driver's license shall not have been suspended or revoked any time during the immediately preceding 2 years. Instructor's shall have no convictions for driving under the influence of alcohol or of drugs during the immediately preceding 5 years, nor have been subject to first offenders election in lieu of trial during the immediately preceding 5 years.

4.3 Instructor shall not have any convictions for moving traffic violations with a total of 4 or more points during the immediately preceding 2 years.

4.4 An Instructor who is licensed to drive in another state must furnish certified copies of their driving record to the Coordinator, Motorcycle Rider Education Program Division of Motor Vehicles. An applicant shall not be eligible for instructor status until the instructor's driving record for the immediately preceding 5 years is furnished.

4.5 All of the Provider's instructors must be state licensed per 21 **Del.C.** Section 8304

4.6 An Instructor is responsible for conducting classroom sessions and for demonstrating and conducting range exercises, including evaluating rider performance. Only an MSF certified instructor trained or re-certified in the BRC/ERC, after completing the State update, is authorized to teach the course.

**5.0 Enrollment Eligibility**

5.1 Basic Rider Course – Persons enrolling in a BRC must:

- Possess a current, valid driver license issued by Delaware or another jurisdiction.
- Applicant's holding a level one learner's permit (Graduated Driver License) are not eligible to attend the program.
- Be licensed driver of the U.S. Armed Forces stationed in Delaware and/or his or her family members.
- Delaware can not issue a motorcycle endorsement unless the applicant holds a Delaware license. However, the Delaware DMV will send a letter certifying course completion to include students name, driver license number, course dates and location, skills and written test scores, to another state if they agree to upgrade the participant's license.
- Possess the physical ability to operate a motorcycle.
- Have the ability to balance a two-wheeled vehicle.
- Provide written parental permission if under the age of eighteen (18).
- Be at least sixteen (16) years of age.

5.2 Experienced Rider Course – Persons enrolling in an ERC must:

- Possess a current, valid driver license with an endorsement to operate a motorcycle issued by Delaware or another jurisdiction.
- Possess the physical ability to operate a motorcycle.

**6.0 Enrollment**

6.1 Class Participants shall be considered enrolled in a BRC once they have completed the registration process and have been accepted into a specific class. If an applicant is not accepted into any class, the registration fee collected shall either be refunded or applied toward a future class if the class applicant so desires.

6.2 Basic Rider Course – The number of students that can be enrolled in any one BRC class is restricted to the following schedule:

1. Classroom 1 instructor - 24 students
2. Range 2 instructors - 12 students

6.3 During on-cycle instruction no more than six (6) students may be under the supervision of any one (1) instructor at any one time and no more than twelve (12) students may operate motorcycles on the same range area at the same time. If the number of enrolled students is less than six (6), the class shall be canceled.

**7.0 Registration**

7.1 All persons enrolling in a BRC or ERC must be registered. Registration shall consist of:

- Completing the Student Registration Form
- Submitting all required written permissions, as applicable
- Completing a Release, Waiver and Indemnification Statement
- Payment of student registration fee

7.2 Participants must be registered prior to engaging in any training activities.

**8.0 Course Registration**

8.1 Registration will be the responsibility of the Provider. All fees should include all insurances deemed necessary to run the program. It is the responsibility of the Provider to maintain the required insurances.

**9.0 Student Registration Fees**

9.1 Each person enrolling in a BRC or ERC who resides in the State of Delaware, shall pay a student registration fee of not less than that paid by State Program registered students (currently fifty dollars \$50.00 for the BRC and \$35.00 for the ERC).

9.2 Each person enrolling in a BRC or ERC who does not reside in the State of Delaware shall pay a student registration fee of not less than that currently paid by State Program registered students (currently two hundred dollars \$200.00 for the BRC and \$100.00 for the ERC).

9.3 In State registration fees apply to those who:

- Possesses a current, valid Delaware Motor Vehicle Operator's License, or who is eligible for a motorcycle learner's permit.
- ~~Are~~ Is a member of the U.S. Armed Forces stationed in Delaware or a member of their family.
- Permanently resides at an address within the political boundaries of the State of Delaware.
- Are full time student at a College or University within the State of Delaware.

9.4 These fees are non-refundable with the following exceptions:

- The registrant is not accepted into the class of their choice. (However, the fee may be applied towards another class if the student desires.)
- The class is canceled.
- The registrant gives notice of withdrawal no later than seventy-two (72) hours prior to the start of the course.

**10.0 Rate of Pay**

10.1 Instructors are hired by the selected Provider; the rate of pay will be commensurate with the level for instructors in the State program. The contractual agreement

between Provider and Instructors will be the sole responsibility of the Provider.

### 11.0 ~~Basic Rider Course (BRC) Curriculum~~

11.1 ~~Curriculum~~ Basic Rider Course (BRC) – The curriculum used to train novice riders shall be the most current version of the BRC developed by the Motorcycle Safety Foundation (MSF). Each participant enrolled in any BRC shall receive no less than the minimum number of hours of classroom and on-cycle instruction as specified in the current BRC curriculum guidelines adopted by the Delaware Motorcycle Rider Education Program. Experienced riders may also be enrolled in the program if they so desire.

11.2 Experienced Rider Course (ERC) – The curriculum used to train experienced riders shall be the most current version of the ERC developed by the Motorcycle Safety Foundation (MSF). Each participant enrolled in any ERC shall receive no less than the minimum number of hours of classroom and on-cycle instruction as specified in the current ERC curriculum guidelines adopted by the Delaware Motorcycle Rider Education Program.

### 12.0 Facilities and Equipment

12.1 The following facilities and equipment must be available for use during each BRC or ERC course:

12.1.1 A classroom for the presentation of the off-cycle instructional portion of the BRC and the written test portion of the ERC located as close to the range area as possible. It must be able to comfortably accommodate the number of students enrolled and possess the following:

- One (1) classroom chair for each student with writing surface.
- One (1) teacher's desk or podium with chair.
- Capabilities for utilizing audio-visual aids.

12.1.2 A paved range area for the on-cycle portion of the BRC or ERC located as close to the classroom as possible. The following are recommended guidelines for selecting an appropriate area to accommodate the students engaged in range activities:

- The minimum riding area pf 120' X 220', with sufficient buffer space for safety considerations. Generally, a minimum size for the overall range is 160' X 260'. If ranges are sub-standard, they must be approved by MSF. The surface must be as flat as possible. Provide a copy of MSF certification to Coordinator Motorcycle Rider Education Program.
- No other traffic, including bicyclists and pedestrians, or cars are permitted on the range during on-cycle activities. If a parking lot is used, it must be free of parked cars and entrances should be blocked during use.

- The range should be free of potholes, sewer gratings, trash, sand, gravel, light poles, parking barriers, athletic equipment and any other surface hazards or obstacles.
- It should have grass edges without curbing. If the perimeter of the range is fenced, or curbed, there should be at least a twenty (20) foot buffer zone from the range area.
- The specific range layouts to be utilized are those listed in the current version of the Motorcycle Safety Foundation BRC Instructor's Guide and ERC Suite.
- Portable toilets should be provided, depending on the distance to classroom

12.1.3 Miscellaneous equipment and accessories as follows:

- Class B type fire extinguisher,
- 6/12 volt, 1 amp battery charger,
- First aid kit,
- Stopwatch,
- One (1) or two (2) - five (5) gallon gas containers, (depending on need),
- Metric tool kit is provided on each loan motorcycle,
- Tire pressure gauge,
- One-hundred (100) foot tape measure and chalk line,
- Fifty (50) - four (4) inch traffic cones,
- BRC or ERC Course Package,

12.1.4 Training Motorcycles used for BRC courses:

12.1.4.1 Any motorcycle model manufactured for on-highway use that meets two (2) of the following three (3) criteria (as published by the original equipment manufacture/distributor) may be used.

- An engine displacement of 500cc or less
- An un-laden weight of 400 pounds or less
- A seat height of 30" or less

12.1.4.2 Provide one of the above for each participant taking part in the on-cycle sessions of the BRC. A minimum of six (6) motorcycles is required per training program. It is recommended that one additional motorcycle be available for use in demonstrations and as a replacement.

12.1.4.3 No motorcycle with a defect which could impair handling or control will be permitted in the program. Off-road motorcycles or extensively modified "choppers" will not be permitted.

12.1.5 Training Motorcycles used for ERC courses:

12.1.5.1 Students in the ERC provide their own motorcycle which must be:

- Properly insured. Students are

required to show proof of insurance prior to participating in the riding portions of the class.

- Legally registered and inspected.
- Pass instructor's pre-ride check. To include checking tires, controls, lights, oil levels, chassis and side stand. Motorcycles with defects that could impair handling or control will not be permitted in the class.

### **13.0 Supplies**

13.1 The following supplies must be provided for or be available for use in each BRC or ERC section as specified:

- Appropriate range layout materials as described in the BRC Instructor's Guide or ERC Suite
- Sufficient quantities of the State of Delaware Motorcycle Operator's Manual (MOM) to provide one to each participant
- Adequate amounts of spark plugs, oil, chain lube and gasoline for the motorcycles utilized in the BRC
- Sufficient quantities of BRC or ERC student activity workbooks to provide one to each student

### **14.0 Insurance**

14.1 Contractor recognizes that they are operating as an independent Contractor and that they are liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the Contractor's negligent performance under this Contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the Contractor in their negligent performance under this Contract.

14.2 The Contractor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this Contract. The Contractor is an independent contractor and is not an employee of the State.

14.3 The Contractor shall, at its expense, carry insurance of minimum limits as follows:

Comprehensive General Liability	\$1,000,000
Medical/Professional Liability	\$1,000,000/ \$3,000,000

14.4 If the contractual service requires the

transportation of Departmental clients or staff, the contractor shall, in addition to the above coverage's, secure the following coverage:

Automotive Liability(Bodily Injury)	\$100,000\	\$300,000
Automotive Property Damage (to others)		\$25,000

14.5 Medical Insurance coverage of at least five hundred dollars (\$500.00) for each student, range aide, primary and assistant instructor participating in any BRC course section.

14.6 Comprehensive and Collision Insurance coverage providing for a total limit of not less than the value of each motorcycle utilized in any Motorcycle Rider Education Program course section less deductibles for damage or loss due to fire, theft and collision.

14.7 Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, which may result from the Contractor's performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

14.8 The policies for Liability and Property Damage must be so written to include Professional Liability and Comprehensive General Liability, which includes Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Contractor and the contractor's subcontractors under this Contract.

14.9 The Contractor shall provide a Certificate of Insurance as proof that the Contractor has the required insurance or a letter indicating a program of self insurance and its limits and availability of funds sufficient to meet the claims.

### **15.0 Protective Clothing**

15.1 All participants are required to wear the following protective gear during BRC or ERC on-cycle instruction:

- Full face or 3/4 helmet that meets US DOT, ANSI Z90.1 standards (no 1/2 helmets)
- Eye protection (Face shield recommended)
- Boots or heavy-soled shoes that cover the ankles and have a low heel, or leather high-top sneakers
- Non-flared denim pants
- Long sleeved jacket or shirt
- A pair of sturdy gloves (no half-gloves)

**STATE OF DELAWARE**  
**EXECUTIVE DEPARTMENT**  
**DOVER**

**EXECUTIVE ORDER**  
**NUMBER SIXTY-SEVEN**

**RE: Establishing A Retirement Benefit Study Committee**

**WHEREAS**, the Governmental Accounting Standards Board ("GASB") has issued Statement No. 45, "Accounting and Financial Reporting by Employers for Post-retirement Benefits other than Pensions"; and

**WHEREAS**, post-retirement benefits other than pensions consist primarily of health care insurance, the cost of which is escalating at a very rapid rate; and

**WHEREAS**, beginning in fiscal year 2008, GASB No. 45 requires state and local governments to recognize on their financial statements the present and future cost of benefits to pension recipients; and

**WHEREAS**, to date, the State of Delaware has funded retiree health benefits almost exclusively on a pay-as-you-go basis, and substantial resources will be required to be allocated to avoid a substantial unfunded liability associated with retiree benefits, as reported pursuant to GASB No. 45; and

**WHEREAS**, in order to meet its obligations to its current and future retirees, preserve sound fiscal practices, and provide necessary public services while maintaining competitive tax rates, the State must examine and quantify the impact of a wide array of important policy options raised by GASB No. 45 and the resulting unfunded liability; and

**WHEREAS**, the State of Delaware has a long and successful tradition of bipartisan cooperation, credible analyses, and long-term focus in the conduct of its fiscal affairs; and

**WHEREAS**, a meaningful policy response to GASB No. 45 will require that the State once again draw upon its long and successful tradition of bipartisan fiscal management.

**NOW, THEREFORE, I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, DO HEREBY ORDER AND DECLARE AS FOLLOWS:**

1. A Retiree Benefit Study Committee (the "Committee") is created. The Committee shall consist of twelve (12) members as follows:

- a. The Secretary of Finance or his designee;
- b. The State Budget Director or her designee;
- c. The Controller General or his designee;
- d. The Director of the State Office of Pensions;

- e. The Co-Chairs of the Joint Finance Committee;
- f. One member appointed by the Speaker of the House of Representatives;
- g. One member appointed by the Minority Leader of the House of Representatives;
- h. One member appointed by the President Pro Tempore of the Senate;
- i. One member appointed by the Minority Leader of the Senate;
- j. One private sector representative nominated by the Delaware State Chamber of Commerce and appointed by the Secretary of Finance; and
- k. One representative of a public employee union currently recognized as a bargaining entity with the State appointed by the Secretary of Finance.

The Secretary of Finance or his designee shall act as the Committee's Chairperson.

2. The purposes of the Retiree Study Benefit Committee shall be as follows:

- a. Study the results of any available actuarial work (or commission additional actuarial work) that addresses GASB No. 45's impact on the State of Delaware;
- b. Identify the options available to the State, quantify their potential effects, and assess the desirability of such options (or combination of options) according to the following criteria:

(1) the extent to which and over what time-horizon the option eliminates or reduces the State's unfunded liability;

(2) fairness in the distribution of cost between or among employees and retirees taking into account such considerations as employee and retirees' age, length of State service, starting and ending dates of service, and income levels;

(3) the transparency of each option's impact on current and future beneficiaries;

(4) ease of administration of the State and use for beneficiaries;

(5) the extent to which the option affects the State's position in the labor market including taking into account its competitiveness with other employers, turn-over rates, and incentives or disincentives to retire;

(6) fiscal considerations including an assessment of the opportunity costs of GASB No. 45 compliance or noncompliance in terms of its:

- (a) ratings implications and the cost of capital;
- (b) impact on operating budget growth and programs; and
- (c) tax and revenue policy implications.

3. The Retiree Benefit Study Committee shall be supported by staff from the following State offices:

- a. the Department of Finance;

- b. the State Budget Office;
  - c. the State Office of Pensions; and
  - d. the Office of the Controller General.
4. The Retiree Benefits Study Committee shall:
- a. meet on a regular basis, with its first meeting occurring not later than June 1, 2005;
  - b. rely upon outside experts as needed, including but not limited to actuaries, rating agency staff, the State's Auditor of Accounts, and the State's financial advisor;
  - c. present a summary of its preliminary findings to the Delaware Economic and Financial Advisory Council at its September 2005 meeting; and
  - d. issue a written report of its findings and recommendations to the Governor, General Assembly and the Delaware Economic and Financial Advisory Council by October 15, 2005.

Approved: May 2, 2005

Ruth Ann Minner,  
Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

---

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council to the Division of Substance Abuse and Mental Health	Anthony J. Brazen, III, D.O.	4/12/2008
	Timothy F. Brooks, Ed.D.	4/12/2008
	Ms. Carol A. Harman	4/12/2008
	Mr. George B. Meldrum, Jr.	4/12/2008
	Ms. Paula Voshell	4/12/2008
Architectural Accessibility Board	Mr. James E. Liguori	9/6/2005
Board of Accountancy	Ms. Sandra S. Gullede	4/25/2008
	Mr. James A. Horty	4/25/2008
	Mr. James R. Zdimal	4/25/2008
Board of Chiropractic	The Honorable William I. Houghton	4/12/2008
Board of Cosmetology and Barbering	Ms. Margaret Bonarigo	4/20/2008
Board of Examiners of Private Investigators & Security Agencies	Ms. Cynthia R. Jones	4/11/2008
	Mr. Kline G. Kemp, Jr.	4/11/2008
Board of Landscape Architecture	Ms. Barbara A. Hanson	4/11/2008
	Mr. Ronald Sherman	4/11/2008
	Mr. Eric J. Sturm	4/11/2008
Board of Massage and Bodywork	Ms. Dorothy D. Langston	4/4/2008
	Mr. David L. Patterson	4/4/2008
	Ms. Suzie S. Stehle	4/11/2008
	Mr. Clayton C. Yocum	4/11/2008
Board of Medical Practice	Oluseyi N. Senu-oke, M.D.	4/18/2008
Board of Occupational Therapy Practice	Ms. Michele A. Maahs	4/4/2008
	Ms. Virginia Mirro	4/4/2008
	Ms. Debra A. Young	4/4/2008
Board of Veterinary Medicine	Erin Vicari, VMD	4/11/2008
	Ms. Kimberly S. Vincent	4/11/2008
Child Placement Review Board, Kent	Mr. Charles B. Carter	4/12/2008
	Ms. Jane J. Fox	4/12/2008
	Ms. Catherine Mebane	4/12/2008
	Mr. Michael T. Rezac	4/12/2008
Child Placement Review Board, New Castle	Ms. Nancy Czeiner	4/12/2008
	Jeffrey Davidson, Ph.D.	4/12/2008
	Ms. Linda L. Hartzel	4/12/2008
	Ms. M. Jane Holloway	4/12/2008
	Mr. William C. Miller	4/12/2008
Child Placement Review Board, Sussex	Mr. Raymond L. Moore, Sr.	4/12/2008

---

---

**GOVERNOR'S APPOINTMENTS**

---

1733

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Child Placement Review Board, Sussex	Ms. Cora Norwood Selby	4/12/2008
	Ms. Deneen Smith	4/12/2008
	Ms. Virginia Van Sciver	4/12/2008
Committee on Employment of People with Disabilities	Ms. Chrys A. DiRienzo	4/12/2008
	Mr. James Kristof	4/12/2008
	Mr. Scott R. Ward	4/12/2008
Council on Archives	Mr. Richard B. Carter	4/12/2008
	Mr. Edward H. Fielding	4/12/2008
	Mr. Craig A. Wilson	4/12/2008
Council on Housing	Ms. Connie H. Louder	4/12/2008
	Mr. John L. Walker, Sr.	4/12/2008
Council on Real Estate Appraisers	Mr. Kevin A. Esslinger	1/3/2006
	Mr. Charles L. Witt	4/11/2008
Council on Services for Aging and Adults with Physical Disabilities	Ms. Katherine S. Cowperthwait	4/12/2008
	Mr. Newton E. Crouse	4/12/2008
	Mr. Edward C. Larrivee	4/12/2008
	Ms. Karen R. Lloyd	4/12/2008
	Mr. Dennis L. McIlvain	4/12/2008
Council on Services for Aging and Adults	Ms. Gloria Price	1/21/2006
Council on Social Services	Sister Geanne F. Cashman	4/26/2008
	Mr. James A. Villarreal	4/26/2008
	Mr. Donovan C. Carbaugh	4/12/2008
Delaware Bicycle Council	Mr. Robert V. Witsil	4/12/2008
Delaware Commission for Women	Mr. Brian J. Bartley	4/12/2008
	Ms. Eileen Conner	4/12/2008
	Kathleen Jacobs, Ph.D.	4/12/2008
	Ms. Geraldine M. Lewis-Loper	4/12/2008
Delaware State University Board of Trustees, Trustee	Mr. Wesley E. Perkins	8/10/2010
Developmental Disabilities Council	Ms. Marie-Anne E. Aghazadian	4/25/2011
	Ms. Carol E. Barnett	4/25/2011
	Ms. A. Jean Knotts	4/25/2011
	Ms. Ann Marie A. Merena	4/25/2011
Governor's Commission on Community-Based Alternatives for Individuals with Disabilities	Ms. Daniese McMullin-Powell	Pleasure of the Governor
	Mr. Michael Shriver	Pleasure of the Governor
Governor's Council on Hispanic Affairs	Ms. Maria D. Cabrera	4/12/2008

# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Governor's Council on Hispanic Affairs	Ms. Cherisse S. Carlisle	4/12/2008
	Ms. Anastacio Matamoros	4/12/2008
	Mr. Ryan K. Messatzzia	4/12/2008
	Ms. Edith M. Prado	4/12/2008
	Ms. Margaret E. Reyes	4/12/2008
Governor's Council on Lifestyles & Fitness	Ms. Danna M. Levy	4/12/2008
Human Relations Commission	Mr. Stephen W. Elkins	4/12/2009
	Mr. Thomas K. Johnson	4/12/2009
	Ms. Lois A. Myers	4/12/2009
	Mr. Jose Quinones	4/12/2009
	Mr. Richard D. Senato	4/12/2009
	Mr. Robert L.A. Watson	4/12/2009
Interagency Coordinating Council	Anne Meduri Cannuli, M.D.	4/12/2008
	Ms. Nancy W. Colley	4/12/2008
	The Honorable Nancy W. Cook	4/12/2008
	Ms. Margaret K. Cuthrell	4/12/2008
	Carlos Duran, M.D.	4/12/2008
	Ms. Susan E. Jackson	4/12/2008
	Ms. Beth A. MacDonald	4/12/2008
	Ms. Linda K. Nemes	4/12/2008
	Mr. Bruce L. Orr	4/12/2008
	Ms. Helen C. Riley	4/12/2008
	Ms. Martha L. Toomey	4/12/2008
	Ms. Gail B. Womble	4/12/2008
	Ms. Arnetta D. Woodson	4/12/2008
	Ms. Aleph Ann Woolfolk	4/12/2008
New Castle County, Justice of the Peace	Mr. Donald W. Callender, Jr.	4/9/2009
Organ and Tissue Donor Awareness Board	Ms. Mary Sue Jones	4/12/2008
	Ms. Jan Weinstock	4/12/2008
Pesticide Advisory Committee	Mr. John Barndt	4/12/2008
	Mr. Thomas V. May	4/12/2008
	Mr. Joseph J. Reardon	4/12/2008
	Mr. Jacob Vukich	4/12/2008
	Ms. Susan Whitney King	4/12/2008
The Sewell C. Biggs Collection, member of the Board	Mr. Richard B. Carter	Pleasure of the Governor
State Committee of Dietetics/Nutrition	Ms. Tracey K. Sinibaldi	4/4/2008
	Ms. Mary M. Trotter	4/4/2008
State Rehabilitation Advisory Council	Mr. Doyle R. Dobbins	4/12/2008
	Ms. Elisabeth A. Furber	4/12/2008

---

---

**GOVERNOR'S APPOINTMENTS**

---

1735

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
State Rehabilitation Advisory Council	Ms. Melissa H. Shahan	4/12/2008
Veterans Home Oversight Committee	Mr. Mark T. Brainard	Pleasure of the Governor
	Mr. Robert Furman	Pleasure of the Governor
	Mr. Robert Scoglietti	Pleasure of the Governor
Veterans Home Oversight Committee, Co-Chair	The Honorable Jennifer W. Davis	Pleasure of the Governor
	The Honorable Harriet Smith Windsor	Pleasure of the Governor
Wilmington Housing Authority	Ms. Mary Ann Miller	4/4/2008

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

**NOTICE OF INTENT #05-25**

**Child Care Development Fund Services  
October 1, 2003 through September 30, 2005**

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) provides notice of intent. This notice is being given to provide information of public interest with respect to the intent of DSS to submit to the Child Care Bureau an amendment to the State Plan for Child Care Development Fund Services for the period October 1, 2003 through September 30, 2005.

**Statutory Basis**

- Section 658E of the Child Care & Development Block Grant of 1990, as amended; and,
- 45 CFR §§98.10 98.18

**Summary of Amendment**

1) Beginning June 2005 license exempt in-home providers are required to complete 45 hours of training consisting of Health, Safety & Nutrition (9 hours); CPR and First Aid (6 hours); Child Development (15 hours); Understanding Children's Behavior (12 hours); and Understanding Early Literacy and Language Development (3 hours).

2) Existing providers have six months upon notice from The Family & Workplace Connection (FWC) to enroll and complete required training.

3) New providers must complete training within 90 days of beginning their contract with the Division of Social Services. Classes are provided by the FWC and are offered during the day and evening.

A copy of the current Child Care Development Fund Services State Plan for the period October 1, 2003 through September 30, 2005 is available upon request by contacting Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by mail or by fax (302-255-4544).

**Section 6.4 - Health and Safety Requirements for In-Home Providers (658E(c)(2)(F), §§98.41, 98.16(j))**

6.4.3 For in-home care that is NOT licensed, and therefore not reflected in NRCHSCC's compilation, the following health and safety requirements apply to child care services provided under the CCDF for:

- The prevention and control of infectious disease (including age-appropriate immunizations)

In-home providers: provide or maintain clean furnishings, free from rodents and insects; maintain documentation of immunization status; separate children with symptoms of illness from other children in care; provide a clean and sanitary place for storing and changing diapers; wash hands before and after diapering and before serving meals. In-home providers must self-certify that they intend to operate a healthy and safe facility.

- Building and physical premises safety

In-home providers: Screens must be in good repair; protective receptacle covers for electrical; outlets have or have access to a working telephone; operable flash lights; first aid kits; adequate space for play and movement; storage of flammable materials away from children; kitchens must be clean and food storage areas clean; compliance with applicable community regulations; play equipment must be safe; outdoor area must be accessible by a safe route; play areas near hazards must be fenced or otherwise protected, in-home providers must self-certify.

- Health and safety training

~~In-home providers: must read and review information provided about health and safety, and attend Office of Child Licensing workshops as deemed necessary.~~

~~In addition, these providers must attend an initial DSS sponsored workshop. This workshop explains DSS rules for care, its reimbursement policies, payment and attendance reporting requirements, and provides tips for good child care and safety practices.~~

~~Also, the providers are required to have both a child abuse registry and criminal history check. A negative outcome results in termination of service.~~

~~Providers are required to have both a child abuse registry and criminal history check. A negative outcome results in termination of service.~~

~~In addition, these providers must attend an initial DSS sponsored workshop. This workshop explains DSS rules for care, its reimbursement policies, payment and attendance reporting requirements.~~

Beginning June 2005 license exempt in-home providers are required to complete 45 hours of training consisting of Health, Safety & Nutrition (9 hours); CPR and First Aid (6 hours); Child Development (15 hours); Understanding

Children's Behavior (12 hours); and Understanding Early Literacy and Language Development (3 hours).

Existing providers have six months upon notice from The Family & Workplace Connection (FWC) to enroll and complete required training.

New providers must complete training within 90 days of beginning their contract with the Division of Social Services. Classes are provided by the FWC and are offered during the day and evening.

**Summary of Amendment Provisions**

To ensure that the state delivers an accessible medical assistance prescription drug program, the following describes the proposed change for pharmacy co-payments, effective July 1, 2005:

A cumulative maximum is established as described below:

- \$15.00 – \$25.00\* cumulative monthly maximum co-payment amount aggregated for pharmacy services.

\*The specific amount to be determined.

Once a client has met the individual monthly maximum co-payment for his or her prescriptions, the Point of Sale (POS) System will NOT indicate a co-payment is due. Medicaid will keep track of the cumulative number of prescriptions for a client with co-payments. Any prescriptions dispensed after the cumulative maximum monthly co-payment amount is met are not subject to a co-payment. Reversal of a previously filled prescription with a co-payment will require a refund of the co-payment to the individual, and will cause the next prescription filled for that client to be adjudicated with a co-payment.

By implementing this process, the Department ensures that a cumulative maximum is likely to benefit all eligible Medicaid clients with continued access to prescription medications.

DSS will notify affected Medicaid clients prior to implementation.

The proposed cumulative maximum pharmacy requirements are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

---

**DIVISION OF SOCIAL SERVICES****NOTICE OF INTENT #05-28****Client Cost Sharing for Pharmaceutical Services:  
Cumulative Maximum**

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) provides notice of intent. This notice is being given to provide information of public interest with respect to the intent of DSS to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Pharmaceutical Services Program.

The purpose of this action is to give public notice of the agency's intent to submit an amendment to the Title XIX Medicaid State Plan to the Centers for Medicare and Medicaid Services (CMS) and to amend the Division of Social Services Manual (DSSM) to establish a cumulative maximum on pharmacy co-payments.

**Statutory Basis**

42 CFR §447.54(d)

**Amending the Following Title XIX Medicaid State Plan  
Pages**

- Page 56a
- Attachment 4.18-A, Page 3

**Amending the Following Sections of the Division of  
Social Services Manual**

- 4960.1
- 14960.1.1

---

**DIVISION OF SOCIAL SERVICES****NOTICE OF INTENT #05-29****Pharmaceutical Services: Mail Order Pharmacy Services**

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) provides notice of intent. This notice is being given to provide information of public interest with respect to the intent of DSS to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Pharmaceutical Services Program.

**Purpose**

The purpose of this action is to give public notice of the agency's intent to submit an amendment to the Title XIX Medicaid State Plan to the Centers for Medicare and Medicaid Services (CMS) to implement mail order prescription service.

**Amending the Following Title XIX Medicaid State Plan Pages**

- Attachment 3.1-A, Page 5c Addendum (new page)
- Attachment 4.18-A, Page 3
- Attachment 4.18-C, Page 3
- Attachment 4.19-B, Page 14

**Summary of Provisions**

As a convenience, cost savings and quality improvement measure, the Delaware Medical Assistance Program (DMAP) will implement a statewide contracted mail order pharmacy program option. Medicaid may establish a contract with one or more mail order pharmacies to provide this service. DMAP will continue to reimburse local pharmacies for all covered drugs.

Medicaid clients statewide will be offered the option to have new and refill prescriptions dispensed by any willing Medicaid retail pharmacy provider or by the mail order contractor. The DMAP will contract with a mail order delivery service for prescription drugs; the service is optional and voluntary for eligible clients; drugs supplied through mail order are subject to special terms in addition to general pharmacy rules, for example, prior authorization; and, the contractor is reimbursed at a rate set by contract with the mail order pharmacy provider. In addition, this action allows the DMAP to dispense certain drugs in a ninety-day supply.

Effective July 1, 2005, the following provisions of this amendment shall be implemented:

(1) The contracted mail order pharmacy service is available as an option to all eligible DMAP clients statewide, subject to the:

- (a) Scope of the client's medical care program;
- (b) Availability of services from the contracted mail order provider; and
- (c) Special terms and conditions described in subsections (2) through (7) below.

(2) The mail order prescription service may not dispense medication in any quantity greater than authorized by the prescriber.

(3) Prescribed medications may be dispensed by the mail order pharmacy service within the following restrictions:

(a) Drugs available from mail order in no more than a ninety-day supply include:

(i) Preferred drugs identified by the Pharmaceutical and Therapeutics Committee (P & T Committee); and,

(ii) Drugs that do not require prior authorization or expedited prior authorization.

(b) All Medicaid state plan pharmacy limitations, restrictions and provider requirements continue to apply.

(4) All Medicaid program rules apply to the provider contract.

(5) The reimbursement rate for drugs dispensed through a contracted mail order delivery service will be the lowest of the following:

(a) The usual and customary charge to the public for the product;

(b) The Average Wholesale Price (AWP) minus 20% for Brand-name drugs and AWP minus 40% for Generic Drugs plus a \$1.50 dispensing fee;

(c) A State-specific maximum allowable cost (DMAC) and, in some cases, the federally defined Federal Upper Limit (FUL) prices plus a dispensing fee.

(6) There are no co-payment or any shipping and handling fees, if sent by U.S. mail, for delivery of the drug to the client's address or other location designated by the Medicaid client. The Point of Sale (POS) System will identify and exclude prescription drugs dispensed through the mail order pharmacy program.

(7) Eligible clients are not required to order and receive drugs through mail order. Clients may voluntarily choose to receive or not receive their prescriptions through a contracted mail order pharmacy provider and may discontinue the prescription by mail service at any time.

DSS will notify affected clients prior to implementation and provide clients and prescribers with instructions for submitting a prescription by mail order.

The proposed mail order pharmacy requirements are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit it to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by June 30, 2005.

**DEPARTMENT OF INSURANCE**

April 25, 2005

**CIRCULAR LETTER 01-05****18 Del.C. §3343****Health Benefit Coverage for Serious Mental Illness-Drug and Alcohol Dependency**

In 2001, the Delaware General Assembly passed and the Governor signed 73 **Del. Laws** c. 199 amending 18 **Del.C.** §3343. In particular, 18 **Del.C.** §3343(b)-(f) reads as follows:

(b) Coverage of serious mental illnesses and drug and alcohol dependencies. -- Carriers shall provide coverage for serious mental illnesses in all health benefit plans delivered or issued for delivery in this State. Subject to subsections (a) and (c) through (h) of this section, no carrier may issue for delivery, or deliver, in this State any health benefit plan containing terms that place a greater financial burden on an insured for covered services provided in the diagnosis and treatment of a serious mental illness than for covered services provided in the diagnosis and treatment of any other illness or disease covered by the health benefit plan. By way of example, such terms include deductibles, co-pays, monetary limits, co-insurance factors, limits in the numbers of visits, limits in the length of inpatient stays, durational limits or limits in the coverage of prescription medicines.

(c) Eligibility for coverage. -- A health benefit plan may condition coverage of services provided in the diagnosis and treatment of a serious mental illness on the further requirements that the service(s):

(1) Must be rendered by a mental health professional licensed or certified by the State Board of Licensing or in a mental health facility licensed by the State or substantially similar licensing entities in other states;

(2) Must be medically necessary; and

(3) Must be covered services subject to any administrative requirements of the health benefit plan.

A health benefit plan may further condition coverage of services provided in the diagnosis and treatment of a serious mental illness in the same manner and to the same extent as coverage for all other illnesses and diseases is conditioned. Such conditions may include, by way of example, and not by way of limitation, precertification and referral requirements.

(d) Benefit management. -- A carrier may, directly or by contract with another qualified entity, manage the benefit prescribed by subsection (b) of this section in order to limit coverage of services provided in the diagnosis and treatment of a serious mental illness to those services that

are deemed medically necessary. The management of benefits for serious mental illnesses may be by methods used for the management of benefits provided for other medical conditions, or may be by management methods unique to mental health benefits. Such may include, by way of example and not limitation; pre-admission screening, prior authorization of services, utilization review and the development and monitoring of treatment plans.

This section shall not be interpreted to require a carrier to employ the same benefit management procedures for serious mental illnesses that are employed for the management of other illnesses or diseases covered by the health benefit plan or to require parity or equivalence in the rate, or dollar value of, claims denied.

(e) Exclusions. -- This section shall not apply to plans or policies not within the definition of health benefit plan, as set out in subsection (a)(2) of this section.

(f) Out of network services. -- Where a health benefit plan provides benefits for the diagnosis and treatment of serious mental illnesses within a network of providers and where a beneficiary of the health benefit plan obtains services consisting of diagnosis and treatment of a serious mental illness outside of the network of providers, this section shall not apply. The health benefit plan may contain terms and conditions applicable to out of network services without reference to this section.

Section 13 of 73 **Del. Laws** c. 199 also provided that, with respect to the mandate for serious mental illness and drug and alcohol dependencies, "This act shall become effective upon the specific appropriation of funds for such purposes in the Annual Appropriations Act."

The purpose of this circular letter is to advise the companies providing health benefit coverage in the State of Delaware that the Delaware General Assembly is actively considering the appropriation of funds for the purposes set forth in 18 **Del.C.** §3343 and that the mandate contained in the statute will become immediately effective upon the passage of the appropriation unless a later effective date is provided for in the appropriations act or other legislation.

Matthew Denn, Insurance Commissioner

---

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
Board of Electrical Examiners**

**NOTICE OF PUBLIC HEARING**

The Delaware Board of Electrical Examiners in accordance with 24 Del.C. §1406(a)(1) has proposed changes to its rules and regulations to clarify the requirement for lettering on a vehicle, the renewal responsibility of a licensee, and the conditions for receiving a homeowner's permit.

A public hearing will be held at 9:00 a.m. on July 6, 2005 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

---

**DIVISION OF PROFESSIONAL REGULATION  
Board of Geologists**

**NOTICE OF PUBLIC HEARING**

The Delaware Board of Geologists in accordance with 24 Del.C. §3606 has proposed changes to Rule 7.0 of its rules and regulations to clarify that the ASBOG Fundamentals of Geology (FG) exam may be taken at any time after the applicant meets the educational requirements set forth in the statute. This rule clarifies that the ASBOG Fundamentals of Geology (FG) exam and ASBOG Practice of Geology (PG) exam may be taken at separate times allowing the Fundamentals exam to be taken immediately after graduation if an applicant so desires.

The public hearing originally scheduled for May 6, 2005 at 10:15 a.m. has been rescheduled to August 5, 2005 at 10:15 a.m. The public hearing will be held in the Delaware Development Office conference room on the 10<sup>th</sup> floor of the Carvel State Office Building, 820 N. French Street, Wilmington, 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 Geologists, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

---

**DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, June 16, 2005 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  
Electronic Benefit Transfer**

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/Division of Social Services (DHSS/DSS) is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to Electronic Benefit Transfer (EBT).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by June 30, 2005.

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 INSURANCE****NOTICE OF PUBLIC HEARING**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Tuesday, June 28, 2005 at 10:00 a.m. in the Consumer Services Hearing Room at the Delaware Department of Insurance, Rodney Building, 841 Silver Lake Blvd., Dover, Delaware. The hearing is to amending **Regulation 1310** relating to **Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services**.

The purpose for amending Regulation 1310 is to speed resolution of health care providers' claims and simplify the current process for resolution of those claims. The proposed amendments provide for a 30 day time period for insurers to process all clean claims and limits the number of times an insurer can request additional information from a provider. The proposed amendment also redefines a clean claim and changes the penalty provisions for violations of the regulation. The hearing officer shall also consider any non-substantive technical changes that may presented at the time of the hearing. This hearing will also consider changes to the proposed regulation resulting from the public hearing conducted by the Department on March 3, 2005.

The hearing will be conducted in accordance with 18 Del.C. §311 and the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday June 27, 2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

---

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT****NOTICE OF PUBLIC HEARING****Brief Synopsis of the Subject, Substance and Issues:**

The Department of Natural Resources and Environmental Control, The Department of Agriculture and the Delaware Nutrient management Commission are re-

proposing general permit regulations for concentrated animal feeding operations (CAFOs). The proposed CAFO regulations will amend section 9 (The General Permit Program) of the *Regulations Governing the Control of Water Pollution*. The Clean Water Act and recent revisions to federal regulations define a CAFO. The draft regulations were developed cooperatively with the involvement of the Department of Agriculture, Delaware Nutrient Management Commission, Department of Natural Resources and Environmental Control, Natural Resource Conservation Service and the University of Delaware.

**Notice Of Public Comment:**

The Department of Natural Resources and Environmental Control, the Department of Agriculture and the Delaware Nutrient Management Commission will hold public hearings on June 22, 2005 at 7 PM at the Delaware Department of Agriculture and June 23, 2005 at 6 PM at the Gumboro Fire Hall to receive comments on proposed amendments to the *Regulations Governing the Control of Water Pollution*. Comments should be sent in writing to Peder Hansen, Surface Water Discharges Section, Division of Water Resources, DNREC, 89 Kings Hwy., Dover, DE 19901.

---

---

# SUBSCRIBE TO THE OFFICIAL SOURCE OF COMPLETE INFORMATION ON DELAWARE STATE REGULATIONS

## THE DELAWARE REGISTER OF REGULATIONS



A single-source document for regulatory information, including proposed and adopted text of state regulations, all emergency regulations, Governors Executive Orders and Appointments, Attorney General Opinions, General Notices and notices of public hearings and open meetings of state agencies.

**PUBLISHED MONTHLY - \$135.00 PER YEAR**

-----  
YES, PLEASE ENTER MY SUBSCRIPTION FOR THE DELAWARE REGISTER AT \$135/YEAR.  
**You will be billed upon receipt of your order.** Subscription period runs from January to December. Mid-year subscriptions will be prorated at \$11 per issue. Back issues are available at \$12 per issue. Subscription fees are non refundable.

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_

PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

Please clip and return to: **REGISTRAR OF REGULATIONS  
LEGISLATIVE HALL, DOVER, DELAWARE 19903  
FAX: 302-739-3895**

---

---

# Visit The Delaware General Assembly On The Web!

<a href="#">Home</a> <a href="#">Bill Tracking</a> <a href="#">Contact Info</a> <a href="#">House</a> <a href="#">Joint</a> <a href="#">Committees</a> <a href="#">Legislative</a> <a href="#">Divisions</a> <a href="#">Legislative Info</a> <a href="#">Meeting</a> <a href="#">Schedules</a> <a href="#">Online</a> <a href="#">Publications</a> <a href="#">Regulations</a> <a href="#">Schedule</a> <a href="#">Senate</a> <a href="#">Virtual Tour</a> <a href="#">Who's my Legislator</a>  <b>Bill Search:</b> <input type="text" value="Session"/> <input type="text" value="Bill Type"/> <input type="text" value="No."/> OR	<b>143rd Delaware General Assembly</b> The Legislature is currently in session. <a href="#">Click here for Schedule</a>  <b>Senate</b> <a href="#">Agenda(s)</a> <a href="#">Committees</a> <a href="#">Members</a> <a href="#">Ready List</a> <a href="#">...more items</a>  <b>House</b> <a href="#">Agenda(s)</a> <a href="#">Committees</a> <a href="#">Members</a> <a href="#">Ready List</a> <a href="#">...more items</a>  <b>Items of Interest / Quick Links</b> <a href="#">Legislative Process</a> <a href="#">Grants-In-Aid Application</a> <a href="#">Delaware Code</a> <a href="#">Admin Code</a> <a href="#">Regulations</a> <a href="#">CSG</a> <a href="#">NCSL</a> <a href="#">Current Appropriation Bills</a>  <b>What is Happening Today?</b>  Legislature is in Session	<b>WHAT'S NEW</b>  <b>SB 6</b> Status: Out of Committee TO AMEND CHAPTER 1 VOLUME 57, LAWS OF AS AMENDED, ENITIT E  <b>COMMITTEE HEARINGS</b>  <a href="#">House Business/Corporations/C</a> <a href="#">House Majority Hearing R</a> 01/27/2005 12:00:00 PM  <b>myLIS</b> <a href="#">Register</a> <a href="#">Login</a>  <b>LEGISLATIVE</b> <a href="#">Actions Notice</a> <a href="#">Subscribe/Manage</a>  <b>Find my Legislator</b> <input type="text"/>
--	---	---

## The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access to the Delaware Code
- Access to the Delaware Register of Regulations
- Information on the legislative process
- Various reports and publications

The General Assembly Website is located at:

**<http://www.legis.state.de.us>**



# LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_ FAX \_\_\_\_\_

PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

Please check the specific service(s) to which you wish to subscribe :

<u>SERVICES</u>	<u>ANNUAL COST</u>
<b>One copy of all legislation introduced:</b>	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$110.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$850.00
<b>One copy of all legislation signed by the Governor:</b>	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$215.00
<b>One copy of House and Senate calendars:</b>	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$110.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$850.00
<b>One copy of all Governor's Advisories:</b>	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$30.00
<b>Daily Legislative Agendas and weekly Standing Committee Notices:</b>	
<input type="checkbox"/> Via Fax - - - - -	\$135.00

\* Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.

If you have any questions about our subscription services, please contact the Division of Research by dialing, toll-free, (800) 282-8545 (in state) or via E-Mail at [jeffrey.hague@state.de.us](mailto:jeffrey.hague@state.de.us). Please dial (302) 744-4114 if you are calling from outside Delaware.

Please return this order form to the Division of Research at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to (302) 739-3895 as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.

---

---

# ACCESS THE DELAWARE CODE ON-LINE!



## Online Delaware Code

- [The Delaware Constitution](#)
- [Title 1 - General Provisions](#)
- [Title 2 - Transportation](#)
- [Title 3 - Agriculture](#)
- [Title 4 - Alcoholic Liquors](#)
- [Title 5 - Banking](#)
- [Title 6 - Commerce and Trade](#)
- [Title 7 - Conservation](#)
- [Title 8 - Corporations](#)
- [Title 9 - Counties](#)
- [Title 10 - Courts and Judicial Procedures](#)
- [Title 11 - Crimes and Criminal Procedure](#)
- [Title 12 - Decedents' Estates and Fiduciary Relations](#)
- [Title 13 - Domestic Relations](#)
- [Title 14 - Education](#)
- [Title 15 - Elections](#)
- [Title 16 - Health and Safety](#)
- [Title 17 - Highways](#)
- [Title 18 - Insurance Code](#)
- [Title 19 - Labor](#)
- [Title 20 - Military and Civil Defense](#)
- [Title 21 - Motor Vehicles](#)
- [Title 22 - Municipalities](#)
- [Title 23 - Navigation and Waters](#)
- [Title 24 - Professions and Occupations](#)
- [Title 25 - Property](#)
- [Title 26 - Public Utilities](#)
- [Title 27 - Religion](#)
- [Title 28 - Sports and Amusements](#)
- [Title 29 - State Government](#)
- [Title 30 - State Taxes](#)
- [Title 31 - Welfare](#)

Find  in the section label

- Up-to-date version of the Code reflecting recent legislative enactments
- Comprehensive full text search capabilities.

**Visit the Delaware Code On-Line at:**

**<http://www.delcode.state.de.us/>**