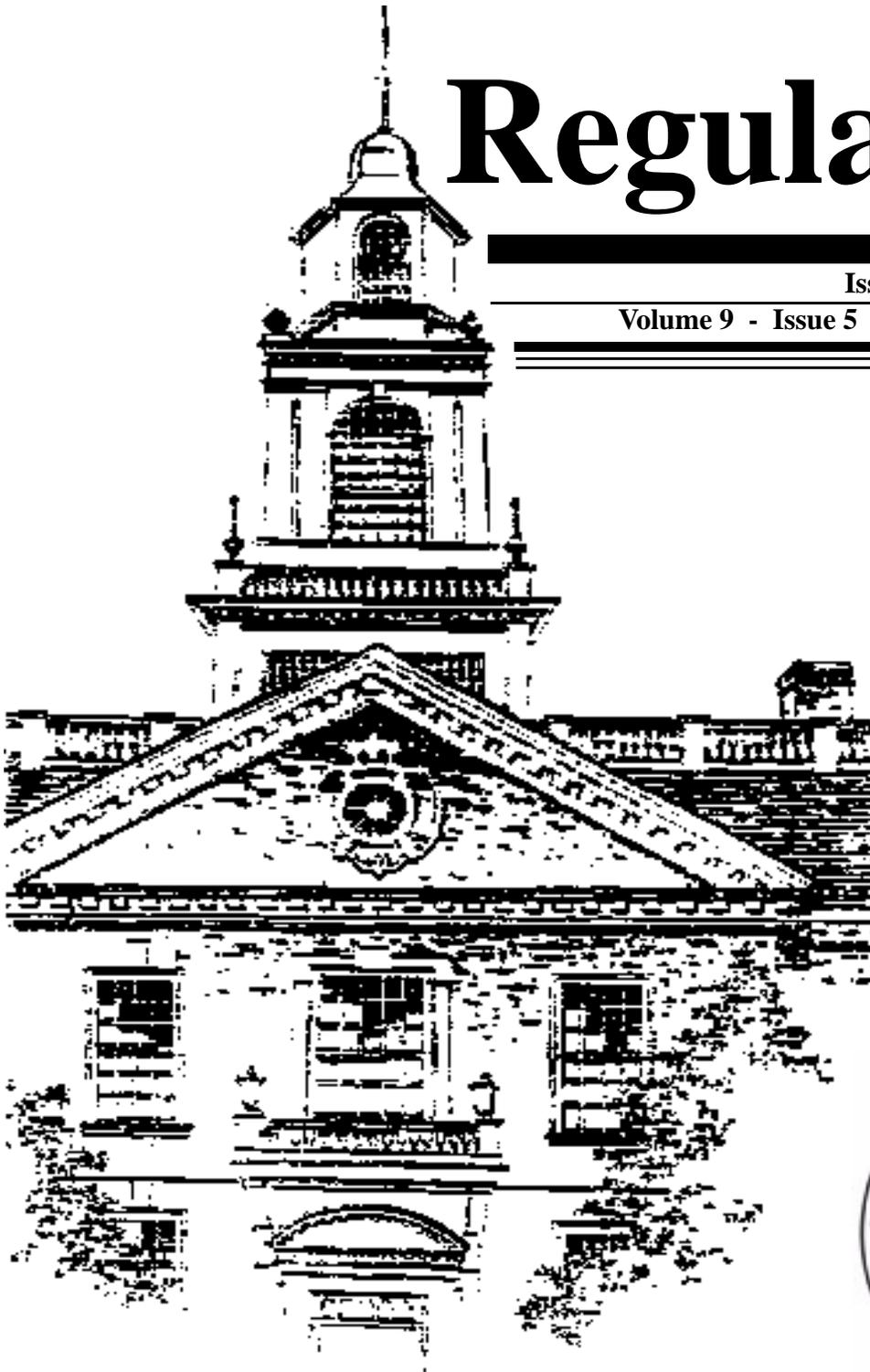

Delaware Register of Regulations

Issue Date: November 1, 2005

Volume 9 - Issue 5

Pages 664 -828



IN THIS ISSUE:

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Proposed

Final

Governor

Executive Orders

Calendar of Events &

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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 October 15, 2005.

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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*.

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ISSUE DATE	CLOSING DATE	CLOSING TIME
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.

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Symbol Key

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

Proposed Regulations

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

**DELAWARE RIVER BASIN
COMMISSION**

PUBLIC NOTICE

**Proposed Amendment to the Basin Regulations--Water
Supply Charges and Comprehensive Plan Relating to
Certificates of Entitlement**

Summary: The Delaware River Basin Commission ("Commission" or "DRBC") will hold a public hearing to receive comments on proposed amendments to the Commission's *Basin Regulations - Water Supply Charges and Comprehensive Plan* concerning certificates of entitlement. No changes in the substance or administration of the rule are proposed. The purpose of the proposed amendments is to clarify the language of the rule to conform to the Commission's past decisions and current practices in order to provide better notice to users as to how the Commission is implementing its entitlements program and to avoid future controversy.

Background. The Delaware River Basin Compact ("Compact"), the 1961 statute that created the DRBC and defined its powers, authorizes the Commission to charge for the use of facilities that it may own or operate and for products and services rendered thereby. Compact, §3.7. Congress limited this authority by providing that the Commission cannot charge for water withdrawals or

diversions that could lawfully have been made without charge as of the effective date of the Compact. Id., § 15.1(b).

By Resolution No. 64-16A in 1964 the Commission authorized a water charging program. It provided for the revenues generated by the program to be used for repayment of the nonfederal share of the investment cost of water supply storage facilities associated with federal projects within the Basin. In anticipation of Commission investment in storage at the Beltzville Lake and Blue Marsh Reservoir projects in Pennsylvania, the Commission by Resolution No. 1971-4 defined, among other things, the means by which it would establish water charging rates. Consistent with Section 15.1 (b) of the Compact, Resolution No. 1971-4 provided that charges would be applicable only to the amount of water withdrawn in excess of the amount taken or legally entitled to be taken by an entity during the preceding year. By Resolution No. 74-6, the Commission instituted a system of water supply charges for surface water withdrawals within the Basin. That resolution provided for the issuance of certificates of entitlement to then-current water users, establishing the amount of water each could lawfully take from the surface waters of the Basin without charge, consistent with Section 15.1(b) of the Compact. The resolution provided that a certificate of entitlement was not transferable, except under limited circumstances set forth in enumerated exceptions.

Because entitlements treat users that commenced water withdrawals before the enactment of the Compact more favorably than users who commenced water withdrawals later, even though all users benefit equally from the facilities

financed by water supply charges, courts and the Commission have emphasized the need to eliminate entitlements over time. Both the Commission and the courts have construed narrowly the exceptions to the rule that entitlements are not transferable, and the Commission has in its decisions consistently held that changes in ownership or control would extinguish a certificate. However, the language of the regulations has never explicitly defined "changes in ownership or control." As a consequence, in the decisions that the Commission has been asked to make in its adjudicatory capacity and that the courts have subsequently been asked to decide, the matter of what constitutes a change of ownership or control has been controversial.

In 1994, in response to a ruling by the Third Circuit in Texaco Refining and Marketing, Inc. v. DRBC, 824 F. Supp. 500 (D.Del. 1993), *aff'd.*, No. 93-7475 (3d Cir. June 24, 1994) (*per curiam*), the Commission adopted Resolution No. 94-20. That resolution incorporated an explicit "ownership and/or control" test and eliminated the merger exception included in the Commission's regulations at the time. In addition, the exception for corporate reorganizations embodied in Section 5.2.1.F.2 of the Water Charging Regulations was amended to apply only when the reorganization "does not affect ownership and/or control."

In spite of the 1994 amendment, some members of the Basin community have continued to interpret the language of the rule in a manner contrary to the Commission's consistent interpretation. To avoid further controversy, the Commission proposes a more thorough revision of the language, intended to remove any ambiguity.

Key Provisions. In addition to defining "change in ownership and/or control" with much greater specificity, the proposed revisions also make clear that a merger at any tier in a corporate organization will extinguish a certificate held by a subsidiary in the same way as if the merger had occurred at the subsidiary level. Although the Commission has interpreted its rule this way in the past, the rules have never been explicit on this point.

The proposed amendments preserve and clarify the corporate reorganization exception contained in the current regulation. The Commission traditionally has not extinguished an entitlement in the case of an internal reorganization, and it does not propose a change in this practice.

The proposed amendments also preserve the existing exception for agricultural uses. Historically, agriculture has been treated differently than other uses. For purposes other than agriculture, an entitlement is issued to a user and would not be transferable to a different user, even if the use remained the same. In the case of agriculture, however, an entitlement effectively runs with the land, as long as the land

remains in agriculture. The proposed amendments provide that an entitlement can be reissued to the successor of a holder of a certificate issued for agricultural water use, provided that the successor demonstrates that the water will continue to be used for agricultural irrigation purposes.

Dates: The public hearing on the proposed rule change will be held on Wednesday, December 7, 2005 at approximately 2:30 P.M. as part of the Commission's regularly scheduled business meeting. The time is approximate because the Commission will conduct hearings on several dockets (project approvals) beforehand, beginning at approximately 1:30 P.M. The hearing will continue until all those who wish to testify are afforded an opportunity to do so. In the event that all those who wish to testify cannot be heard on December 7, the hearing will be continued at a date, time and location to be announced by the Commission Chair that day. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609-883-9500, extension 224. Written comments will be accepted through Tuesday, January 10, 2006.

Addresses: The public hearing will be held in the Goddard Room at the Commission's office building, located at 25 State Police Drive in West Trenton, New Jersey. Directions to the Commission's office building are posted on the Commission's website, <http://www.drbc.net>. Written comments should be addressed to the Commission Secretary as follows: by email to paula.schmitt@drbc.state.nj.us; by fax to the Commission Secretary - 609-883-9522; by U.S. Mail to the Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to the Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

Additional Information, Contact: The full text of the proposed amendment and the text of the current regulation are posted on the Commission's website, <http://www.drbc.net>. Please contact Commission Secretary Pamela Bush at 609-883-9500 ext. 203 with questions about the proposed rule or the rulemaking process.

Pamela M. Bush, Esquire
Commission Secretary and Assistant General Counsel
October 12, 2005

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 225

PUBLIC NOTICE
**Education Impact Analysis Pursuant To
14 Del.C. Section 122(d)**
225 Prohibition of Discrimination
A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

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

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the prohibition of discrimination not student achievement issues.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses equitable education issues.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation will help to ensure that all students' legal rights are respected.

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

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

administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

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

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

225 Prohibition of Discrimination
1.0 Prohibition of Discrimination

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

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

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 525

PUBLIC NOTICE**Education Impact Analysis Pursuant To
14 Del.C. Section 122(d)****525 Requirements for Career-Technical Education
Programs****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 525 Requirements for Career-Technical Education Programs in order to add the phrase “or under unique circumstances as approved by the Department of Education” to 3.0 Cooperative Education and to 4.0 Diversified Occupations Programs. The word “quarterly” has also been added to 4.1 under Diversified Education Programs to clarify the number of visits the teacher or counselor must make and “Relative Caregiver” has been added to parent or guardian in 3.3 and 4.3. The Name of the Delaware Advisory Council on Career and Technical Education has also been corrected in 2.14.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses career and technical programs and improving student achievement is an important consideration in the development of these programs.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses career and technical programs and equity issues are an important consideration in the development of these programs.

3. Will the amended regulation help to ensure that all students’ health and safety are adequately protected? The amended regulation addresses career and technical programs and students’ health and safety are an important part of these programs.

4. Will the amended regulation help to ensure that all students’ legal rights are respected? The amended regulation addresses career and technical programs and students’ legal

rights are an important consideration in the development of these programs.

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

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

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

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

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

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

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

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

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

2.0 Requirements for all local School Districts and Charter Schools that Offer State Approved Career-Technical Education Programs

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

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

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

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

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

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

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

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

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

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

2.9.1 Business Professionals of America (BPA)

2.9.2 Technology Student Association (TSA)

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

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

2.9.5 The National FFA Organization

2.9.6 Skills USA/VICA

2.9.7 The Delaware Career Association (DCA)

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

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

2.12 Establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from

having the opportunity to learn about, enroll in and complete a Career-Technical Education Program in a career-technical school district.

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

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

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

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

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

3.0 Cooperative Education Programs.

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

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

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

3.3 In order to qualify for Career-Technical Education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is

signed by a parent ~~or guardian~~, guardian or Relative Caregiver the employer, the student and a representative of the district. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.

3.4 For an IDEA eligible student, the student's IEP team, in consultation with the Career Technical Education Teacher Coordinator, may authorize the student's participation in this program irrespective of lack of senior year status if necessary to provide the student a free, appropriate public education.

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

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

4.0 Diversified Occupations Programs.

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

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

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

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

with State Department of Labor regulations shall also be on file.

4.4 For an IDEA eligible student, the student's IEP team, in consultation with the Career Technical Education Teacher Coordinator, may authorize the student's participation in this program irrespective of lack of junior or senior year status if necessary to provide the student a free, appropriate public education.

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

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code,
Sections 1250-1252 (14 **Del.C.** §§1250-1252)

14 DE Admin. Code 310

PUBLIC NOTICE

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

310 Certification Administrative Supervisor/Reading Coordinator

A. Type of Regulatory Action Requested
Repeal

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to repeal 14 **DE Admin. Code** §310 Certification Administrative Supervisor/Reading Coordinator. It is necessary to repeal this regulation as the requirements for administrative supervisor are incorporated into 14 **DE Admin. Code** §1531, thereby making regulation §310 unnecessary.

~~**310 Certification Administrative Supervisor/Reading
Coordinator**~~

Effective July 1, 1993

~~**1.0** The following shall be required for the Standard License for assignment as a district reading supervisor/coordinator or state supervisor of reading.~~

~~**1.1** Degree required~~

~~**1.1.1** Master's degree (or Master's equivalent) from an accredited college and;~~

~~**1.2** Experience~~

1.2.1 Minimum of three years of successful teaching experience with at least two years in the classroom and;

1.3 Specialized Professional Preparation

1.3.1 Eligible for the Reading Specialist License and;

1.3.2 A three semester hour graduate level course in each of the following:

1.3.2.1 Educational Supervision

1.3.2.2 Technology in Education

1.3.2.3 Curriculum Development, and

1.3.3 Nine graduate semester hours in specialized reading courses chosen from the following:

1.3.3.1 Children's and Adolescent Literature 3 semester hours

1.3.3.2 Emergent Literacy 3 semester hours

1.3.3.3 Teaching English as a Second Language 3 semester hours

1.3.3.4 Seminar in Reading Research, and 3 semester hours

1.3.4 Six additional semester hours of graduate level courses chosen from the following:

1.3.4.1 Educational Assessment 3 semester hours

1.3.4.2 Legal Issues in Education 3 semester hours

1.3.4.3 Leadership in Education 3 semester hours

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district to a person who meets the requirements listed below, and who is employed as a Reading Coordinator/Supervisor to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Bachelor's degree from an accredited college; and

2.1.2 Eligible for the Standard Reading Specialist License and;

2.1.3 Minimum of three years of successful teaching experience with at least two years in the classroom and;

2.1.4 Six additional semester hours in graduate level courses and;

2.1.5 Three semester hours in graduate level reading courses in 1.3.3.

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

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE

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

**1544 Art Teacher Elementary
1545 Art Teacher Secondary
1549 Music Teacher Elementary
1550 Music Teacher Secondary
1552 Physical Education Teacher Elementary
1553 Physical Education Teacher Secondary**

A. Type of Regulatory Action Requested

Repeal

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to repeal 14 DE Admin. Code 1544, 1545, 1549, 1550, 1552, and 1553. It is necessary to repeal these regulations as as comprehensive K-12 regulations exist in all of the affected content areas. PRAXIS™ II tests in these content areas are comprehensive in nature, addressing grades kindergarten through 12. Passage of the appropriate PRAXIS™ II test would qualify a candidate for all levels of certification. In a continuing effort to reduce the number and complexity of regulations, it is necessary to repeal the above regulations, as they are unnecessary and redundant.

1544 Art Teacher Elementary

1-0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Art Teacher — Elementary (required in grades K-6 in an elementary school and valid in grades 5-8 in a middle level school):

7 DE Reg. 775 (12/1/03)

2-0 Definitions

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

"Department" means the Delaware Department of Education.

"License" means a credential which authorizes the

holder to engage in the practice for which the license is issued.

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

7 DE Reg. 775 (12/1/03)

3.0 In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Standard Certificate as an Art Teacher Elementary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree from a regionally accredited college or university and;

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in Elementary Art or;

3.2.2 Minimum of 24 semester hours to include Human Development, Methods of Teaching Art/Elementary Level, Art for Special Education, Effective Teaching Strategies, Multicultural Education, and;

3.3 Specific Teaching Field

3.3.1 Major in Art or;

3.3.2 Completion of an approved teacher education program in Elementary Art or;

3.3.3 Minimum of 36 semester hours including a minimum of two courses in each of the following areas: Drawing, Painting, Design, Art History Aesthetics, Graphics, Printmaking, and Related Processes, Three Dimensional Arts and Crafts including 1 course in Ceramics.

7 DE Reg. 775 (12/1/03)

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as an Art Teacher Elementary after that date must comply with the requirements set forth in 14 ~~Del.C.~~ §1516.

7 DE Reg. 775 (12/1/03)

1545 Art Teacher Secondary

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for Art Teacher Secondary (required in grades 9-12 and valid in grades 5-8 in a middle-level school).

7 DE Reg. 775 (12/1/03)

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

7 DE Reg. 775 (12/1/03)

3.0 In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Standard Certificate as an Art Teacher Secondary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree from a regionally accredited college or university and;

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in Secondary Art or;

3.2.2 Minimum of 24 semester hours to include Human Development, Methods of Teaching Art/Secondary Level, Art for Special Education, Effective Teaching Strategies, Multicultural Education, and;

3.3 Specific Teaching Field

3.3.1 Major in Art or;

3.3.2 Completion of an approved teacher education program in Secondary Art or;

3.3.3 Minimum of 36 semester hours including a minimum of two courses in each of the following areas: Drawing, Painting, Design, Art History Aesthetics, Graphics, Printmaking, and Related Processes, and Three Dimensional Arts and Crafts, including 1 course in Ceramics.

7 DE Reg. 775 (12/1/03)

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as an Art Teacher Secondary after that date must comply with the requirements set forth in 14 ~~Del.C.~~ §1516.

7 DE Reg. 775 (12/1/03)

1549 Music Teacher Elementary

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for Music Teacher Elementary (Required for grades K-6 and valid in grades 5-8 in a middle level school).

~~7 DE Reg. 775 (12/1/03)~~

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

~~7 DE Reg. 775 (12/1/03)~~

3.0 In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Standard Certificate as a Music Teacher Elementary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree from a regionally accredited college or university and;

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in Elementary Music or;

3.2.2 Minimum of 24 semester hours to include Human Development, Methods of Teaching Music/Elementary Level, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and;

3.3 Specific Teaching Field

3.3.1 Major in Music or;

3.3.2 Completion of an approved teacher education program in Elementary Music or;

3.3.3 Minimum of 36 semester hours including course work in Music Theory, Music Literature, and Musical Performance.

~~7 DE Reg. 775 (12/1/03)~~

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Music Teacher Elementary after that date must comply with the requirements set forth in 14 ~~Del.C.~~ §1516.

~~7 DE Reg. 775 (12/1/03)~~

1550 Music Teacher Secondary

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for Music Teacher Secondary (Required for grades 9-12 and valid in grades 5-8 in a middle level school).

~~7 DE Reg. 775 (12/1/03)~~

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

~~7 DE Reg. 775 (12/1/03)~~

3.0 In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Standard Certificate as a Music Teacher Secondary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree from a regionally accredited college or university and;

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in Secondary Music or;

3.2.2 Minimum of 24 semester hours to include Human Development, Methods of Teaching Music/Secondary Level, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and;

3.2.3 Specific Teaching Field

3.2.3.1 Major in Music or;

3.2.3.2 Completion of an approved teacher education program in Secondary Music or;

3.2.3.3 Minimum of 36 semester hours including course work in Music Theory, Music Literature, and Musical Performance.

~~7 DE Reg. 775 (12/1/03)~~

~~4.0~~ This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Music Teacher Secondary after that date must comply with the requirements set forth in 14 ~~Del.C.~~ §1516.

~~7 DE Reg. 775 (12/1/03)~~

1552 Physical Education Teacher Elementary

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for Physical Education Teacher Elementary (Required for grades K-6 in an elementary school and valid in grades 7-8 in a middle level school).

~~7 DE Reg. 775 (12/1/03)~~

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

~~7 DE Reg. 775 (12/1/03)~~

~~3.0~~ In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Standard Certificate as a Physical Education Teacher Elementary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree from a regionally accredited college or university and;

3.2 Professional Education

3.2.1 Completion of a program in teacher education in Physical Education (must include K-4) or;

3.2.2 Minimum of 24 semester hours to include Human Development, Methods of Teaching Physical Education/Elementary Level, and Methods of Teaching Physical Education at one of the following levels: 5-8 or 9-12; Special/Adapted Physical Education, Effective Teaching Strategies, Multicultural Education, and;

3.3 Specific Teaching Field

3.3.1 Major in Physical Education or;

3.3.2 Completion of an approved teacher preparation program in Physical Education, K-4 or;

3.3.3 Minimum of 45 semester hours including course work in the following areas of Physical Education:

3.3.3.1 Foundations and Theory (15 semester hours): History, Philosophy, Administration, Program Planning, Concepts of Play, Coaching Strategy and Techniques, Evaluation

3.3.3.2 Movement Experience* (18 semester hours) Individual Sports, Dual Sports, Team Sports, Elementary Rhythms/Dance, Aquatics, Low Organization or Cooperation Games, Movement/Tumbling, Gymnastics Apparatus, Recreation and Leisure Activities, Health-related Fitness (*Must include two courses in Elementary School Physical Education Activities)

3.3.3.3 Science (12 semester hours): Anatomical, Physiological, Biomechanical, Kinesiological, Exercise Performance, Technical Applications (including computers)

~~7 DE Reg. 775 (12/1/03)~~

~~4.0~~ This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Physical Education Teacher Elementary after that date must comply with the requirements set forth in 14 ~~Del.C.~~ §1516.

~~7 DE Reg. 775 (12/1/03)~~

1553 Physical Education Teacher

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for Physical Education Teacher Secondary (Required in grades 9-12 and valid in grades 5-8 in a middle level school).

~~7 DE Reg. 775 (12/1/03)~~

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

~~7 DE Reg. 775 (12/1/03)~~

~~3.0~~ In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Standard Certificate as a Physical Education Teacher Secondary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

~~3.1~~ Bachelor's degree from a regionally accredited college or university and;

~~3.2~~ Professional Education

~~3.2.1~~ Completion of a teacher preparation program in Physical Education (must include 7-12) or;

~~3.2.2~~ Minimum of 24 semester hours to include Human Development, Methods of Teaching Physical Education/Secondary Level, Special/Adapted Physical Education, Effective Teaching Strategies, Multicultural Education, and;

~~3.3~~ Specific Teaching Field

~~3.3.1~~ Major in Physical Education or;

~~3.3.2~~ Completion of an approved teacher preparation program in Physical Education, 9-12 or;

~~3.3.3~~ Minimum of 45 semester hours including course work in the following areas of Physical Education:

~~3.3.3.1~~ Foundations and Theory (15 semester hours): History, Philosophy, Administration, Program Planning, Concepts of Play, Coaching Strategy and Techniques, Evaluation.

~~3.3.3.2~~ Movement Experience* (18 semester hours): Individual Sports, Dual Sports, Team Sports, Elementary Rhythms/Dance, Aquatics, Low Organization or Cooperation Games, Basic Movement/Tumbling, Gymnastics Apparatus, Recreation and Leisure Activities, Health-related Fitness. (Must include two courses in Elementary School Physical Education Activities)

~~3.3.3.3~~ Science (12 semester hours): Anatomical, Physiological, Biomechanical, Kinesiological, Exercise Performance, Technical Applications (including computers):

~~7-DE Reg. 775 (12/1/03)~~

~~4.0~~ This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Physical Education Teacher Secondary after that date must comply with the requirements set forth in 14 ~~Del.C.~~ §1516.

~~7-DE Reg. 775 (12/1/03)~~

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Estate Recovery Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) related to the Estate Recovery Program. Additionally, this action is technical in nature to allow for updated state plan pre print pages. This technical amendment to clarify the plan has no budget impact.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by November 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 Amendment

Statutory Authority

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

Amending the Following Updated Pre Print State Plan Pages

- Pages 53, 53a, 53b, 53c, 53d, 53e

- Attachment 4.17-A, Pages 1, 2, 3, and 4

Background

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

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

States are also required to establish procedures, under standards specified by the Secretary for waiving estate recovery when recovery would cause an undue hardship.

Summary of Proposed Amendment

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

The following proposed changes are effective January 1, 2006:

- DSSM 20310.1.1, *Intent to Return and DSSM 20620.3, Community Spouse Income Allowance/Home Maintenance Disregard*: Amends the length of time DMMA will protect the \$75.00 per month for home maintenance from 6 months to 2 months.
- DSSM 20500.5.2, *Lien Recovery Exception*: Amends the lien recovery exception provision for a sibling lawfully residing in the home of the recipient from two (2) years (24 months) to one (1) year (12 months) immediately prior to the recipient's admission for long term care services.
- DSSM 20500.6.1, *Exceptions to the Lien Policy*: Amends the client's intent to return home provision

from two (2) years to within sixty (60) days of their admission date to a facility. If the stay in the facility is sixty (60) days or more, DHSS will place a lien on the property.

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

DSS PROPOSED REGULATION #05-64a**REVISIONS:****53**

Revision: HCFA-PM-95-3 (MB)
May 1995

State Plan Under Title XIX Of The Social Security Act**STATE/TERRITORY: DELAWARE****Citation**

42 CFR 433.36(c)
1902(a)(18) and
1917(a) and (b) of
the Act

4.17 Liens and Adjustments or Recoveries

(a) Liens

___The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

The State complies with the requirements of section 1917(a) of the Act and regulations at 42 CFR 433.36 (c)-(g) with respect to any lien imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.

___The State imposed liens on real property on account of benefits incorrectly paid.

X *The State imposes TEFRA liens 1917(a) (1) (B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR or other medical institution, where the individual is required to contribute toward the cost of institutional care all

PROPOSED REGULATIONS

but a minimal amount of income required for personal needs.

The procedure by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A. (NOTE: If the State indicates in its State plan that it is imposing TEFRA liens, the State is required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures, and due process requirements.)

___ The State imposes liens on both real and personal property of an individual after the individual's death.

*The State only imposes TEFRA liens on real property of inpatient long term care residents age 55 and over under OBRA 93.

53a

Revision: HCFA-PM-95-3 (MB)
May 1995

State Plan Under Title XIX Of The Social Security Act

STATE/TERRITORY: DELAWARE

(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36 (h)-(l).

(1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.

___ Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.

(2) ___ The State determines "permanent institutional status" of the individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917(a)(1)(B) (even if it does not impose those liens.

(3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services.

X In addition to adjustment of recovery of payments for services listed above, payments are adjusted or recovered for all services under the State Plan.

53b

Revision: HCFA-PM-95-3 (MB)
May 1995

State Plan Under Title XIX Of The Social Security Act

STATE/TERRITORY: DELAWARE

(4) N/A The State disregards assets or resources for individuals who receive or are entitled to receive benefits under a long term care insurance policy as provided for in Supplement 8b to Attachment 2.6-A.

N/A The State adjusts or recovers from the individual's estate on account of all medical assistance paid for nursing facility and other long-term care services provided on behalf of the individual

(States other than California, Connecticut, Indiana, Iowa, and New York, which provide long-term care insurance policy-based asset or resource disregard, must select this entry. These five States may either check this entry or one of the following entries).

N/A The State does not adjust or recover from the individual's estate on account of any medical assistance paid for nursing facility or other long-term care services provided on behalf of the individual.

N/A The State adjusts or recovers from the assets or resources on account of medical assistance paid for nursing facility or other long-term care services provided on behalf of the individual to the extent described below:

53c

Revision: HCFA-PM-95-3 (MB)
May 1995

State Plan Under Title XIX Of The Social Security Act**STATE/TERRITORY: DELAWARE****(c) Adjustments or Recoveries: Limitations**

The State complies with the requirements of Section 1917(b)(2) of the Act and regulations at 42 CFR §422.36 (h) - (i) and the State Probate law.

(1) Adjustment or recovery of medical assistance correctly paid will be made only after the death of the individual's surviving spouse, and only when the individual has no surviving child who is under age 21, blind, or disabled.

(2) With respect to liens on the home

of any individual who the State determines is permanently institutionalized and who must as a condition of receiving services in the institution apply their income to the cost of care; the State will not seek adjustment or recovery of medical assistance paid on behalf of the individual until such time as none of the following individuals are residing in the individual's home:

(a) a sibling of the individual (who was residing in the individual's home for at least one year immediately before the date the individual was institutionalized).

(b) a child of the individual (who was residing in the individual's home for at least two years immediately before the date the individual was institutionalized) who established to the satisfaction of the State that the care the child provided permitted the individual to reside at home rather than become institutionalized.

(3) No money payments under another program are reduced as a means of adjusting or recovering Medicaid claims incorrectly paid.

53d

Revision: HCFA-PM-95-3 (MB)
May 1995

State Plan Under Title XIX Of The Social Security Act**STATE/TERRITORY: DELAWARE****(d) Attachment 4.17-A**

(1) Specifies the procedures for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home.

The description of the procedure meets the requirements of 42 CFR 433.36(d).

(2) Specifies the criteria by which a son or daughter can establish that he or she has been providing care, as specified under 42 CFR 433.36(f).

(3) Defines the following terms:

- Estate (at minimum, estate as defined under State Probate law.) Except for the grandfathered States listed in Section 4.17(b)(3), if the State provides a disregard for assets or resources for any individual who received or is entitled to receive benefits under a long-term care insurance policy, the definition of estate must include all real, personal property and assets of an individual (including any property or assets in which the individual had any legal title or interest at the time of death to the extent of the interest and also including the assets conveyed through devices such a joint tenancy, life estate, living trust, or other arrangement).
- individual's home,
- equity interest in the home,
- residing in the home for at least 1 or 2 years,
- on a continuous basis,
- discharge from the medical institution and return home, and
- lawfully residing.

53e

Revision: HCFA-PM-95-3 (MB)
May 1995

State Plan Under Title XIX Of The Social Security Act

STATE/TERRITORY: DELAWARE

(4) Describes the standards and procedures for waiving estate recovery when it would cause undue

hardship.

(5) Defines when adjustment or recovery is not cost-effective. Defines cost effective and includes methodology or thresholds used to determine cost-effectiveness.

(6) Describes collection procedures. Includes advance notice requirements, specifies the method for applying for a waiver, hearing and appeals procedures, and the time frames involved.

DSS PROPOSED REGULATION #05-64b

REVISIONS:

ATTACHMENT 4.17-1
Page 1

State Plan Under Title XIX Of The Social Security Act

STATE/TERRITORY: DELAWARE

Liens and Adjustments or Recoveries

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

The process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home is made based on the individual's medical condition. The following is considered in making the determination, that it is reasonable that the client may return home within sixty (60) days:

A written statement or DMMA Form 407 completed and signed by the attending physician indicating that it is reasonable to expect the client will be able to return home within sixty (60) days of their admission date. Any lien placed on the real property of an institutionalized client will be released when that client is discharged to return to live in the home on the property.

2. The following criteria are used for establishing that permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR§433.36(f):

Delaware Health and Social Services (DHSS) shall not seek recovery in the case of a lien on an individual's

home when there is a son or daughter over the age of twenty-one (21) lawfully residing in the home of the client whom:

- a) has resided there for a period of at least two (2) years immediately prior to the date of the client's admission to a long-term care service;
- b) has lawfully resided there on a continuous basis since that time; and
- c) can establish to the Department's satisfaction that he or she provided the care and assistance that permitted the recipient to reside in the home rather than in a long-term care facility.

The son or daughter may demonstrate having rendered care or assistance that resulted in a delay in the need for institutionalized care by means of a written statement from an institutionalized individual's attending medical attending physician or another person or persons who have personal knowledge of the living circumstances of the individual. The written statement must indicate that the individual was able to remain in his or her home because of the care provided by the child. A written statement only from the child will not satisfy this requirement.

NOTE: DHSS can seek recovery from other assets in the estate.

3. The State defines the terms below as follows:

- Estate means all real property, as well as all personal property that constitutes assets of the individual's estate as described in Title 12 of the **Delaware Code**, Chapter 19.
- Individual's home means his or her principal place of residence.
- Equity interest in the home means a formal legal interest such as mortgage or loan.
- Residing in the home for at least one (1) or two (2) years on a continuous basis means using the home as the principal place of residence.
- Discharge from the medical institution and return home means the release of a person from a long-term care facility for the purpose of returning to the home for permanent residence or discontinuance of home and community-based services.
- Lawfully residing means residing in the home with the permission of the owner or, if under guardianship, the owner's legal guardian.

4. The State defines undue hardship as follows:

In cases of undue hardship, recovery may be waived for the period of the hardship. Undue hardship exists for certain individuals who have resided in the home of the DHSS long-term care recipient on a continuous basis for a period of at least two (2) years twenty-four consecutive months) immediately prior to the date of the DHSS long-

term care recipient's admission to DHSS long-term care services.

Individuals eligible for recovery waiver are limited to children, grandchildren, parents, or siblings of the DHSS long-term care recipient who meet one of the following conditions:

Receive any Federal or State funded assistance for living expenses (examples: SSI, AFDC, VA Aid and Attendance) **and** have no other home to which they can return.

OR

Have total family income less than or equal to 200% of the current monthly Federal Poverty limit, **and** have total family resources that can be converted to cash less than or equal to \$3,000, including any real property that they own.

OR

DHSS will also not recover if the real property that is held in ownership with children, grandchildren, siblings or parents constitutes a business that contributes to the livelihood of that other individual or his/her dependents or heirs.

In cases of undue hardship, liens against the real property of DHSS long-term care recipients shall be filed, but a moratorium established on the lien. The moratorium on imposing the lien on the home will exist as long as the hardship condition continues to be met and as long as the above-described individuals reside in the DHSS long-term care recipient's home on a continuous basis.

NOTE: The waiver for recovery will exist as long as one of the above conditions continues to be met and as long as the above-described individuals reside in the DHSS long-term care recipient's home on a continuous basis.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause undue hardship, and when recovery is not cost effective.

Standards: Same as number 4 above.

Procedures: If a hardship condition is requested and verified when the referral for estate recovery is received, it is tracked for eight (8) months. If at the end of eight (8) months the hardship condition still applies the recovery case is closed because Delaware probate law requires that claims against estates be filed within eight (8) months of the date of death.

Not Cost Effective: Criteria for determining cost effectiveness are set forth below in number 6.

6. The State defines when adjustment or recovery is not cost effective. The State defines cost effectiveness as follows (include methodology/thresholds used to determine cost effectiveness).

If there are no resources for burial and the total assets in the estate are less than \$5,000 then, it is not considered cost effective to pursue because the State's probate law requires that funeral expenses be paid first.

If there are resources for burial in the amount of \$5,000 then it is considered cost effective to pursue if there are assets in the estate.

7. The State uses the following collection procedures (include specific elements contained in the advance action notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

The State distributes a pamphlet, outlining estate recovery procedures, at the time of application to all applicants for long-term care services.

All persons receiving or applying for Long Term Care Medicaid Services are advised in writing about the estate recovery policy of DHSS at the time of application and redetermination, via the ERL1.DOC form titled, Recovery and Lien Policy for Persons Receiving or Applying for Long Term Care Services. This form outlines the following:

- Explanation of estate recovery, including citations of the federal and state authority;
- Defines long-term care;
- Describes the circumstances under which DHSS will file a claim;
- Describes what constitutes undue hardship. Exclusion and hardship waiver conditions are listed on page 2 of this form titled, Request for Exclusion or Hardship Waiver;
- Specifies which Medicaid payments DHSS will seek to recover; and,
- Appeal procedures, specifically notifying recipient/applicant that "If you are dissatisfied with any decision made by the Department of Health and Social Services, you have the right to appeal the decision by requesting a fair hearing. You must submit a written request to the local DHSS office within 90 days of the action".

DSS PROPOSED REGULATION #05-64c

REVISIONS:

20310.1.1 Intent to Return

The principal place of residence may be excluded if the individual intends to return home after any length of time.

Temporary Institutionalization - If the attending physician has certified that a recipient is likely to return to his own home within a definite period (not to exceed ~~6~~ 2

months) up to \$75.00 per month may be protected for maintenance of the home.

(Break In Continuity of Sections)

20500.5.2 Lien Recovery Exceptions

DHSS shall not seek recovery in the case of a lien on an individual's home when there is:

a son or daughter over the age of 21 lawfully residing in the home of the recipient, who has resided there for a period of at least two years immediately prior to the date of the recipient's admission to a long-term care service, who has lawfully resided there on a continuous basis since that time, and who can establish to the Department's satisfaction that he or she provided the care that permitted the recipient to reside in the home rather than in a long-term care facility

or

Sibling lawfully residing in the home of the recipient for ~~2 years (24 months)~~ one (1) year (12 months) immediately prior to the recipient's admission for long term care services.

NOTE: DHSS can seek recovery from other assets in the estate.

(Break In Continuity of Sections)

20500.6.1 Exceptions to the Lien Policy

1. Clients intending to return home within ~~2 years~~ sixty (60) days of their admission date to a facility.

a) If the stay in the facility is ~~2 years~~ sixty (60) days or more, DHSS will ~~determine if medical documentation indicates the client can reasonably be expected to return home, taking into consideration such factors as length of stay in a facility, mental capacity and physical condition~~ place a lien on the property.

b) ~~DHSS will provide the recipient of notice of the medical evaluation to determine if the recipient can return home. The results of the medical evaluation will also be provided to the recipient with the opportunity for a fair hearing before the department. The lien on the property will be released if the patient is discharged after sixty (60) days and returns to live in the home.~~

2. DHSS will not file a lien as long as the following individuals lawfully resided in the home before the date of application for long-term care services and continue to reside in the home while the applicant receives long-term care services:

a) Husband or wife of the applicant or recipient (NOTE: Common law marriages are not recognized by the Courts of Delaware).

b) Son or daughter who is blind or disabled as defined in accordance with the disability rule of the federally administered Supplemental Security Income (Title XVI of the Social Security Act).

c) Child under age 21 who is lawfully residing in the home.

d) Sibling lawfully residing in the home for ~~2 years (24 months)~~ one (1) year (12 months) immediately prior to admission to a long term care facility and who has equity in the property.

3. DHSS will also not file a lien if the real property that is held in ownership with children, grandchildren, siblings or parents constitutes a business, which contributes to the livelihood of that other individual or his/her dependents or heirs.

(Break In Continuity of Sections)

20620.3 Community Spouse Income Allowance/Home Maintenance Disregard

Temporary Institutionalization - If the attending physician has certified that a recipient is likely to return to his own home within a definite period (not to exceed ~~6~~ 2 months) up to \$75.00 per month may be protected for maintenance of the home. This allowance may be used for mortgage payments, rent, insurance, utility bills, repairs, etc. Copies of receipts, contracts or other types of verification shall be obtained and kept in the DSS record.

The \$75 home maintenance disregard may not be allowed if the community spouse is receiving the spousal income allowance.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Food Stamp Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is

proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to changes in Federal rules.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by November 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 Changes

Citations

- 7 CFR §272.1, *General Terms and Conditions*
- 7 CFR §273.1, *Household Concept*
- 7 CFR §273.2(d)(2), *Cooperation with QC Reviewer*

Summary of Proposed Changes

DSS proposes to amend its regulations to comply with changes to Federal rules, as follows:

- Under DSSM 1003.2, *Information to Law Enforcement* revises DSS policy regarding disclosure of information about food stamp applicants or recipients to law enforcement agencies.
- Under DSSM 9013.1, *Household Definition* there are three changes. The first change clarifies who can be budgeted together for food stamp purposes when persons do not live in the home for the entire month. Federal rules state that as long as a person is in the home for a portion of the month, that person can be included in the food stamp budget as long as s/he is not receiving food stamps in another household. The second change clarifies the term "spouse" for food stamp purposes based on the definition provided in Section 3 of the Defense of Marriage Act, 1 USC §7. The third change renumbers the current #3 to #6 to accommodate added language at new numbers 3, 4 and 5.
- Under DSSM 9029.1, *Cooperation with Quality Control* clarifies that if a household does not comply with a Quality Control (QC) review, is terminated and moves into another household, that household still cannot get benefits until the

household complies with QC. The change also defines annual review period.

DSS PROPOSED REGULATION #05-60

REVISIONS:

1003.2 Information to Law Enforcement Agencies

For Cash Assistance Programs:

Each DSS Financial Services Regional Operations Manager has the authority to disclose the address of a recipient to a Federal, State or local law enforcement officer at the officer's request if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient:

- is fleeing to avoid prosecution; or
- is a fleeing felon (or in the case of New Jersey is fleeing from conviction of a high misdemeanor); or
- is violating a condition or probation or parole; or
- has information that is necessary for the officer to conduct his or her official duties; and,
- the location or apprehension of the recipient is within such official duties.

For Food Stamps:

DSS will disclose information about food stamp applicants or recipients to law enforcement agencies only when the agency provides a written request and it is for the purpose of investigating an alleged violation of the Food Stamp Act or regulation.

The written request shall include:

- the identity of the individual requesting the information,
- the individual's authority to request the information,
- the violation being investigated, and
- the identity of the person on whom the information is requested.

DSS shall also make available to law enforcement officers, on official duty, the address, social security number, and a photograph (if available) of a food stamp recipient if the officer furnishes the recipient's name and informs DSS that the individual is fleeing to avoid prosecution, custody or confinement for a felony, is violating a condition of parole or probation, or has information necessary for the officer to conduct an official duty related to a felony/parole violation.

DSS will also provide information regarding a household member who has information about another household member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation

or parole. The information will be provided as long as the law enforcement officer has provided a written request.

If the law enforcement officer has provided documentation, not just the written request, that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, DSS shall terminate the member's participation.

DSS will only disclose the information that is necessary to comply with a specific written request of a law enforcement agency.

(Break In Continuity of Sections)

9013.1 Household Definition

A) General Definition - a household is composed of one of the following individuals or groups of individuals, provided they are not residents of an institution (except as otherwise specified in DSSM 9015), or are not boarders (as specified in DSSM 9013.3).

1. An individual living alone
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

B) Special Definition - the following individuals living with others or groups of individuals living together must be considered as customarily purchasing food and preparing meals together, even if they do not do so*.

1. Spouses who live together. Spouse refers to either of two individuals:
 - a. Who would be defined as married to each other under applicable State law; or
 - b. Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

*Same sex couples, for food stamp purposes, are not considered spouses and the presumption of purchasing food and preparing meals together would not apply to them.

2. Children 21 years of age and younger living with their parents [Parents are defined as natural parent(s) or step-parent(s)].

Children (other than foster care children) who are under 18 and live under the parental control of a non-parent, adult household member cannot be separate households.

Adult children (22 years of age and older) who live with their parents can be separate households if they purchase and prepare food separately.

3. Child(ren) living with a non-parent who has legal custody of the child(ren) will continue to be a member of the household for food stamp purposes even if a natural parent moves into the home. The non-parent must provide proof of legal custody. If the adult who has legal custody of the child chooses to let the child and natural parent purchase and prepare meals together, the child can become a member of the natural parent's food stamp household.

4. Joint custody – Children who live with parents in a joint custody situation can get food stamps with the parent who is the first to apply for food stamps. If both parents are applying for the same child(ren), the parent who provides the majority of the meals (21 meals a week) will include the child as part of his/her food stamp household.

5. When an individual resides a portion of the month with a food stamp household, the household can choose to include or exclude the individual from the food stamp household. If included, the income of the individual must be included and the individual cannot get benefits in another household or state.

Examples:

- A son works out of state but comes home every weekend. His mom can include or exclude him.
- A child lives in PA with her father. She comes to DE to live with her mom on weekends. Her mother can include her in her food stamp household as long as the child is not getting food stamps in PA.
- A child goes to a residential school and comes home every other weekend and holidays. The parents can include the child in their food stamp household.

3-6. Although a group of individuals living together and purchasing and preparing meals together constitutes a single household under the provisions of the above general definition, an otherwise eligible member of such a household who is 60 years of age or older and who is unable to purchase and prepare meals because (s)he suffers from a disability considered permanent under the Social Security Act, or suffers from a non-disease-related, severe, permanent disability, may be a separate household from the others based on the provisions of this section provided that the income (all income under DSSM 9055) of the others with whom the individual resides (excluding the income of the spouse of the elderly and disabled individual) does not exceed 165% of the poverty line. Only the spouse of the elderly and disabled individual is required to be included in the same household with the individual.

(Break In Continuity of Sections)

9029.1 Cooperation With Quality Control

A household is ineligible if it refuses to cooperate in any subsequent review of its eligibility as a part of a Quality Control (QC) review. If a household is terminated for refusal to cooperate with a QC reviewer, the household may reapply but will not be determined eligible until it cooperates with the QC reviewer. If a household terminated for refusal to cooperate with a State QC reviewer reapplies after 95 days from the end of ~~the annual review period~~ September, (the end of the annual review period which runs October through September each fiscal year), do not determine the household ineligible for its refusal to cooperate with a State QC reviewer during the completed review period. However, the household must provide verification in accordance with DSSM 9032.13.

If a household terminated for refusal to cooperate with a Federal QC reviewer reapplies after seven months from the end of ~~the annual review period~~ September, (the end of the annual review period which runs October through September each fiscal year), do not determine the household ineligible for its refusal to cooperate with a Federal QC reviewer during the completed review period. However, the household must provide verification in accordance with DSSM 9032.13.

If the household who refuses to cooperate with a QC reviewer joins another food stamp household, those individuals would be treated as ineligible household members until they cooperate with the QC reviewer.

DEPARTMENT OF INSURANCE

18 Delaware Code, Sections 311 and 2503

(18 Del.C. §§311 and 2503)

18 DE Admin. Code 1214

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a **PUBLIC HEARING** will be held on **TUESDAY, NOVEMBER 29, 2005** at 2:00 p.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2005-153**, proposed **Regulation 1214** relating to **Senior Protection In Annuity Transactions**. The purpose for proposing Regulation 1214 is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.

The text of the proposed amendments is reproduced in the November 2005 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The 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 2:00 p.m., Friday, December 2, 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. If you are disabled and might need assistance in this matter, please contact Julia Blevins at 302.739.4251 ext.111 or Julia.Blevins@state.de.us.

1214 Senior Protection In Annuity Transactions

1.0 Purpose

The purpose of this regulation is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.

2.0 Scope

This regulation shall apply to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

3.0 Authority

This regulation is adopted by the Commissioner pursuant to 18 Del.C. §§311, 2304 and 2312. It is promulgated in accordance with 29 Del.C. Chapter 101.

4.0 Exemptions

Unless otherwise specifically included, this regulation shall not apply to recommendations involving:

4.1 Direct response solicitations where there is no recommendation based on information collected from the senior consumer pursuant to this regulation;

4.2 Contracts used to fund:

4.2.1 An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

4.2.2 A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

4.2.3 A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

4.2.4 A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

4.2.5 Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

4.2.6 Formal prepaid funeral contracts.

5.0 Definitions

"Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

"Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

"Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

"Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual senior consumer that results in an annuity transaction in accordance with that advice.

"Senior consumer" means a person sixty-five (65) years of age or older. In the event of a joint purchase by more than one party, the purchaser will be considered to be a senior consumer if any of the parties is age sixty-five (65) or older.

6.0 Duties of Insurers and Insurance Producers

6.1 In recommending to a senior consumer the purchase or exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

6.2 Prior to the execution of an annuity transaction resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

6.2.1 the senior consumer's financial status;

6.2.2 the senior consumer's tax status;

6.2.3 the senior consumer's investment objectives; and

6.2.4 such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.

6.3 The following conditions shall apply to transactions contemplated by this regulation:

6.3.1 Except as provided in section 6.3.2, neither an insurance producer, or an insurer where no producer is involved, shall have any obligation to a senior consumer under section 6.1 related to any annuity transaction if a consumer:

6.3.1.1 refuses to provide relevant information requested by the insurer or insurance producer;

6.3.1.2 decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

6.3.1.3 fails to provide complete or accurate information.

6.3.2 An insurer or insurance producer's recommendation subject to section 6.3.1 shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

6.4 The following procedures shall apply to transactions contemplated by this regulation:

6.4.1 Except as provided in sections 6.4.2 and 6.4.3, an insurer shall establish and maintain a system to supervise the insurer's, and the insurer's insurance producers', recommendations to senior consumers that is reasonably designed to achieve compliance by the insurer and its insurance producers with this regulation, including, but not limited to:

6.4.1.1 written procedures; and

6.4.1.2 periodic reviews of its distribution methods that are reasonably designed to assist in detecting and preventing violations of this regulation.

6.4.2 The following conditions shall apply to the delegation of an insurer's obligations:

6.4.2.1 An insurer may, by contract, delegate to a third party the obligation to perform the functions required by section 6.4.1 with respect to insurance producers under contract with or employed by the third party.

6.4.2.2 An insurer shall make reasonable inquiry to assure that the third party contracting under

section 6.4.2.1 is performing the functions required under section 6.4.1 and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

6.4.2.2.1 The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

6.4.2.2.2 The insurer, based on reasonable selection criteria, periodically selects third parties contracting under section 6.4.2.1 for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

6.4.3 An insurer is not required by section 6.4.1 to:

6.4.3.1 review, or provide for review of, all insurance producer solicited transactions; or

6.4.3.2 include in its supervisory system an insurance producer's recommendations to senior consumers of products other than the insurer's annuities.

6.4.4 Section 7 does not apply to this subsection.

6.4.5 The commissioner may order:

6.4.5.1 an insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's, or by the insurer's insurance producer's, violation of this regulation;

6.4.5.2 an insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation; and

6.4.5.3 a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale of, annuities to senior consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation.

6.5 Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

7.0 Recordkeeping

7.1 Insurers and insurance producers shall maintain or be able to make available to the commissioner records of the

information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

7.2 Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

8.0 Severability

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

9.0 Causes of Action and Defenses

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an insurer or its representative based upon a violation of 18 Del.C. §2304. In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 Del.C. §2304.

10.0 Effective Date

This regulation shall become effective on January 11, 2006.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60
(7 Del.C. Ch. 60)

PUBLIC NOTICE

1201 Accidental Release Prevention Regulation

1. Title of the Regulations:

Regulation 1201 "Accidental Release Prevention Regulation"

2. Brief Synopsis of the Subject, Substance and Issues

The Department is proposing to amend the Accidental Release Prevention Regulation to include 1999, 2000 and 2004 amendments made by the Environmental Protection Agency (EPA) to the Accidental Release Prevention Requirements contained in federal rule 40 CFR Part 68. The Department believes these amendments are already in effect for regulated Delaware facilities and that this amendment will have no impact on them. In addition, several minor changes and corrections are proposed for the "Additional Delaware Accidental Release Prevention Provisions" contained in Section 6.0 of the Regulation. Specifically this includes minor changes to the Delaware only lists and simplifying Delaware risk management plan submission requirements. Again, the Department believes these corrections and changes will have no impact on Delaware only regulated facilities. In summary, the purpose of this proposed amendment is a correction to the Delaware regulation; bringing it into agreement with the most recent federal rule changes.

3. Possible Terms of the Agency Action

None

4. Statutory Basis or Legal Authority to Act

7 Delaware Code, Chapter 77

5. Other Regulations That May Be Affected by the Proposal

None

6. Notice of Public Comment

Interested parties may submit comments in writing to: Jay Brabson, Emergency Prevention and Response Branch, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Monday, December 5, 2005 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE. The public comment period for this proposed amendment will extend through December 15, 2005.

7. Prepared By

Jay Brabson (302) 323-4542 October 14, 2005

1201 Accidental Release Prevention Regulation

1.0 Statement of Authority

1.1 Pursuant to 7 Delaware Code, Chapter 77, the General Assembly of the State of Delaware has directed that

regulations be prepared and adopted by the Department of Natural Resources and Environmental Control to require owners or operators of stationary sources having regulated substances to take actions, subject to review by the Department, to control and minimize the chances of sudden, accidental releases and catastrophic releases of such substances. The Department adopted the "Regulation for the Management of Extremely Hazardous Substances" on September 25, 1989 and modified this regulation on December 18, 1995. The "Accidental Release Prevention Regulation" replaces the "Regulation for the Management of Extremely Hazardous Substances" in its entirety.

1.2 The General Assembly of the State of Delaware has also directed the Department to seek full delegation from the United States Environmental Protection Agency to administer the sections of 40 Code of Federal Regulations (CFR) Part 68, "Chemical Accident Provisions" revised as of July 1, 1997 which can be delegated to the State.

2.0 Purpose

2.1 The purpose of this regulation is to protect lives and the health of citizens of the state living and working in the vicinity of stationary sources having regulated substances on site. This regulation is concerned with the prevention of sudden releases of regulated substances and the generation of pressure waves and thermal exposure beyond the property boundaries of the stationary source where they occur and the catastrophic health consequences caused by short-term exposures to such accidental releases. This regulation has the goal of prevention of such catastrophic events by requiring owner or operator having regulated substances on-site to take all feasible actions needed to minimize the probability of catastrophic events. It is the intent of this regulation to complement and be enforced in conjunction with other laws.

2.2 It is also the secondary purpose of this regulation to adopt the necessary language to allow the Department to seek delegation of the United States Environmental Protection Agency authority for 40 CFR Part 68, "Chemical Accident Provisions" revised as of ~~July 1, 1997~~ April 9, 2004 for the administration of the sections of this rule which can be delegated to the State.

2.3 This regulation has two parts. The first part (consisting of Section 5) deals with adopting the federal language to allow delegation of the federal program. The second part (consisting of Section 6) uses state authority to extend beyond 40 CFR Part 68 ~~revised as of July 1, 1997~~ to continue to regulate substances that were previously regulated by the Delaware "Regulation for the Management of Extremely Hazardous Substances", as revised on December 18, 1995. The accidental release prevention activities (the prevention program or the risk management

program) are the same for processes subject to either Section 5.0 or Section 6.0. Section 6.0 also contains reporting requirements for a process having regulated substances that are subject to the State criteria but not the federal criteria.

3.0 Policy and General Duty

3.1 It is the obligation of the owner or operator of stationary sources having regulated substances on-site to operate in a manner consistent with this regulation by developing and implementing a risk management program that anticipates and minimizes the chances of catastrophic events. The stationary source risk management program implementation shall be subject to review by the Department. It is the objective of this regulation and the programs established by this regulation to prevent accidental releases and to minimize the consequences of any such release of any substance listed in Section 5.130 or Sections 6.2, 6.3 and 6.4 or any other extremely hazardous substance.

3.2 Every person in control of or associated with any such substances (regulated or not regulated) that is produced, handled, or stored has a general duty to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

4.0 Definitions

Accidental release means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

Actual Distance to Stationary Source Boundary means the distance from the nearest potential release point capable of generating a sufficient quantity to the nearest public receptor.

Actual Quantity (AQ) means the sum of all the physical quantities of a regulated substance listed in either Section 6.2, 6.3 or 6.4 in whatever form at the maximum design capacity of the process considering administrative controls.

Administrative controls mean written procedural mechanisms used for hazard control.

Administrator means the Administrator of the U.S. Environmental Protection Agency.

AIChE/CCPS means the American Institute of Chemical Engineers/Center for Chemical Process Safety.

API means the American Petroleum Institute.

Article means a manufactured item, as defined under 29 CFR 1910.1200(b) dated July 1, 1997, that is formed to a specific shape or design during manufacture, that has end use functions dependent in whole or in part upon the shape

or design during end use, and that does not release or otherwise result in exposure to a regulated substance under normal conditions of processing and use.

Artificial Barricade means an artificial mound or riveted wall of earth of a minimum thickness of three feet (NFPA-495, 1996 Edition, Explanatory Notes for Table 6-4.1 "American Table of Distances").

ASME means the American Society of Mechanical Engineers.

Board means the Environmental Appeals Board.

CAS means the Chemical Abstracts Service.

Catastrophic Event means a sudden release of a sufficient quantity of a regulated substance, a pressure wave or a thermal exposure beyond the property boundaries of a stationary source which will cause death or permanent disability to a person because of a single, short term exposure.

Catastrophic release means a major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents imminent and substantial endangerment to public health and the environment.

Classified information means "classified information" as defined in the Classified Information Procedures Act, 18 U.S.C. App. 3, Section 1(a) as "any information or material that has been determined by the United States Government pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security."

Combustible Liquid means a liquid having a flash point at or above 100°F and below 140°F.

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in temperature, pressure, or both, and remains a liquid at standard conditions.

Consequence Analysis means a review of the potential effects of regulated substance release on surrounding populations.

Consequence Assessment means an evaluation of the results of a release of a regulated substance. A consequence assessment shall consist of:

- An estimate of the PRQ,
- Dispersion analysis (for toxics, flammables, and combustibles) showing downwind effects, and
- Consequence analysis involving potentially exposed population.

Covered process means a process that has a regulated substance present in more than a threshold quantity as determined in Section 5.115 or a regulated substance present in more than the sufficient quantity as determined in Sections 6.2, 6.3 or 6.4.

Critical means those elements such as equipment, piping, alarms, interlocks, or controls which are essential to preventing the occurrence of a catastrophic event.

Crude oil means any naturally occurring, unrefined petroleum liquid.

Department means the Department of Natural Resources and Environmental Control (DNREC).

Dispersion Analysis means the calculation, by means of a model of the ambient concentrations of a regulated substance after its release, taking into account, when appropriate, the physical and chemical state and properties of the regulated substance, the release scenario, and the geographical, topographical, geological and meteorological characteristics of the environment which will influence the migration, movement, dilution, or degradation of the regulated substance in the environment.

DOT means the United States Department of Transportation.

Environmental receptor means natural areas such as national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, refuges, or areas; and Federal wilderness areas, that could be exposed at any time to toxic concentrations, radiant heat, or overpressure greater than or equal to the endpoints provided in Section 5.22.1, as a result of an accidental release and that can be identified on local U. S. Geological Survey maps.

Field gas means gas extracted from a production well before the gas enters a natural gas processing plant.

Flammable Gas means a gas or vapor which when mixed with air or oxygen in certain concentrations will ignite and burn on contact with a source of ignition. Such gases have lower and upper explosive limits which are usually expressed in terms of percentage by volume of gas or vapor in air.

Flammable Liquid means a liquid having a flash point below 100°F.

Hot work means work involving electric or gas welding, cutting, brazing, or similar flame or spark-producing operations.

Implementing agency means the Department.

Injury means any effect on a human that results either from direct exposure to toxic concentrations, radiant heat, or overpressures from accidental releases or from the direct consequences of a vapor cloud explosion (such as flying glass, debris, and other projectiles) from an accidental release and that requires medical treatment or hospitalization.

Major change means introduction of a new process, process equipment, or regulated substance, an alteration of process chemistry that results in any change to safe operating limits, or other alteration that introduces a new hazard.

Mechanical integrity means the process of ensuring that process equipment is fabricated from the proper materials of construction and is properly installed, maintained, and replaced to prevent failures and accidental releases.

Medical treatment means treatment, other than first aid, administered by a physician or registered professional personnel under standing orders from a physician.

Mitigation or mitigation system means specific activities, technologies, or equipment designed or deployed to capture or control substances upon loss of containment to minimize exposure of the public or the environment. Passive mitigation means equipment, devices, or technologies that function without human, mechanical, or other energy input. Active mitigation means equipment, devices, or technologies that need human, mechanical, or other energy input to function.

Natural Barricade means natural features of the ground, such as hills, or standing timber of sufficient density that the surroundings which require protection cannot be seen from the regulated process when the trees are bare of leaves; see the Explanatory Notes for Table 6-4.1 of NFPA 495 "Explosive Materials Code, 1196 Edition".

NAICS means the North American Industrial Classification System. (Replaces SIC codes).

Natural gas processing plant (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both, classified as North American Industrial Classification System (NAICS) code 211112 (previously Standard Industrial Classification (SIC) code 1321).

NFPA means the National Fire Protection Association.

Offsite means areas beyond the property boundary of the stationary source, and areas within the property boundary to which the public has routine and unrestricted access during or outside business hours.

OSHA means the U.S. Occupational Safety and Health Administration.

Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Person or persons means a natural person, partnership, limited partnership, trust, estate, corporation, custodian, association or any other individual entity in its own or any representative capacity.

Petroleum refining process unit means a process unit used in an establishment primarily engaged in petroleum refining as defined in NAICS code 32411 for petroleum refining (formerly SIC code 2911) and used for the following: producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene,

fuel gas distillate, and fuel oils), or lubricants; separating petroleum; or separating, cracking, reacting, or reforming intermediate petroleum products streams. Examples of such units include, but are not limited to, petroleum-based solvent units, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, lube oil processing, hydrogen production, isomerization, polymerization, thermal processes, and blending, sweetening, and treating processes. Petroleum refining process units include sulfur plants.

Population means the public.

Produced water means water extracted from the earth from an oil or natural gas production well, or that is separated from oil or natural gas after extraction.

Process means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Process Hazard Review means a systematic identification of the potential sources and conditions that may result in the release of a regulated substance and determination of the effects of the release on the surrounding environment using generally accepted methods of risk assessment.

Public means any person except employees or contractors at the stationary source.

Public receptor means offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed to toxic concentrations, radiant heat, or overpressure, as a result of an accidental release.

Regulated substance is any substance listed pursuant to Section 5.130 or Sections 6.2, 6.3, or 6.4.

Replacement in kind means a replacement that satisfies the design specifications.

Retail facility means a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

Risk Management Program means all the activities intended to reduce risk of a catastrophic event including, but not limited to, the consideration of technology, personnel and the equipment associated with the covered process.

Risk Management Plan or RMP means the risk management plan submission required under subpart G of Section 5. The Delaware RMP is called the Delaware Risk Management Plan.

RMP Off-site Consequent Analysis Guidance means guidance document published on May 24, 1996 by the EPA intended to assist sources to conduct worst-case consequence analyses and alternative scenarios involving regulated substances.

Secretary means the Secretary of the Department of Natural Resources and Environmental Control.

Separate Containment Area means an area which is separated from other areas by 100 meters or which is separated from adjoining areas by 4-hour fire rated walls resistant to blast pressures of 3 psig; in addition, such areas cannot have common piping containing a regulated substance.

SIC means Standard Industrial Classification.

Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this regulation. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 CFR parts 192, 193, or 195, or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. Section 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way.

Substance Hazard Index (SHI) means a calculated number which relates the relative danger of a substance considering toxicity and ability to disperse in the atmosphere.

Sufficient Quantity (SQ) means the amount of regulated substance sufficient to cause a catastrophic event. The sufficient quantity shall be calculated based on commonly recognized atmospheric modeling procedures and mortality/exposure probabilities calculated for an average individual. For flammable and combustible substances, the sufficient quantity is expressed as a release rate. For toxic

and explosive substances it is expressed as a distinct quantity.

Technically qualified individual means a person or persons (1) who, because of education, training, or experience, or a combination of these factors, is capable of understanding the health and environmental risks associated with the chemical substance which is used under his or her supervision, (2) who is responsible for enforcing appropriate methods of conducting scientific experimentation, analysis, or chemical research to minimize such risks, and (3) who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the chemical substance as may be appropriate or required within the scope of conducting a research and development activity.

Threshold quantity means the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Clean Air Act as amended, listed in Section 5.130 and determined to be present at a stationary source as specified in Section 5.115.

Typical meteorological conditions means the temperature, wind speed, cloud cover, and atmospheric stability class, prevailing at the site based on data gathered at or near the site or from a local meteorological station.

Unit means the nearest whole number resulting from the division of the actual quantity by the sufficient quantity at 100 meters as set forth in Sections 6.2, 6.3, or 6.4 of this regulation and the nearest whole number resulting from the division of the actual quantity by the threshold quantity as set forth in Section 5.130 of this regulation. For stationary sources reporting propane or ammonium nitrate with a *potential release quantity* equal to or greater than the *sufficient quantity* in their risk management plan, the units will equal one, regardless of the *actual quantity*.

Vessel means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container.

Worst-case release means the release of the largest quantity of a regulated substance from a vessel or process line failure that results in the greatest distance to an endpoint defined in Section 5.22.1.

5.0 Accidental Release Prevention Provisions Established to Seek Delegation of 40 CFR Part 68

Revised as of July 1, 1997

Subpart A - General

5.1 through 5.9 Reserved

5.10 Applicability

5.10.1 An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under Section 5.115,

shall comply with the requirements of this regulation no later than the latest of the following dates:

5.10.1.1 June 21, 1999;

5.10.1.2 Three years after the date on which a regulated substance is first listed by EPA pursuant to 40 CFR 68.130 dated July 1, 1997; or

5.10.1.3 The date on which a regulated substance is first present above a threshold quantity in a process.

5.10.2 Program 1 eligibility requirements. A covered process is eligible for Program 1 requirements as provided in Section 5.12.2 if it meets all of the following requirements:

5.10.2.1 For the five years prior to the submission of an RMP, the process has not had an accidental release of a regulated substance where exposure to the substance, its reaction products, overpressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance led to any of the following off-site:

5.10.2.1.1 Death;

5.10.2.1.2 Injury; or

5.10.2.1.3 Response or restoration activities for an exposure of an environmental receptor;

5.10.2.2 The distance to a toxic or flammable endpoint for a worst-case release assessment conducted under Subpart B and Section 5.25 is less than the distance to any public receptor, as defined in Section 5.30; and

5.10.2.3 Emergency response procedures have been coordinated between the stationary source and local emergency planning and response organizations.

5.10.3 Program 2 eligibility requirements. A covered process is subject to Program 2 requirements if it does not meet the eligibility requirements of either 5.10.2 or 5.10.4 of this section.

5.10.4 Program 3 eligibility requirements. A covered process is subject to Program 3 if the process does not meet the requirements of 5.10.2 of this section, and if either of the following conditions is met:

5.10.4.1 The process is in NAICS code 325181, 325211, 325311, 32532, 32411, 32211, 325188, 32511, 325192, 325199; or

5.10.4.2 The process is subject to the OSHA process safety management standard, 29 CFR 1910.119 dated July 1, 1997.

5.10.5 If at any time a covered process no longer meets the eligibility criteria of its Program level, the owner or operator shall comply with the requirements of the new Program level that applies to the process and update the RMP as provided in Section 5.190.

5.11 Reserved

5.12 General Requirements

5.12.1 General requirements. The owner or operator of a stationary source subject to this part shall submit a single RMP, as provided in Sections 5.150 to 5.185. The RMP shall include a registration that reflects all covered processes.

5.12.2 Program 1 requirements. In addition to meeting the requirements of 5.12.1 of this section, the owner or operator of a stationary source with a process eligible for Program 1, as provided in Section 5.10.2, shall:

5.12.2.1 Analyze the worst-case release scenario for the process(es), as provided in Section 5.25; document that the nearest public receptor is beyond the distance to a toxic or flammable endpoint defined in Section 5.22.1; and submit in the RMP the worst-case release scenario as provided in Section 5.165;

5.12.2.2 Complete the five-year accident history for the process as provided in Section 5.42 of this part and submit it in the RMP as provided in Section 5.168;

5.12.2.3 Ensure that response actions have been coordinated with local emergency planning and response agencies; and

5.12.2.4 Certify in the RMP the following: "Based on the criteria in Section 5.10 (40 CFR 68.10 dated July 1, 1997), the distance to the specified endpoint for the worst-case accidental release scenario for the following process(es) is less than the distance to the nearest public receptor: [list process(es)]. Within the past five years, the process(es) has (have) had no accidental release that caused off-site impacts provided in the risk management program rule (Section 5.10.2.1). No additional measures are necessary to prevent off-site impacts from accidental releases. In the event of fire, explosion, or a release of a regulated substance from the process(es), entry within the distance to the specified endpoints may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the emergency contact indicated in the RMP. The undersigned certifies that, to the best of my knowledge, information, and belief, formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature, title, date signed]."

5.12.3 Program 2 requirements. In addition to meeting the requirements of paragraph 5.12.1 of this section, the owner or operator of a stationary source with a process subject to Program 2, as provided in Section 5.10.3, shall:

5.12.3.1 Develop and implement a management system as provided in Section 5.15;

5.12.3.2 Conduct a hazard assessment as provided in Sections 5.20 through 5.42;

5.12.3.3 Implement the Program 2 prevention steps provided in Sections. 5.48 through 5.60 or implement the Program 3 prevention steps provided in Sections. 5.65 through 5.87;

5.12.3.4 Develop and implement an emergency response program as provided in Sections. 5.90 to 5.95; and

5.12.3.5 Submit as part of the RMP the data on prevention program elements for Program 2 processes as provided in Section 5.170.

5.12.4 Program 3 requirements. In addition to meeting the requirements of 5.12.1 of this section, the owner or operator of a stationary source with a process subject to Program 3, as provided in Section 5.10.4 shall:

5.12.4.1 Develop and implement a management system as provided in Section 5.15;

5.12.4.2 Conduct a hazard assessment as provided in Sections. 5.20 through 5.42;

5.12.4.3 Implement the prevention requirements of Sections. 5.65 through 5.87;

5.12.4.4 Develop and implement an emergency response program as provided in Sections. 5.90 to 5.95 of this part; and

5.12.5 Submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in Section 5.175.

5.13 and 5.14 Reserved

5.15 Management

5.15.1 The owner or operator of a stationary source with processes subject to Program 2 or Program 3 shall develop a management system to oversee the implementation of the risk management program elements.

5.15.2 The owner or operator shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

5.15.3 When responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under 5.15.2 of this section, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

Subpart B-Hazard Assessment

5.15 through 5.19 Reserved

5.20 Applicability

An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under Section 5.115, shall prepare a worst-case release scenario analysis as provided in Section 5.25 of this part and complete the five-year accident history

as provided in Section 5.42. The owner or operator of a Program 2 and 3 process must comply with all sections in this subpart for these processes.

5.21 Reserved

5.22 Off-site Consequence Analysis Parameters

5.22.1 Endpoints. For analyses of off-site consequences, the following endpoints shall be used:

5.22.1.1 Toxics. The toxic endpoints provided in Table 3 of this part.

5.22.1.2 Flammables. The endpoints for flammables vary according to the scenarios studied:

5.22.1.2.1 Explosion. An overpressure of 1 psi.

5.22.1.2.2 Radiant heat/exposure time. A radiant heat of 5 kw/m² for 40 seconds.

5.22.1.2.3 Lower flammability limit. A lower flammability limit as provided in NFPA documents or other generally recognized sources.

5.22.2 Wind speed/atmospheric stability class. For the worst-case release analysis, the owner or operator shall use a wind speed of 1.5 meters per second and atmospheric stability class of F. If the owner or operator can demonstrate that local meteorological data applicable to the stationary source show a higher minimum wind speed or less stable atmosphere at all times during the previous three years, these minimums may be used. For analysis of alternative scenarios, the owner or operator may use the typical meteorological conditions for the stationary source.

5.22.3 Ambient temperature/humidity. For worst-case release analysis of a regulated toxic substance, the owner or operator shall use the highest daily maximum temperature in the previous three years and average humidity for the site, based on temperature/humidity data gathered at the stationary source or at a local meteorological station; an owner or operator using the RMP Off-site Consequence Analysis Guidance may use 25 deg.C and 50 percent humidity as values for these variables. For analysis of alternative scenarios, the owner or operator may use typical temperature/humidity data gathered at the stationary source or at a local meteorological station.

5.22.4 Height of release. The worst-case release of a regulated toxic substance shall be analyzed assuming a ground level (0 feet) release. For an alternative scenario analysis of a regulated toxic substance, release height may be determined by the release scenario.

5.22.5 Surface roughness. The owner or operator shall use either urban or rural topography, as appropriate. Urban means that there are many obstacles in the immediate area; obstacles include buildings or trees. Rural means there

are no buildings in the immediate area and the terrain is generally flat and unobstructed.

5.22.6 Dense or neutrally buoyant gases. The owner or operator shall ensure that tables or models used for dispersion analysis of regulated toxic substances appropriately account for gas density.

5.22.7 Temperature of released substance. For worst case, liquids other than gases liquified by refrigeration only shall be considered to be released at the highest daily maximum temperature, based on data for the previous three years appropriate for the stationary source, or at process temperature, whichever is higher. For alternative scenarios, substances may be considered to be released at a process or ambient temperature that is appropriate for the scenario.

5.23 through 5.24 Reserved

5.25 Worst-Case Release Scenario Analysis

5.25.1 The owner or operator shall analyze and report in the RMP:

5.25.1.1 For Program 1 processes, one worst-case release scenario for each Program 1 process;

5.25.1.2 For Program 2 and 3 processes:

5.25.1.2.1 One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint provided in Table 3 of this regulation resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions defined in Section 5.22;

5.25.1.2.2 One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in Section 5.22.1 resulting from an accidental release of regulated flammable substances from covered processes under worst-case conditions defined in Section 5.22; and

5.25.1.2.3 Additional worst-case release scenarios for a hazard class if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case release scenario developed under 5.25.1.2.1 or 5.25.1.2.2 of this section.

5.25.2 Determination of worst-case release quantity. The worst-case release quantity shall be the greater of the following:

5.25.2.1 For substances in a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity; or

5.25.2.2 For substances in pipes, the greatest amount in a pipe, taking into account administrative controls that limit the maximum quantity.

5.25.3 Worst-case release scenario-toxic gases.

5.25.3.1 For regulated toxic substances that are normally gases at ambient temperature and handled as a gas

or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under 5.25.2 of this section, is released as a gas over 10 minutes. The release rate shall be assumed to be the total quantity divided by 10 unless passive mitigation systems are in place.

5.25.3.2 For gases handled as refrigerated liquids at ambient pressure:

5.25.3.2.1 If the released substance is not contained by passive mitigation systems or if the contained pool would have a depth of 1 cm or less, the owner or operator shall assume that the substance is released as a gas in 10 minutes;

5.25.3.2.2 If the released substance is contained by passive mitigation systems in a pool with a depth greater than 1 cm, the owner or operator may assume that the quantity in the vessel or pipe, as determined under 5.25.2 of this section, is spilled instantaneously to form a liquid pool. The volatilization rate (release rate) shall be calculated at the boiling point of the substance and at the conditions specified in 5.25.4 of this section.

5.25.4 Worst-case release scenario-toxic liquids.

5.25.4.1 For regulated toxic substances that are normally liquids at ambient temperature, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under 5.25.2 of this section, is spilled instantaneously to form a liquid pool.

5.25.4.1.1 The surface area of the pool shall be determined by assuming that the liquid spreads to 1 centimeter deep unless passive mitigation systems are in place that serve to contain the spill and limit the surface area. Where passive mitigation is in place, the surface area of the contained liquid shall be used to calculate the volatilization rate.

5.25.4.2 If the release would occur onto a surface that is not paved or smooth, the owner or operator may take into account the actual surface characteristics.

5.25.4.2.2 The volatilization rate shall account for the highest daily maximum temperature occurring in the past three years, the temperature of the substance in the vessel, and the concentration of the substance if the liquid spilled is a mixture or solution.

5.25.4.3 The rate of release to air shall be determined from the volatilization rate of the liquid pool. The owner or operator may use the methodology in the RMP Off-site Consequence Analysis Guidance or any other publicly available techniques that account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the Department access to the model and

describes model features and differences from publicly available models to local emergency planners upon request.

5.25.5 Worst-case release scenario-flammables. The owner or operator shall assume that the quantity of the substance, as determined under 5.25.2 of this section, vaporizes resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy released in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TNT-equivalent methods.

5.25.6 Parameters to be applied. The owner or operator shall use the parameters defined in Section 5.22 to determine distance to the endpoints. The owner or operator may use the methodology provided in the RMP Off-site Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the Department access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

5.25.7 Consideration of passive mitigation. Passive mitigation systems may be considered for the analysis of worst case provided that the mitigation system is capable of withstanding the release event triggering the scenario and would still function as intended.

5.25.8 Factors in selecting a worst-case scenario. Notwithstanding the provisions of 5.25.2 of this section, the owner or operator shall select as the worst case for flammable regulated substances or the worst case for regulated toxic substances, a scenario based on the following factors if such a scenario would result in a greater distance to an endpoint defined in Section 5.22.1 beyond the stationary source boundary than the scenario provided under 5.25.2 of this section:

5.25.8.1 Smaller quantities handled at higher process temperature or pressure; and

5.25.8.2 Proximity to the boundary of the stationary source.

5.26 and 5.27 Reserved

5.28 Alternative Release Scenario Analysis

5.28.1 The number of scenarios. The owner or operator of Program 2 and Program 3 processes shall identify and analyze at least one alternative release scenario for each regulated toxic substance held in a covered process(es) and at least one alternative release scenario to represent all flammable substances held in covered processes.

5.28.2 Scenarios to consider.

5.28.2.1 For each scenario required under 5.28.1 of this section, the owner or operator shall select a scenario:

5.28.2.1.1 That is more likely to occur than the worst-case release scenario under Section 5.25; and

5.28.2.1.2 That will reach an endpoint off-site, unless no such scenario exists.

5.28.2.2 Release scenarios considered should include, but are not limited to, the following, where applicable:

5.28.2.2.1 Transfer hose releases due to splits or sudden hose uncoupling;

5.28.2.2.2 Process piping releases from failures at flanges, joints, welds, valves and valve seals, and drains or bleeds;

5.28.2.2.3 Process vessel or pump releases due to cracks, seal failure, or drain, bleed, or plug failure;

5.28.2.2.4 Vessel overfilling and spill, or over-pressurization and venting through relief valves or rupture disks; and

5.28.2.2.5 Shipping container mishandling and breakage or puncturing leading to a spill.

5.28.3 Parameters to be applied. The owner or operator shall use the appropriate parameters defined in Section 5.22 to determine distance to the endpoints. The owner or operator may use either the methodology provided in the RMP Off-site Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the specified modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the Department access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

5.28.4 Consideration of mitigation. Active and passive mitigation systems may be considered provided they are capable of withstanding the event that triggered the release and would still be functional.

5.28.5 Factors in selecting scenarios. The owner or operator shall consider the following in selecting alternative release scenarios:

5.28.5.1 The five-year accident history provided in Section 5.42; and

5.28.5.2 Failure scenarios identified under Section 5.50 or Section 5.67.

5.29 Reserved

5.30 Defining Off-site Impacts-Population

5.30.1 The owner or operator shall estimate in the RMP the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in Section 5.22.1.

5.30.2 Population to be defined. Population shall include residential population. The presence of institutions (schools, hospitals, prisons), parks and recreational areas, and major commercial, office, and industrial buildings shall be noted in the RMP.

5.30.3 Data sources acceptable. The owner or operator may use the most recent census data, or other updated information, to estimate the population potentially affected.

5.30.4 Level of accuracy. Population shall be estimated to two significant digits.

5.31 and 5.32 Reserved

5.33 Defining Off-site Impacts—environment

5.33.1 The owner or operator shall list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in Section 5.22.1 of this part.

5.33.2 Data sources acceptable. The owner or operator may rely on information provided on local U.S. Geological Survey maps or on any data source containing U.S.G.S. data to identify environmental receptors.

5.34 and 5.35 Reserved

5.36 Review and Update

5.36.1 The owner or operator shall review and update the off-site consequence analyses at least once every five years.

5.36.2 If changes in processes, quantities stored or handled, or any other aspect of the stationary source might reasonably be expected to increase or decrease the distance to the endpoint by a factor of two or more, the owner or operator shall complete a revised analysis within six months of the change and submit a revised risk management plan as provided in Section 5.190.

5.37 and 5.38 Reserved

5.39 Documentation. The owner or operator shall maintain the following records on the off-site consequence analyses:

5.39.1 For worst-case scenarios, a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for selection; assumptions shall include use of any administrative controls and any passive mitigation that were assumed to limit the quantity that could be released. Documentation shall include the anticipated effect of the controls and mitigation on the release quantity and rate.

5.39.2 For alternative release scenarios, a description of the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios; assumptions shall include use of any administrative controls and any mitigation that were assumed to limit the quantity that could be released. Documentation shall include the effect of the controls and mitigation on the release quantity and rate.

5.39.3 Documentation of estimated quantity released, release rate, and duration of release.

5.39.4 Methodology used to determine distance to endpoints.

5.39.5 Data used to estimate population and environmental receptors potentially affected.

5.40 and 5.41 Reserved

5.42 Five-Year Accident History.

5.42.1 The owner or operator shall include in the five-year accident history all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known off-site deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage.

5.42.2 Data required. For each accidental release included, the owner or operator shall report the following information:

5.42.2.1 Date, time, and approximate duration of the release;

5.42.2.2 Chemical(s) released;

5.42.2.3 Estimated quantity released in pounds and, for mixtures containing regulated toxic substances, percentage concentration by weight of the released regulated toxic substance in the liquid mixture;

5.42.2.4 Five- or six-digit NAICS code that most closely corresponds to the process;

5.42.2.5 The type of release event and its source;

5.42.2.6 Weather conditions, if known;

5.42.2.7 On-site impacts;

5.42.2.8 Known off-site impacts;

5.42.2.9 Initiating event and contributing factors, if known;

5.42.2.10 Whether off-site responders were notified, if known; and

5.42.2.11 Operational or process changes that resulted from investigation of the release and that have been made by the time this information is submitted in accordance with 5.168.

5.42.3 Level of accuracy. Numerical estimates may be provided to two significant digits.

Subpart C - Program 2 Prevention Program

5.43 through 5.47 Reserved

5.48 Safety Information

5.48.1 The owner or operator shall compile and maintain the following up-to-date safety information related to the regulated substances, processes, and equipment:

5.48.1.1 Material Safety Data Sheets that meet the requirements of 29 CFR 1910.1200(g) dated July 1, 1997;

5.48.1.2 Maximum intended inventory of equipment in which the regulated substances are stored or processed;

5.48.1.3 Safe upper and lower temperatures, pressures, flows, and compositions;

5.48.1.4 Equipment specifications; and

5.48.1.5 Codes and standards used to design, build, and operate the process.

5.48.2 The owner or operator shall ensure that the process is designed in compliance with recognized and generally accepted good engineering practices. Compliance with Federal or state regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.

5.48.3 The owner or operator shall update the safety information if a major change occurs that makes the information inaccurate.

5.49 Reserved

5.50 Hazard Review

5.50.1 The owner or operator shall conduct a review of the hazards associated with the regulated substances, process, and procedures. The review shall identify the following:

5.50.1.1 The hazards associated with the process and regulated substances;

5.50.1.2 Opportunities for equipment malfunctions or human errors that could cause an accidental release;

5.50.1.3 The safeguards used or needed to control the hazards or prevent equipment malfunction or human error; and

5.50.1.4 Any steps used or needed to detect or monitor releases.

5.50.2 The owner or operator may use checklists developed by persons or organizations knowledgeable about the process and equipment as a guide to conducting the review. For processes designed to meet industry standards or Federal or state design rules, the hazard review shall, by inspecting all equipment, determine whether the process is designed, fabricated, and operated in accordance with the applicable standards or rules.

5.50.3 The owner or operator shall document the results of the review and ensure that problems identified are resolved in a timely manner.

5.50.4 The review shall be updated at least once every five years. The owner or operator shall also conduct reviews whenever a major change in the process occurs; all issues identified in the review shall be resolved before startup of the changed process.

5.51 Reserved

5.52 Operating Procedures

5.52.1 The owner or operator shall prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process. Operating procedures or instructions provided by equipment manufacturers or developed by persons or organizations knowledgeable about the process and equipment may be used as a basis for a stationary source's operating procedures.

5.52.2 The procedures shall address the following:

5.52.2.1 Initial startup;

5.52.2.2 Normal operations;

5.52.2.3 Temporary operations;

5.52.2.4 Emergency shutdown and operations;

5.52.2.5 Normal shutdown;

5.52.2.6 Startup following a normal or emergency shutdown or a major change that requires a hazard review;

5.52.2.7 Consequences of deviations and steps required to correct or avoid deviations; and

5.52.2.8 Equipment inspections.

5.52.3 The owner or operator shall ensure that the operating procedures are updated, if necessary, whenever a major change occurs and prior to startup of the changed process.

5.53 Reserved

5.54 Training

5.54.1 The owner or operator shall ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in Section 5.52 that pertain to their duties. For those employees already operating a process on June 21, 1999, the owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as provided in the operating procedures.

5.54.2 Refresher training. Refresher training shall be provided at least every three years, and more often if

necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees operating the process, shall determine the appropriate frequency of refresher training.

5.54.3 The owner or operator may use training conducted under Federal or state regulations or under industry-specific standards or codes or training conducted by covered process equipment vendors to demonstrate compliance with this section to the extent that the training meets the requirements of this section.

5.54.4 The owner or operator shall ensure that operators are trained in any updated or new procedures prior to startup of a process after a major change.

5.55 Reserved

5.56 Maintenance

5.56.1 The owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. The owner or operator may use procedures or instructions provided by covered process equipment vendors or procedures in Federal or state regulations or industry codes as the basis for stationary source maintenance procedures.

5.56.2 The owner or operator shall train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of the process. To ensure that the employee can perform the job tasks in a safe manner, each such employee shall be trained in the hazards of the process, in how to avoid or correct unsafe conditions, and in the procedures applicable to the employee's job tasks.

5.56.3 Any maintenance contractor shall ensure that each contract maintenance employee is trained to perform the maintenance procedures developed under 5.56.1 of this section.

5.56.4 The owner or operator shall perform or cause to be performed inspections and tests on process equipment. Inspection and testing procedures shall follow recognized and generally accepted good engineering practices. The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, and prior operating experience.

5.57 Reserved

5.58 Compliance Audits

5.58.1 The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

5.58.2 The compliance audit shall be conducted by at least one person knowledgeable in the process.

5.58.3 The owner or operator shall develop a report of the audit findings.

5.58.4 The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected.

5.58.5 The owner or operator shall retain the two (2) most recent compliance audit reports. This requirement does not apply to any compliance audit report that is more than five years old.

5.59 Reserved

5.60 Incident Investigation

5.60.1 The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

5.60.2 An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

5.60.3 A summary shall be prepared at the conclusion of the investigation which includes at a minimum:

5.60.3.1 Date of incident;

5.60.3.2 Date investigation began;

5.60.3.3 A description of the incident;

5.60.3.4 The factors that contributed to the incident; and,

5.60.3.5 Any recommendations resulting from the investigation.

5.60.4 The owner or operator shall promptly address and resolve the investigation findings and recommendations. Resolutions and corrective actions shall be documented.

5.60.5 The findings shall be reviewed with all affected personnel whose job tasks are affected by the findings.

5.60.6 Investigation summaries shall be retained for five years.

Subpart D -Program 3 Prevention Program

5.61 through 5.64 Reserved

5.65 Process Safety Information

5.65.1 In accordance with the schedule set forth in Section 5.67, the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by this subpart. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving

regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

5.65.2 Information pertaining to the hazards of the regulated substances in the process. This information shall consist of at least the following:

- 5.65.2.1 Toxicity information;
- 5.65.2.2 Permissible exposure limits;
- 5.65.2.3 Physical data;
- 5.65.2.4 Reactivity data;
- 5.65.2.5 Corrosion data;
- 5.65.2.6 Thermal and chemical stability

data; and

5.65.2.7 Hazardous effects of inadvertent mixing of different materials that could foreseeably occur.

Note: Material Safety Data Sheets meeting the requirements of 29 CFR 1910.1200(g) dated July 1, 1997 may be used to comply with this requirement to the extent they contain the information required by this subparagraph.

5.65.3 Information pertaining to the technology of the process.

5.65.3.1 Information concerning the technology of the process shall include at least the following:

- 5.65.3.1.1 A block flow diagram or simplified process flow diagram;
- 5.65.3.1.2 Process chemistry;
- 5.65.3.1.3 Maximum intended inventory;
- 5.65.3.1.4 Safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and
- 5.65.3.1.5 An evaluation of the consequences of deviations.

5.65.3.2 Where the original technical information no longer exists, such information may be developed in conjunction with the process hazard analysis in sufficient detail to support the analysis.

5.65.4 Information pertaining to the equipment in the process.

5.65.4.1 Information pertaining to the equipment in the process shall include:

- 5.65.4.1.1 Materials of construction;
- 5.65.4.1.2 Piping and instrument diagrams (P and ID's);
- 5.65.4.1.3 Electrical classification;
- 5.65.4.1.4 Relief system design and design basis;
- 5.65.4.1.5 Ventilation system design;

5.65.4.1.6 Design codes and standards employed;

5.65.4.1.7 Material and energy balances for processes built after June 21, 1999; and

5.65.4.1.8 Safety systems (e.g. interlocks, detection or suppression systems).

5.65.4.2 The owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

5.65.4.3 For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

5.66 Reserved

5.67 Process Hazard Analysis

5.67.1 The owner or operator shall perform an initial process hazard analysis on processes covered by Program Level 3. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations as extent of the process hazards, number of potentially affected employees, age of the process, and operating history of the process. The process hazard analysis shall be conducted as soon as possible, but not later than June 21, 1999. Process hazards analyses completed to comply with 29 CFR 1910.119(e) dated July 1, 1997 are acceptable as initial process hazards analyses. These process hazard analyses shall be updated and revalidated, based on their completion date.

5.67.2 The owner or operator shall use one or more of the following methodologies that are appropriate to determine and evaluate the hazards of the process being analyzed.

- 5.67.2.1 What-If;
- 5.67.2.2 Checklist;
- 5.67.2.3 What-If/Checklist;
- 5.67.2.4 Hazard and Operability Study (HAZOP);
- 5.67.2.5 Failure Mode and Effects Analysis (FMEA);
- 5.67.2.6 Fault Tree Analysis; or
- 5.67.2.7 An appropriate equivalent methodology.

5.67.3 The process hazard analysis shall address:

- 5.67.3.1 The hazards of the process;

5.67.3.2 The identification of any previous incident which had a likely potential for catastrophic consequences;

5.67.3.3 Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. (Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors.);

5.67.3.4 Consequences of failure of engineering and administrative controls;

5.67.3.5 Stationary source siting;

5.67.3.6 Human factors; and

5.67.3.7 A qualitative evaluation of a range of the possible safety and health effects of failure of controls.

5.67.4 The process hazard analysis shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

5.67.5 The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

5.67.6 At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in 5.67.4 of this section, to assure that the process hazard analysis is consistent with the current process. Updated and revalidated process hazard analyses completed to comply with 29 CFR 1910.119(e) dated July 1, 1997 are acceptable to meet the requirements of this paragraph.

5.67.7 The owner or operator shall retain process hazards analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in 5.67.5 of this section for the life of the process.

5.68 Reserved

5.69 Operating Procedures

5.69.1 The owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements.

5.69.1.1 Steps for each operating phase:

5.69.1.1.1 Initial startup;

5.69.1.1.2 Normal operations;

5.69.1.1.3 Temporary operations;

5.69.1.1.4 Emergency shutdown

including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner;

5.69.1.1.5 Emergency operations;

5.69.1.1.6 Normal shutdown; and,

5.69.1.1.7 Startup following a turnaround, or after an emergency shutdown.

5.69.1.2 Operating limits:

5.69.1.2.1 Consequences of deviation and

5.69.1.2.2 Steps required to correct or avoid deviation.

5.69.1.3 Safety and health considerations:

5.69.1.3.1 Properties of, and hazards presented by, the chemicals used in the process;

5.69.1.3.2 Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment;

5.69.1.3.3 Control measures to be taken if physical contact or airborne exposure occurs;

5.69.1.3.4 Quality control for raw materials and control of hazardous chemical inventory levels and,

5.69.1.3.5 Any special or unique hazards.

5.69.1.4 Safety systems and their functions.

5.69.2 Operating procedures shall be readily accessible to employees who work in or maintain a process.

5.69.3 The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

5.69.4 The owner or operator shall develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and

control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees.

5.70 Reserved

5.71 Training.

5.71.1 Initial training.

5.71.1.1 Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in Section 5.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

5.71.1.2 In lieu of initial training for those employees already involved in operating a process on June 21, 1999, an owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.

5.71.2 Refresher training. Refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

5.71.3 Training documentation. The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

5.72 Reserved

5.73 Mechanical Integrity

5.73.1 Application. Paragraphs 5.73.2 through 5.73.6 of this section apply to the following process equipment:

5.73.1.1 Pressure vessels and storage tanks;

5.73.1.2 Piping systems (including piping components such as valves);

5.73.1.3 Relief and vent systems and devices;

5.73.1.4 Emergency shutdown systems;

5.73.1.5 Controls (including monitoring devices and sensors, alarms, and interlocks); and

5.73.1.6 Pumps.

5.73.2 Written procedures. The owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

5.73.3 Training for process maintenance activities. The owner or operator shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

5.73.4 Inspection and testing.

5.73.4.1 Inspections and tests shall be performed on process equipment.

5.73.4.2 Inspection and testing procedures shall follow recognized and generally accepted good engineering practices.

5.73.4.3 The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

5.73.4.4 The owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

5.73.5 Equipment deficiencies. The owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in Section 5.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

5.73.6 Quality assurance.

5.73.6.1 In the construction of new plants and equipment, the owner or operator shall assure that equipment as it is fabricated is suitable for the process application for which they will be used.

5.73.6.2 Appropriate checks and inspections shall be performed to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions.

5.73.6.3 The owner or operator shall assure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be used.

5.74 Reserved

5.75 Management of Change

5.75.1 The owner or operator shall establish and implement written procedures to manage changes (except for 'replacements in kind') to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

5.75.2 The procedures shall assure that the following considerations are addressed prior to any change:

5.75.2.1 The technical basis for the proposed change;

5.75.2.2 Impact of change on safety and health;

5.75.2.3 Modifications to operating procedures;

5.75.2.4 Necessary time period for the change; and,

5.75.2.5 Authorization requirements for the proposed change.

5.75.3 Employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

5.75.4 If a change covered by this paragraph results in a change in the process safety information required by Section 5.65 of this part, such information shall be updated accordingly.

5.75.5 If a change covered by this paragraph results in a change in the operating procedures or practices required by Section 5.69, such procedures or practices shall be updated accordingly.

5.76 Reserved

5.77 Pre-startup Review

5.77.1 The owner or operator shall perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

5.77.2 The pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process:

5.77.2.1 Construction and equipment is in accordance with design specifications;

5.77.2.2 Safety, operating, maintenance, and emergency procedures are in place and are adequate;

5.77.2.3 For new stationary sources, a process hazard analysis has been performed and recommendations have been resolved or implemented before startup; and modified stationary sources meet the requirements contained in management of change, Section 5.75; and

5.77.2.4 Training of each employee involved in operating a process has been completed.

5.78 Reserved

5.79 Compliance Audits

5.79.1 The owner or operator shall certify that they have evaluated compliance with the provisions of this ~~section~~ Regulation at least every three years to verify that the procedures and practices developed under the Regulation are adequate and are being followed.

5.79.2 The compliance audit shall be conducted by at least one person knowledgeable in the process.

5.79.3 A report of the findings of the audit shall be developed.

5.79.4 The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

5.79.5 The owner or operator shall retain the two (2) most recent compliance audit reports.

5.80 Reserved

5.81 Incident Investigation

5.81.1 The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance.

5.81.2 An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

5.81.3 An incident investigation team shall be established and consist of at least one person knowledgeable in the process involved, including a contract employee if the incident involved work of the contractor, and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident.

5.81.4 A report shall be prepared at the conclusion of the investigation which includes at a minimum:

5.81.4.1 Date of incident;

5.81.4.2 Date investigation began;

5.81.4.3 A description of the incident;

5.81.4.4 The factors that contributed to the incident; and,

5.81.4.5 Any recommendations resulting from the investigation.

5.81.5 The owner or operator shall establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.

5.81.6 The report shall be reviewed with all affected personnel whose job tasks are relevant to the incident findings including contract employees where applicable.

5.81.7 Incident investigation reports shall be retained for five years.

5.82 Reserved

5.83 Employee Participation

5.83.1 The owner or operator shall develop a written plan of action regarding the implementation of the employee participation required by this section.

5.83.2 The owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this regulation.

5.83.3 The owner or operator shall provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under this regulation.

5.84 Reserved

5.85 Hot Work Permit

5.85.1 The owner or operator shall issue a hot work permit for hot work operations conducted on or near a covered process.

5.85.2 The permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) dated July 1, 1997 have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations.

5.86 Reserved

5.87 Contractors

5.87.1 Application. This section applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process. It does not apply to contractors providing incidental services which do not influence process safety, such as janitorial work, food and drink services, laundry, delivery or other supply services.

5.87.2 Owner or operator responsibilities.

5.87.2.1 The owner or operator, when selecting a contractor, shall obtain and evaluate information regarding the contract owner or operator's safety performance and programs.

5.87.2.2 The owner or operator shall inform contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.

5.87.2.3 The owner or operator shall explain to the contract owner or operator the applicable provisions of subpart E of this regulation.

5.87.2.4 The owner or operator shall develop and implement safe work practices consistent with

Section 5.69.4, to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas.

5.87.2.5 The owner or operator shall periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in 5.87.3 of this section.

5.87.3 Contract owner or operator responsibilities.

5.87.3.1 The contract owner or operator shall assure that each contract employee is trained in the work practices necessary to safely perform his/her job.

5.87.3.2 The contract owner or operator shall assure that each contract employee is instructed in the known potential fire, explosion, or toxic release hazards related to his/her job and the process, and the applicable provisions of the emergency action plan.

5.87.3.3 The contract owner or operator shall document that each contract employee has received and understood the training required by this section. The contract owner or operator shall prepare a record which contains the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training.

5.87.3.4 The contract owner or operator shall assure that each contract employee follows the safety rules of the stationary source including the safe work practices required by Section 5.69.4.

5.87.3.5 The contract owner or operator shall advise the owner or operator of any unique hazards presented by the contract owner or operator's work, or of any hazards found by the contract owner or operator's work.

Subpart E-Emergency Response

5.88 and 5.89 Reserved

5.90 Applicability

5.90.1 Except as provided in 5.90.2 of this section, the owner or operator of a stationary source with Program 2 and Program 3 processes shall comply with the requirements of Section 5.95.

5.90.2 The owner or operator of stationary source whose employees will not respond to accidental releases of regulated substances need not comply with Section 5.95 of this part provided that they meet the following:

5.90.2.1 For stationary sources with any regulated toxic substance held in a process above the threshold quantity, the stationary source is included in the community emergency response plan developed under 42 U.S.C . 11003;

5.90.2.2 For stationary sources with only regulated flammable substances held in a process above the

threshold quantity, the owner or operator has coordinated response actions with the local fire department; and

5.90.2.3 Appropriate mechanisms are in place to notify emergency responders when there is a need for a response.

5.91 through 5.94 Reserved

5.95 Emergency Response Program

5.95.1 The owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements:

5.95.1.1 An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements:

5.95.1.1.1 Procedures for informing the public and local emergency response agencies about accidental releases;

5.95.1.1.2 Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and

5.95.1.1.3 Procedures and measures for emergency response after an accidental release of a regulated substance;

5.95.1.2 Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance;

5.95.1.3 Training for all employees in relevant procedures; and

5.95.1.4 Procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes.

5.95.2 A written plan that complies with other Federal contingency plan regulations or is consistent with the approach in the National Response Team's Integrated Contingency Plan Guidance ("One Plan") and that, among other matters, includes the elements provided in paragraph 5.95.1 of this section, shall satisfy the requirements of this section if the owner or operator also complies with paragraph 5.95.3 of this section.

5.95.3 The emergency response plan developed under paragraph 5.95.1.1 of this section shall be coordinated with the community emergency response plan developed under 42 U.S.C. 11003. Upon request of the local emergency planning committee or emergency response officials, the owner or operator shall promptly provide to the local emergency response officials information necessary for developing and implementing the community emergency response plan.

Subpart F—Regulated Substances for Accidental Release Prevention

5.96 through 5.99 Reserved

5.100 Purpose

This subpart designates substances to be listed under section 112(r)(3), (4), and (5) of the Clean Air Act, as amended and identifies their threshold quantities.

5.101 through 5.114 Reserved

5.115 Threshold Determination

5.115.1 A threshold quantity of a regulated substance listed in Section 5.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.

5.115.2 For the purposes of determining whether more than a threshold quantity of a regulated substance is present at the stationary source, the following exemptions apply:

5.115.2.1 *Concentrations of a regulated toxic substance in a mixture.* If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the amount of the substance in the mixture need not be considered when determining whether more than a threshold quantity is present at the stationary source. Except for oleum, toluene 2,4-diisocyanate, toluene 2,6-diisocyanate, and toluene diisocyanate (unspecified isomer), if the concentration of the regulated substance in the mixture is one percent or greater by weight, but the owner or operator can demonstrate that the partial pressure of the regulated substance in the mixture (solution) under handling or storage conditions in any portion of the process is less than 10 millimeters of mercury (mm Hg), the amount of the substance in the mixture in that portion of the process need not be considered when determining whether more than a threshold quantity is present at the stationary source. The owner or operator shall document this partial pressure measurement or estimate.

5.115.2.2 *Concentrations of a regulated flammable substance in a mixture.*

5.115.2.2.1 *General provision.* If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the mixture need not be considered when determining whether more than a threshold quantity of the regulated substance is present at the stationary source. Except as provided in paragraph 5.115.2.2 and .3 of this section, if the concentration of the substance is one percent or greater by weight of the mixture, then, for purposes of determining whether a threshold quantity is present at the stationary source, the entire weight of the mixture shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture itself does not

have a National Fire Protection Association flammability hazard rating of 4. The demonstration shall be in accordance with the definition of flammability hazard rating 4 in the NFPA 704, Standard System for the Identification of the Hazards of Materials for Emergency Response, National Fire Protection Association, Quincy, MA, 1996. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A-96-O8, Waterside Mall, 401 M. St. SW., Washington D.C.; or at the Office of Federal Register at 800 North Capitol St., NW, Suite 700, Washington, D.C. Boiling point and flash point shall be defined and determined in accordance with NFPA 30, Flammable and Combustible Liquids Code, National Fire Protection Association, Quincy, MA, 1996. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A-96-O8, Waterside Mall, 401 M. St. SW., Washington D.C.; or at the Office of Federal Register at 800 North Capitol St., NW, Suite 700, Washington, D.C. The owner or operator shall document the National Fire Protection Association flammability hazard rating.

5.115.2.2.2 *Gasoline.* Regulated substances in gasoline, when in distribution or related storage for use as fuel for internal combustion engines, need not be considered when determining whether more than a threshold quantity is present at a stationary source.

5.115.2.2.3 *Naturally occurring hydrocarbon mixtures.* Prior to entry into a natural gas processing plant or a petroleum refining process unit, regulated substances in naturally occurring hydrocarbon mixtures need not be considered when determining whether more than a threshold quantity is present at a stationary source. Naturally occurring hydrocarbon mixtures include any combination of the following: condensate, crude oil, field gas, and produced water, each as defined in Section ~~5-3 of this part 4.0.~~

5.115.2.3 *Articles.* Regulated substances contained in articles need not be considered when determining whether more than a threshold quantity is present at the stationary source.

5.115.2.4 *Uses.* Regulated substances, when in use for the following purposes, need not be included

in determining whether more than a threshold quantity is present at the stationary source:

5.115.2.4.1 Use as a structural component of the stationary source;

5.115.2.4.2 Use of products for routine janitorial maintenance;

5.115.2.4.3 Use by employees of foods, drugs, cosmetics, or other personal items containing the regulated substance; and

5.115.2.4.4 Use of regulated substances present in process water or non-contact cooling water as drawn from the environment or municipal sources, or use of regulated substances present in air used either as compressed air or as part of combustion.

5.115.2.5 *Activities in laboratories.* If a regulated substance is manufactured, processed, or used in a laboratory at a stationary source under the supervision of a technically qualified individual, the quantity of the substance need not be considered in determining whether a threshold quantity is present. This exemption does not apply to:

5.115.2.5.1 Specialty chemical production;

5.115.2.5.2 Manufacture, processing, or use of substances in pilot plant scale operations; and

5.115.2.5.3 Activities conducted outside the laboratory.

5.116 through 5.124 Reserved

5.125 Exemptions. *Agricultural nutrients.* Ammonia used as an agricultural nutrient, when held by farmers, is exempt from all provisions of this regulation.

5.126 Exclusion. Flammable Substances Used as Fuel or Held for Sale as Fuel at Retail Facilities. A flammable substance listed in Table 2 of 5.130 is nevertheless excluded from all provisions of section 5 when the substance is used as a fuel or held for sale as a fuel at a retail facility.

5.127 through 5.129 Reserved

5.130 List of Substances.

5.130.1 Regulated toxic and flammable substances under Section 112(r) of the Clean Air Act are the substances listed in Tables 1 and 2, Threshold quantities for listed toxic and flammable substances are specified in the tables.

5.130.2 The basis for placing toxic and flammable substances on the list of regulated substances are explained in the notes to the list.

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Table 1: List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention

Chemical Name	CAS #	Threshold Quantity (lbs)	Basics for Listing
Acrolein [2-Propenal]	107-02-8	5,000	b
Acrylonitrile [2-Propenenitrile]	107-13-1	20,000	b
Acrylyl chloride [2-Propenoyl chloride]	814-68-6	5,000	b
Allyl alcohol [2-Propen-1-ol]	107-18-61	15,000	b
Allylamine [2-Propen-1-amine]	107-11-9	10,000	b
Ammonia (anhydrous)	7664-41-7	10,000	a, b
Ammonia (conc 20% or greater)	7664-41-7	20,000	a, b
Arsenous trichloride	7784-34-1	15,000	b
Arsine	7784-42-1	1,000	b
Boron trichloride [Borane, trichloro-]	10294-34-5	5,000	b
Boron trifluoride [Borane, trifluoro-]	7637-07-2	5,000	b
Boron trifluoride with methyl ether (1:1) [Boron, trifluoro[oxybis[methane]]-, T-4-	353-42-4	15,000	b
Bromine	7726-95-6	10,000	a, b
Carbon Disulfide	75-15-0	20,000	b
Chlorine	7782-50-5	2,500	a, b
Chlorine Dioxide [Chlorine oxide (ClO ₂)]	10049-04-4	1,000	c
Chloroform [Methane, trichloro-]	67-66-3	20,000	b
Chloromethyl ether [Methane, oxybis[chloro]]	542-88-1	1,000	b
Chloromethyl methyl ether [Methane, chloromethoxy-]	107-30-2	5,000	b
Crotonaldehyde [2-Butenal]	4170-30-3	20,000	b
Croutonaldehyde, (E)-[2-Butenal, (E)-]	123-73-9	20,000	b
Cyanogen chloride	506-77-4	10,000	c
Cyclohexylamine [Cyclohexanamine]	108-91-8	15,000	b
Diborane	19287-45-7	2,500	b
Dimethyldichlorosilane [Silane, dichlorodimethyl-]	75-78-5	5,000	b
1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	57-14-7	15,000	b

Epichlorohydrin [Oxirane, (chloromethyl)-]	106-89-8	20,000	b
Ethylenediamine [1,2-Ethanediamine]	107-15-3	20,000	b
Ethyleneimine [Aziridine]	151-56-4	10,000	b
Ethylene Oxide [Oxirane]	75-21-8	10,000	a, b
Fluorine	7782-41-4	1,000	b
Formaldehyde (solution)	50-00-0	15,000	b
Furan	110-00-9	5,000	b
Hydrazine	302-01-2	15,000	b
Hydrochloric acid (conc 37% or greater)	7647-01-0	15,000	d
Hydrocyanic acid	74-90-8	2,500	a, b
Hydrogen chloride (anhydrous) [Hydrochloric acid]	7647-01-0	5,000	a
Hydrogen fluoride/ Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]	7664-39-3	1,000	a, b
Hydrogen selenide	7783-07-5	500	b
Hydrogen sulfide	7783-06-4	10,000	a, b
Iron, pentacarbonyl- [Iron carbonyl (Fe(CO) ₅ , (TB-5-11)-]	13463-40-6	2,500	b
Isobutyronitrile [Propanenitrile, 2-methyl-]	78-82-0	20,000	b
Isopropyl chloroformate [Carbonochloridic acid, methylester]	108-23-6	15,000	b
Methacrylonitrile [2-Propenenitrile, 2-methyl-]	126-98-7	10,000	b
Methyl chloride [Methane, chloro-]	74-87-3	10,000	a
Methyl chloroformate [Carbonochloridic acid, methylester]	79-22-1	5,000	b
Methyl hydrazine [Hydrazine, methyl-]	60-34-4	15,000	b
Methyl isocyanate [Methane, isocyanato-]	624-83-9	10,000	a, b
Methyl mercaptan [Methanethiol]	74-93-1	10,000	b
Methyl thiocyanate [Thiocyanic acid, methyl ester]	556-64-9	20,000	b
Methyltrichlorosilane [Silane, trichloromethyl-]	75-79-6	5,000	b
Nickel carbonyl	13463-39-3	1,000	b
Nitric acid (conc 80% or greater)	7697-37-2	15,000	b

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Nitric oxide [Nitrogen oxide (NO)]	10102-43-9	10,000	b
Oleum (Fuming sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide]	8014-95-7	10,000	e
Peracetic acid [Ethaneperoxy acid]	79-21-0	10,000	b
Perchloromethylmercaptan [methanesulfenyl chloride, trichloro-]	594-42-3	10,000	b
Phosgene [Carbonic dichloride]	75-44-5	500	a, b
Phosphine	7803-51-2	5,000	b
Phosphorus oxychloride [Phosphoryl chloride]	10025-87-3	5,000	b
Phosphorus trichloride [Phosphorous trichloride]	7719-12-2	15,000	b
Piperdine	110-89-4	15,000	b
Propionitrile [Propanenitrile]	107-12-0	10,000	b
Propyl chlorofromate [Cabanochloridic acid, propylester]	109-61-5	15,000	b
Propyleneimine [Aziridine, 2-methyl-]	75-55-8	10,000	b
Propylene oxide [Oxirane, methyl-]	75-56-9	10,000	b
Sulfur Dioxide (anhydrous)	7446-09-5	5,000	a, b
Sulfur tetrafluoride [Sulfur fluoride (SF ₄), (T-4)-]	7783-60-0	2,500	b
Sulfur trioxide	7446-11-9	10,000	a, b
Tetramethyllead [Plumbane, tetramethyl-]	75-74-1	10,000	b
Tetranitromethane [Methane, tetranitro-]	509-14-8	10,000	b
Titanium tetrachloride [Titanium chloride (TiCl ₄), (T-4)]	7550-45-0	2,500	b
Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-] ¹	584-84-9	10,000	a
Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-] ¹	91-08-7	10,000	a
Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-] ¹	26471-62-5	10,000	a
Trimethylchlorosilane [Silane, chlorotrimethyl-]	75-77-4	10,000	b

Vinyl acetate monomer [Acetic acid ethenyl ester]	108-05-4	15,000	b
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¹ The mixture exemption in Sec. 5.115.2.1 does not apply to the substance.

Note: Basis for Listing:

a Mandated for listing by EPA by Congress in Section 112(r) of the 1990 Clean Air Act.

b Listed on the 40 CFR Part 302 EHS list dated July 1, 1997 and has a vapor pressure of 10 mmHg or greater.

c Toxic gas.

d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.

e Toxicity of sulfur trioxide and sulfuric acid, potential to release sulfur trioxide, and history of accidents.

Table 2: List of Regulated Flammable Substances¹ and Threshold Quantities for Accidental Release Prevention

Chemical Name	CAS #	Threshold Quantity (lbs)	Basis for Listing
Acetaldehyde	75-07-0	10,000	g
Acetylene [Ethyne]	74-86-2	10,000	f
Bromotrifluoroethylene [Ethene, bromotribluoro-]	598-73-2	10,000	f
1,3-Butadiene	106-99-0	10,000	f
Butane	106-97-8	10,000	f
1-Butene	106-98-9	10,000	f
2-Butene	107-01-7	10,000	f
Butene	25167-67-3	10,000	f
2-Butene-cis	590-18-1	10,000	f
2-Butene-trans [2-Butene, (E)]	624-64-6	10,000	f
Carbon oxysulfide [Carbon oxide sulfide (COS)]	463-58-1	10,000	f
Chlorine monoxide [Chlorine oxide]	7791-21-1	10,000	f
2-Chloropropylene [1-Propene, 2-chloro-]	557-98-2	10,000	g
1-Chloropropylene [1-Propene, 1-chloro-]	590-21-6	10,000	g
Cyanogen [Ethanedinitrile]	460-19-5	10,000	f
Cyclopropane	75-19-4	10,000	f
Dichlorosilane [Silane, dichloro-]	4109-96-0	10,000	f
Diffluoroethane [Ethane, 1,1-difluoro-]	75-37-6	10,000	f
Dimethylamine [Methanamine, N-methyl-]	124-40-3	10,000	f

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2,2-Dimethylpropane [Propane, 2,2-dimethyl-]	463-82-1	10,000	f
Ethane	74-84-0	10,000	f
Ethyl acetylene [1-Butyne]	107-00-6	10,000	f
Ethylamine [Ethanamine]	75-04-7	10,000	f
Ethyl chloride [Ethane, chloro-]	75-00-3	10,000	f
Ethylene [Ethene]	74-85-1	10,000	f
Ethyl ether [Ethane, 1,1-oxo-bis-]	60-29-7	10,000	g
Ethyl mercaptan [Ethanethiol]	75-08-1	10,000	g
Ethyl nitrite [Nitrous acid, ethyl ester]	109-95-5	10,000	f
Hydrogen	1333-74-0	10,000	f
Isobutane [Propane, 2- methyl]	75-28-5	10,000	f
Isopentane [Butane, 2- methyl]	78-78-4	10,000	g
Isoprene [1,3-Butadiene, 2-methyl-]	78-79-5	10,000	g
Isopropylamine [2- Propanamine]	75-31-0	10,000	g
Isopropyl chloride [Propane, 2-chloro-]	75-29-6	10,000	g
Methane	74-82-8	10,000	f
Methylamine [Methanamine]	74-89-5	10,000	f
3-Methyl-1-butene	563-45-1	10,000	f
2-Methyl-1-butene	563-46-2	10,000	g
Methyl ether [Methane, oxybis-]	115-10-6	10,000	f
Methyl formate [Formic acid, methyl ester]	107-31-3	10,000	g
2 Methylpropene [1- Propene, 2-methyl-]	115-11-7	10,000	f
1,3-Pentadimene	504-60-9	10,000	f
Pentane	109-66-0	10,000	g
1-Pentene	109-67-1	10,000	g
2-Pentene, (E)-	646-04-8	10,000	g
2-Pentene, (Z)-	627-20-3	10,000	g
Propadiene [1,2- Propadiene]	463-49-0	10,000	f
Propane	74-98-6	10,000	f
Propylene [1-Propene]	115-07-1	10,000	f
Propyne [1-Propyne]	74-99-7	10,000	f
Silane	7803-62-5	10,000	f
Tetrafluoroethylene [Ethene, tetrafluoro-]	116-14-3	10,000	f
Tetramethylsilane [Silane, tetramethyl-]	75-76-3	10,000	g
Trichlorosilane [Silane, trichloro-]	10025-78-2	10,000	g

Trifluorochloroethylene [Ethene, chlorotrifluoro-]	79-38-9	10,000	f
Trimethylamine [Methylamine, N,N- dimethyl-]	75-50-3	10,000	f
Vinyl acetylene [1-Buten- 3-yne]	689-97-4	10,000	f
Vinyl chloride [Ethene, chloro-]	75-01-4	10,000	a, f
Vinyl ethyl ether [Ethene, ethoxy-]	109-92-2	10,000	g
Vinyl fluoride [Ethene, fluoro-]	75-02-5	10,000	f
Vinylidene chloride [Ethene, 1,1-dichloro-]	75-35-4	10,000	g
Vinylidene fluoride [Ethene, 1,1-difluoro-]	75-38-7	10,000	f
Vinyl methyl ether [Ethene, methoxy-]	107-25-5	10,000	f

¹ A flammable substance when used as a fuel or held as a fuel at a retail facility is excluded from all provisions of section 5 (See 5.126).

Note: Basis for Listing:

a Mandated for listing by EPA by Congress in Section 112(r) of the 1990 Clean Air Act.

f Flammable gas.

g Volatile flammable liquid.

Table 3: List of Toxic Endpoints

CAS No.	Chemical Name	Toxic Endpoint(mg/L)
107-02-8	Acrolein [2-Propenal]	0.0011
107-13-1	Acrylonitrile [2-Propenenitrile]	0.076
814-68-6	Acrylyl chloride [2-Propenoyl chloride]	0.00090
107-18-6	Allyl alcohol [2-Propen-1-ol]	0.036
107-11-9	Allylamine [2-Propen-1-amine]	0.0032
7664-41-7	Ammonia (anhydrous)	0.14
7664-41-7	Ammonia (conc 20% or greater)	0.14
7784-34-1	Arsenous trichloride	0.010
7784-42-1	Arsine	0.0019
10294-34-5	Boron trichloride [Borane, trichloro-]	0.010
7637-07-2	Boron trifluoride [Borane, trifluoro-]	0.028
353-42-4	Boron trifluoride compound with methyl ether (1:1) [Boron,trifluoro[oxybis	

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	[methane]-,T-4	0.023		[2-Propenenitrile, 2-methyl-]	0.0027
7726-95-6	Bromine	0.0065	74-87-3	Methyl chloride	
75-15-0	Carbon disulfide	0.16		[Methane, chloro-]	0.82
7782-50-5	Chlorine	0.0087	79-22-1	Methyl chloroformate	
10049-04-4	Chlorine dioxide			[Carbonochloridic acid, methyl ester]	0.0019
	[Chlorine oxide (ClO ₂)]	0.0028		Methyl hydrazine	
67-66-3	Chloroform [Methane, trichloro-]	0.49	60-34-4	[Hydrazine, methyl-]	0.0094
542-88-1	Chloromethyl ether			Methyl isocyanate	
	[Methane, oxybis[chloro-]	0.00025	624-83-9	[Methane, isocyanato-]	0.0012
107-30-2	Chloromethyl methyl ether			Methyl mercaptan	
	[Methane, chloromethoxy-]	0.0018	74-93-1	[Methanethiol]	0.049
4170-30-3	Crotonaldehyde [2-Butenal]	0.029		Methyl thiocyanate	
123-73-9	Crotonaldehyde, (E)-,		556-64-9	[Thiocyanic acid, methyl ester]	0.085
	[2-Butenal, (E)-]	0.029		Methyltrichlorosilane	
506-77-4	Cyanogen chloride	0.030	75-79-6	[Silane, trichloromethyl-]	0.018
108-91-8	Cyclohexylamine			Nickel carbonyl	0.00067
	[Cyclohexanamine]	0.16	13463-39-3	Nitric acid	
19287-45-7	Diborane	0.0011	7697-37-2	(conc 80% or greater)	0.026
75-78-5	Dimethyldichlorosilane			Nitric oxide [Nitrogen oxide (NO)]	0.031
	[Silane, dichlorodimethyl-]	0.026	10102-43-9	Oleum (Fuming Sulfuric acid)	
57-14-7	1,1-Dimethylhydrazine		8014-95-7	[Sulfuric acid, mixture with sulfur trioxide]	0.010
	[Hydrazine, 1,1-dimethyl-]	0.012		Peracetic acid	
106-89-8	Epichlorohydrin		79-21-0	[Ethaneperoxoic acid]	0.0045
	[Oxirane, (chloromethyl)-]	0.076		Perchloromethylmercaptan	
107-15-3	Ethylenediamine			[Methanesulfenyl chloride, trichloro-]	0.0076
	[1,2-Ethanediamine]	0.49	594-42-3	Phosgene [Carbonic dichloride]	0.00081
151-56-4	Ethyleneimine [Aziridine]	0.018		Phosphine	0.0035
75-21-8	Ethylene oxide [Oxirane]	0.090	75-44-5	Phosphorus oxychloride	
7782-41-4	Fluorine	0.0039	7803-51-2	[Phosphoryl chloride]	0.0030
50-00-0	Formaldehyde (solution)	0.012	10025-87-3	Phosphorus trichloride	
110-00-9	Furan	0.0012		[Phosphorous trichloride]	0.028
302-01-2	Hydrazine	0.011	7719-12-2	Piperidine	0.022
7647-01-0	Hydrochloric acid			Propionitrile [Propanenitrile]	0.0037
	(conc 37% or greater)	0.030	110-89-4	Propyl chloroformate	
74-90-8	Hydrocyanic acid	0.011	107-12-0	[Carbonochloridic acid, propylester]	0.010
7647-01-0	Hydrogen chloride		109-61-5	Propyleneimine	
	(anhydrous) [Hydrochloric acid]	0.030		[Aziridine, 2-methyl-]	0.12
7664-39-3	Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater)		75-55-8	Propylene oxide	
	[Hydrofluoric acid]	0.016		[Oxirane, methyl-]	0.59
7783-07-5	Hydrogen selenide	0.00066	75-56-9	Sulfur dioxide (anhydrous)	0.0078
7783-06-4	Hydrogen sulfide	0.042		Sulfur tetrafluoride	
13463-40-6	Iron, pentacarbonyl-		7446-09-5	[Sulfur fluoride (SF ₄), (T-4)-]	0.0092
	[Iron carbonyl (Fe(CO) ₅), (TB-5-11)-]	0.00044	7783-60-0	Sulfur trioxide	0.010
78-82-0	Isobutyronitrile			Tetramethyllead	
	[Propanenitrile, 2-methyl-]	0.14	7446-11-9	[Plumbane, tetramethyl-]	0.0040
108-23-6	Isopropyl chloroformate		75-74-1	Tetranitromethane	
	[Carbonochloride acid, 1-methylethyl ester]	0.10	509-14-8	[Methane, tetranitro-]	0.0040
126-98-7	Methacrylonitrile		7750-45-0	Titanium tetrachloride	

584-84-9	[Titanium chloride (TiCl ₄), (T-4-] 0.020 Toluene 2,4-diisocyanate	
	[Benzene, 2,4-diisocyanato -1-methyl-] 0.0070	
91-08-7	Toluene 2,6-diisocyanate	
	[Benzene, 1,3-diisocyanato -2-methyl-] 0.0070	
26471-62-5	Toluene diisocyanate (unspecified isomer)	
	[Benzene, 1,3-diisocyanatomethyl-]0.0070	
75-77-4	Trimethylchlorosilane	
	[Silane, chlorotrimethyl-] 0.050	
108-05-4	Vinyl acetate monomer	
	[Acetic acid ethenyl ester] 0.26	

Subpart G - Risk Management Plan

5.131 through 5.149 Reserved

5.150 Submission Note: The data elements of the Plan are required to be submitted to the EPA. The data elements of the plan are based upon 40 CFR 68.150 through 68.190 dated July 1, 1997 revised as of April 9, 2004 reprinted here under Sections 5.150 through 5.190. It is the responsibility of the owner or operator to meet the existing EPA risk management plan data submittal requirements at the time of submission.

5.150.1 The owner or operator shall submit a single RMP that includes the information required by sections 5.155 through 5.185 for all covered processes. The RMP shall be submitted in a method and format to a central point as specified by EPA prior to June 21, 1999 as of the date of submission.

5.150.2 The owner or operator shall submit the first RMP no later than the latest of the following dates:

5.150.2.1 June 21, 1999;

5.150.2.2 Three years after the date on which a regulated substance is first listed by EPA pursuant to 5.130; or

5.150.2.3 The date on which a regulated substance is first present above a threshold quantity in a process.

5.150.3 The owner or operator of any stationary source for which an RMP was submitted before June 21, 2004, shall revise the RMP to include the information required by 5.160.2.6 and 5.160.2.14 by June 21, 2004 in the manner specified by EPA prior to that date. Any such submission shall also include the information required by 5.160.2.20 (indicating that the submission is a correction to include the information required by 5.160.2.6 and 5.160.2.14 or an update under 5.190).

5.150.4 ~~Subsequent submissions of RMP's shall be in accordance with 5.190.~~ RMPs submitted under

this section shall be updated and corrected in accordance with 5.190 and 5.195.

5.150.5 Notwithstanding the provisions of 5.155 to 5.190, the RMP shall exclude classified information. Subject to appropriate procedures to protect such information from public disclosure, classified data or information excluded from the RMP may be made available in a classified annex to the RMP for review by Federal and state representatives who have received the appropriate security clearances.

5.150.6 Procedures for asserting that information submitted in the RMP is entitled to protection as confidential business information are set forth in 5.151 and 5.152.

5.151 Assertion of claims of confidential business information.

5.151.1 Except as provided in paragraph 5.141.2 of this section, an owner or operator of a stationary source required to report or otherwise provide information under this part may make a claim of confidential business information for any such information that meets the criteria set forth in 40 CFR 2.301.

5.151.2 Notwithstanding the provisions of 40 CFR part 2, an owner or operator of a stationary source subject to this part may not claim as confidential business information the following information:

5.151.2.1 Registration data required by Sec. 5.160.2.1 through 6, 8, and 5.160.2.1.10 through 13 and NAICS code and Program level of the process set forth in Sec. 5.160.2.7;

5.151.2.2 Offsite consequence analysis data required by Sec. 5.165.2.4, 9, 10, 11, and 12.

5.151.2.3 Accident history data required by Sec. 5.168;

5.151.2.4 Prevention program data required by Sec.5.170.2, 5.170.4, 5.170.5.1, and 5.170.6 through 5.170.11;

5.151.2.5 Prevention program data required by Sec. 5.175.2, 5.175.4, 5.175.5.1, 5.175.6 through 5.175.16; and

5.151.2.6 Emergency response program data required by Sec. 5.180.

5.151.3 Notwithstanding the procedures specified in 40 CFR part 2, an owner or operator asserting a claim of CBI with respect to information contained in its RMP, shall submit to EPA at the time it submits the RMP the following:

5.151.3.1 The information claimed confidential, provided in a format to be specified by EPA;

5.151.3.2 A sanitized (redacted) copy of the RMP, with the notation "CBI" substituted for the

information claimed confidential, except that a generic category or class name shall be substituted for any chemical name or identity claimed confidential; and

5.151.3.3 The document or documents substantiating each claim of confidential business information, as described in Section 5.152.

5.152 Substantiating claims of confidential business information

5.152.1 An owner or operator claiming that information is confidential business information must substantiate that claim by providing documentation that demonstrates that the claim meets the substantive criteria set forth in 40 CFR 2.301.

5.152.2 Information that is submitted as part of the substantiation may be claimed confidential by marking it as confidential business information. Information not so marked will be treated as public and may be disclosed without notice to the submitter. If information that is submitted as part of the substantiation is claimed confidential, the owner or operator must provide a sanitized and unsanitized version of the substantiation.

5.152.3 The owner, operator, or senior official with management responsibility of the stationary source shall sign a certification that the signer has personally examined the information submitted and that based on inquiry of the persons who compiled the information, the information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential business information would, if disclosed, reveal trade secrets or other confidential business information.

5.153 and 5.154 Reserved

5.155 Executive Summary. The owner or operator shall provide in the RMP an executive summary that includes a brief description of the following elements:

5.155.1 The accidental release prevention and emergency response policies at the stationary source;

5.155.2 The stationary source and regulated substances handled;

~~(e) The worst case release scenario(s) and the alternative release scenario(s), including administrative controls and mitigation measures to limit the distances for each reported scenario;~~

5.155.3 The general accidental release prevention program and chemical-specific prevention steps;

5.155.4 The five-year accident history;

5.155.5 The emergency response program;

and
5.155.6 Planned changes to improve safety.

5.156 through 5.159 Reserved

5.160 Registration

5.160.1 The owner or operator shall complete a single registration form and include it in the RMP. The form shall cover all regulated substances handled in covered processes.

5.160.2 The registration shall include the following data:

5.160.2.1 Stationary source name, street, city, county, state, zip code, latitude, and longitude, method for obtaining latitude and longitude, and description of location that latitude and longitude represent;

5.160.2.2 The stationary source Dun and Bradstreet number;

5.160.2.3 Name and Dun and Bradstreet number of the corporate parent company;

5.160.2.4 The name, telephone number, and mailing address of the owner or operator;

5.160.2.5 The name and title of the person or position with overall responsibility for RMP elements and implementation, and (optional) e-mail address for that person or position;

5.160.2.6 The name, title, telephone number, and 24-hour telephone number and as of June 21, 2004, the e-mail address (if any e-mail address exists) of the emergency contact;

5.160.2.7 For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six-digit NAICS code that most closely corresponds to the process, and the Program level of the process;

5.160.2.8 The stationary source EPA identifier;

5.160.2.9 The number of full-time employees at the stationary source;

5.160.2.10 Whether the stationary source is subject to 29 CFR 1910.119 dated July 1, 1997;

5.160.2.11 Whether the stationary source is subject to 40 CFR part 355 dated July 1, 1997;

5.160.2.12 ~~Whether~~ If the stationary source has a CAA Title V operating permit, the permit number; and

5.160.2.13 The date of the last safety inspection of the stationary source by a Federal, state, or local government agency and the identity of the inspecting entity.

5.160.2.14 As of June 21, 2004, the name, the mailing address, and the telephone number of the contractor who prepared the RMP (if any);

5.160.2.15 Source of Parent Company E-mail Address (Optional);

5.160.2.16 Source Homepage address
(Optional);

5.160.2.17 Phone number at the source for
public inquiries (Optional);

5.160.2.18 Local Emergency Planning
Committee (Optional);

5.160.2.19 OSHA Voluntary Protection
Program status (Optional).

5.160.2.20 As of June 21, 2004, the type of
and reason for any changes being made to a previously
submitted RMP; the types of changes to RMP are
categorized as follows:

5.160.2.20.1 Updates and re-
submissions required under 5.190.2;

5.160.2.20.2 Corrections under 5.195
or for purposes of correcting minor clerical errors, updating
administrative information, providing missing data elements
or reflecting facility ownership changes, and which do not
require an update and re-submission as specified in 5.190.2;

5.160.2.20.3 De-registrations
required under 5.190.3; and

5.160.2.20.4 Withdrawals of an RMP for
any facility that was erroneously considered subject to this
Section 5 of this Regulation.

5.161 through 5.164 Reserved

5.165 Off-site Consequence Analysis

5.165.1 The owner or operator shall submit in
the RMP information:

5.165.1.1 One worst-case release scenario
for each Program 1 process; and

5.165.1.2 For Program 2 and 3 processes,
one worst-case release scenario to represent all regulated
toxic substances held above the threshold quantity and one
worst-case release scenario to represent all regulated
flammable substances held above the threshold quantity. If
additional worst-case scenarios for toxics or flammables are
required by Section 5.25.1.2.3, the owner or operator shall
submit the same information on the additional scenario(s).
The owner or operator of Program 2 and 3 processes shall
also submit information on one alternative release scenario
for each regulated toxic substance held above the threshold
quantity and one alternative release scenario to represent all
regulated flammable substances held above the threshold
quantity.

5.165.2 The owner or operator shall submit the
following data:

5.165.2.1 Chemical name;

5.165.2.2 Percentage weight of the
chemical in a liquid mixture (toxics only);

5.165.2.3 Physical state (toxics only);

5.165.2.4 Basis of results (give model name
if used);

5.165.2.5 Scenario (explosion, fire, toxic
gas release, or liquid spill and vaporization);

5.165.2.6 Quantity released in pounds;

5.165.2.7 Release rate;

5.165.2.8 Release duration;

5.165.2.9 Wind speed and atmospheric
stability class (toxics only);

5.165.2.10 Topography (toxics only);

5.165.2.11 Distance to endpoint;

5.165.2.12 Public and environmental
receptors within the distance;

5.165.2.13 Passive mitigation considered;
and

5.165.2.14 Active mitigation considered
(alternative releases only);

5.166 and 5.167 Reserved

5.168 Five-year Accident History. The owner or
operator shall submit in the RMP the information provided
in Section 5.42.2 on each accident covered by Section
5.42.1.

5.169 Reserved

5.170 Prevention Program/Program 2

5.170.1 For each Program 2 process, the owner or
operator shall provide in the RMP the information indicated
in paragraphs 5.170.2 through 5.170.11 of this section. If the
same information applies to more than one covered process,
the owner or operator may provide the information only
once, but shall indicate to which processes the information
applies.

5.170.2 The five- or six digit NAICS code that
most closely corresponds to the process.

5.170.3 The name(s) of the chemical(s) covered.

5.170.4 The date of the most recent review or
revision of the safety information and a list of Federal or
state regulations or industry-specific design codes and
standards used to demonstrate compliance with the safety
information requirement.

5.170.5 The date of completion of the most recent
hazard review or update.

5.170.5.1 The expected date of completion
of any changes resulting from the hazard review;

5.170.5.2 Major hazards identified;

5.170.5.3 Process controls in use;

5.170.5.4 Mitigation systems in use;

5.170.5.5 Monitoring and detection
systems in use; and

5.170.5.6 Changes since the last hazard
review.

5.170.6 The date of the most recent review or revision of operating procedures.

5.170.7 The date of the most recent review or revision of training programs;

5.170.7.1 The type of training provided - classroom, classroom plus on the job, on the job; and

5.170.7.2 The type of competency testing used.

5.170.8 The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

5.170.9 The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit.

5.170.10 The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation.

5.170.11 The date of the most recent change that triggered a review or revision of safety information, the hazard review, operating or maintenance procedures, or training.

5.171 through 5.17 Reserved

5.175 Prevention Program/Program 3

5.175.1 For each Program 3 process, the owner or operator shall provide the information indicated in paragraphs 5.175.2 through 5.175.16 of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

5.175.2 The five- or six-digit NAICS code that most closely corresponds to the process.

5.175.3 The name(s) of the substance(s) covered.

5.175.4 The date on which the safety information was last reviewed or revised.

5.175.5 The date of completion of the most recent PHA or update and the technique used.

5.175.5.1 The expected date of completion of any changes resulting from the PHA;

5.175.5.2 Major hazards identified;

5.175.5.3 Process controls in use;

5.175.5.4 Mitigation systems in use;

5.175.5.5 Monitoring and detection systems in use; and

5.175.5.6 Changes since the last PHA.

5.175.6 The date of the most recent review or revision of operating procedures.

5.175.7 The date of the most recent review or revision of training programs;

5.175.7.1 The type of training provided - classroom, classroom plus on the job, on the job; and

5.175.7.2 The type of competency testing used.

5.175.8 The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

5.175.9 The date of the most recent change that triggered management of change procedures and the date of the most recent review or revision of management of change procedures.

5.175.10 The date of the most recent pre-startup review.

5.175.11 The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit;

5.175.12 The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation;

5.175.13 The date of the most recent review or revision of employee participation plans;

5.175.14 The date of the most recent review or revision of hot work permit procedures;

5.175.15 The date of the most recent review or revision of contractor safety procedures; and

5.175.16 The date of the most recent evaluation of contractor safety performance.

5.176 through 5.179 Reserved

5.180 Emergency Response Program

5.180.1 The owner or operator shall provide in the RMP the following information:

5.180.1.1 Do you have a written emergency response plan?

5.180.1.2 Does the plan include specific actions to be taken in response to an accidental releases of a regulated substance?

5.180.1.3 Does the plan include procedures for informing the public and local agencies responsible for responding to accidental releases?

5.180.1.4 Does the plan include information on emergency health care?

5.180.1.5 The date of the most recent review or update of the emergency response plan;

5.180.1.6 The date of the most recent emergency response training for employees.

5.180.2 The owner or operator shall provide the name and telephone number of the local agency with which emergency response activities and the emergency response plan is coordinated.

5.180.3 The owner or operator shall list other Federal or state emergency plan requirements to which the stationary source is subject.

5.181 through 5.184 Reserved

5.185 Certification

5.185.1 For Program 1 processes, the owner or operator shall submit in the RMP the certification statement provided in Section 5.12.2.4.

5.185.2 For all other covered processes, the owner or operator shall submit in the RMP a single certification that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

5.186 through 5.189 Reserved

5.190 Updates

5.190.1 The owner or operator shall review and update the RMP ~~submitted under 40 CFR 68.150 dated July 1, 1997 (Section 5.150)~~ as specified in ~~paragraph 5.190(b) this section~~ and submit it in ~~a~~ the method and format to a central point specified by EPA ~~prior to June 21, 1999 as of the date of submission.~~

5.190.2 The owner or operator of a stationary source shall revise and update the RMP submitted under 5.150 as follows:

5.190.2.1 ~~Within five years of its~~ At least once every five years from the date of its initial submission or most recent update required by paragraphs 5.190.2.2 through 5.190.2.7 of this section, whichever is later; For purposes of determining the date of initial submissions, RMP's submitted before June 21, 1999 are considered to have been submitted on that date.

5.190.2.2 No later than three years after a newly regulated substance is first listed by EPA;

5.190.2.3 No later than the date on which a new regulated substance is first present in an already covered process above a threshold quantity;

5.190.2.4 No later than the date on which a regulated substance is first present above a threshold quantity in a new process;

5.190.2.5 Within six months of a change that requires a revised PHA or hazard review;

5.190.2.6 Within six months of a change that requires a revised off-site consequence analysis as provided in 5.36; and

5.190.2.7 Within six months of a change that alters the Program level that applied to any covered process.

5.190.3 If a stationary source is no longer subject to this part, the owner or operator shall submit a ~~revised de-~~ registration to EPA within six months indicating that the stationary source is no longer covered.

5.191 through 5.194 Reserved

5.195 Required corrections. The owner or operator of a stationary source for which a RMP was submitted shall correct the RMP as follows:

5.195.1 New accident history information--For any accidental release meeting the five-year accident history reporting criteria of 5.42 and occurring after April 9, 2004, the owner or operator shall submit the data required under 5.168, 5.170.10, and 5.175.12 with respect to that accident within six months of the release or by the time the RMP is updated under 5.190, whichever is earlier.

5.195.2 Emergency contact information--Beginning June 21, 2004, within one month of any change in the emergency contact information required under 5.160.2.6, the owner or operator shall submit a correction of that information.

Subpart H-Other Requirements

5.196 through 5.199 Reserved

5.200 Record Keeping. The owner or operator shall maintain records supporting the implementation of this regulation for five years unless otherwise provided in subpart D.

5.201 through 5.209 Reserved

5.210 Availability of Information to the Public

5.210.1 The data elements of the plan based upon 40 CFR 68.150 through 68.190 dated July 1, 1997 reprinted under Sections 5.150 through 5.190 of subpart G of this regulation shall be available to the public under 42 U.S.C. 7414(c).

5.210.2 The disclosure of classified information by the Department of Defense or other Federal agencies or contractors of such agencies shall be controlled by applicable laws, regulations, or executive orders concerning the release of classified information.

5.211 through 5.214 Reserved

5.215 Permit Content and Designated Agency Requirements

5.215.1 Requirements of this regulation apply to any stationary source subject to Section 5.130 and State of Delaware "Regulations Governing the Control of Air Pollution", Regulation No. 30. The Regulation No. 30 permit for the stationary source shall contain:

5.215.1.1 A statement listing this part as an applicable requirement;

5.215.1.2 Conditions that require the source owner or operator to submit:

5.215.1.2.1 A compliance schedule for meeting the requirements of this regulation by the date provided in Section 5.10.1 or;

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5.215.2.2 As part of the compliance certification submitted under Regulation 30 Section 6(c)(5), a certification statement that the source is in compliance with all requirements of this regulation, including the registration and submission of the RMP.

5.215.2 The owner or operator shall submit any additional relevant information requested by the Department.

5.215.3 The Department shall, at a minimum:

5.215.3.1 Verify that the source owner or operator has registered and submitted an RMP or a revised plan when required by this part;

5.215.3.2 Verify that the source owner or operator has submitted a source certification or in its absence has submitted a compliance schedule consistent with 5.215.1.2 of this section;

5.215.3.3 For all of the sources subject to this section, use one or more mechanisms such as, but not limited to, a completeness check, source audits, record reviews, or stationary source inspections to ensure that permitted sources are in compliance with the requirements of this part; and

5.215.3.4 Initiate enforcement action based on 5.215.3.1 and 5.215.3.2 of this section as appropriate.

6.0 Additional Delaware Accidental Release Prevention Provisions

This section is not federally enforceable.

6.1 Applicability

6.1.1 Processes at the stationary source with regulated substances present in more than the threshold quantity as defined by Section 5.130 Table 1 or 2 of this regulation are not subject to Sections 6.1.2, 6.5 or 6.6.

6.1.2 Processes with the regulated substance having any potential release quantity equal to or greater than the sufficient quantities as defined in either Section 6.2 Table 4, Section 6.3 Table 5 or Section 6.4 Table 6 and not subject to Section 5.130 [see 6.1.1], shall:

6.1.2.1 Implement the Risk Management Programs described in Section 5 for appropriate program level;

6.1.2.2 Perform a hazard assessment for the Delaware worst-case as required in 6.5;

6.1.2.3 Submit a Risk Management Plan to the Department that complies with 6.6;

6.1.2.4 Implement Section 5 Subpart E Emergency Response;

6.1.2.5 Implement Section 5.200 Record Keeping; and

6.1.2.6 Implement Section 5.15 Management.

6.1.3 Processes in which ammonia is used as an agricultural nutrient, when held by farmers, is exempt from all provisions of this regulation.

6.2 Additional Delaware Regulated Toxic Substances. Table 4 lists the extremely toxic substances and the sufficient quantities at a distance of 100 meters in pounds per hour that are regulated by the State of Delaware only.

6.2.1 Regulated Delaware Toxic Substances and their Sufficient Quantities in pounds per hour at 100 meters.

Note: T=EPA listed toxic F= EPA listed flammable

Table 4: Regulated Delaware Toxic Substances and Sufficient Quantities

Chemical Name	CAS #	Sufficient Quantity (lbs/hr)	EPA Listed
Acrolein	107-02-8	150	T
Acrylyl chloride	814-68-6	200	T
Allylamine	107-11-9	1500	T
Arsine	7784-42-1	70 100	T
Bis (chloromethyl ether)	542-88-1	70 50	T
Boron trichloride	10294-34-5	2100	T
Boron trifluoride	7637-07-2	250 2000	T
Bromine pentafluoride	7789-38-2	1600	
Bromine	7726-95-6	700	T
Bromine chloride	13863-41-7	1000	
Carbon disulfide (Liquid)	75-15-0	3500	
Carbonyl fluoride	353-58-4	2100	
Chlorine	7782-50-5	1300	T
Chlorine dioxide	10049-04-4	600 200	T
Chlorine pentafluoride	13637-63-3	700	
Chlorine trifluoride	7790-91-2	1700	
Chloromethyl methyl ether	107-30-2	400 700	T
Chloropicrin	76-06-2	450 200-	
Cyanogen	460-19-5	1600	F
Cyanogen chloride	506-77-4	300	T
Cyanuric fluoride	675-14-9	40	
Diazomethane	334-88-3	400	
Diborane	19287-45-7	80	T
Dichloroacetylene	7572-29-4	200	
Dichlorosilane	4189-96-8	2500	F
Ethylene fluorohydrin	371-62-8	20	
Ethyleneimine	151-56-4	1000	T
Ethylene oxide	75-21-8	3500	F
Fluorine	7782-41-4	600	T

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Formaldehyde	50-00-0	700	T
Furan	110-00-9	300	T
Hexafluoroacetone	684-16-2	7500	
Hexafluoroacetone	648-16-2	6000	
Hydrogen bromide	10035-10-6	3700	
Hydrogen chloride (anhydrous)	7647-01-0	3300 5000	T
Hydrogen cyanide	74-90-8	600	T
Hydrogen fluoride	7664-39-3	900	T
Hydrogen selenide	7783-07-5	150	T
Hydrogen sulfide	7783-06-4	3100	T
Iron pentacarbonyl	13463-40-6	200	T
Isopropyl formate	625-55-8	300	
Isopropylamine	75-35-1	4000	
Ketene	463-51-4	70	
Methacryloyl chloride	920-46-7	150	
Methacryloyloxethyl isocyanate	30674-00-7	60	
Methane sulfonyl chloride trichloro-	594-42-3	200	
Methyl acrylonitrile	126-98-7	200	T
Methyl bromide	74-83-9	17000	
Methyl chloroformate	75-22-1	400	T
Methyl disulfide	624-92-0	25	
Methyl fluoroacetate	453-18-9	60	
Methyl fluorosulfate	421-20-5	50	
Methyl hydrazine	60-34-4	90	T
Methyl isocyanate	624-83-9	260 80	T
Methyl mercaptan	74-93-1	4300	T
Methyl vinyl ketone	78-94-4	15	
Methyltrichlorosilane	75-79-6	2000	T
Nickel carbonyl	13463-39-3	150	
Nitric acid (94.5 wt% or greater)	7697-37-2	300	
Nitric oxide	10102-43-9	200 as NO ₂	
Nitrogen oxides	10102-44-0	200 as NO ₂	
Oleum (65 wt% or greater)	8014-95-7	700 as SO ₃	
Osmium tetroxide	20816-12-0	20	
Oxygen difluoride	7783-41-7	10	
Ozone	10028-15-6	20	
Pentaborane	19624-22-7	20	
Perchloromethyl mercaptan	594-42-3	150	T
Perchloryl fluoride	7616-94-6	3600	
Phosgene	75-44-5	90	T
Phosphine	7803-51-2	30 150	T
Phosphorous trichloride	7719-12-2	600 1900	T
Propargyl bromide	106-96-7	10	
Sarin	107-44-8	15	

Selenium hexafluoride	7783-79-1	900	
Stibine	7803-52-3	350 170	
Sulfur dioxide (liquid)	7446-09-5	900	T
Sulfur pentafluoride	5714-22-7	250	
Sulfur tetrafluoride	7783-60-0	200	T
Sulfur trioxide	7446-11-9	700	T
Tellurium hexafluoride	7783-80-4	200	
Tetrafluorohydrazine	10086-47-2	4700	
Thionyl chloride	7719-09-7	200 1100	
Trichloro (chloromethyl) silane	1558-25-4	70	
Trichloro (dichlorophenyl) silane	27137-85-5	1800	
Trichlorosilane	10025-78-2	3300	F
Trimethoxysilane	2487-98-3	600	

6.2.2 Calculation of Sufficient Quantity for Toxic Mixtures .

6.2.2.1 To determine whether a mixture containing an regulated substance is to be regulated, the owner or operator shall calculate the substance hazard index (SHI) as follows:

$$SHI_{\text{mixture}} = SHI_{\text{pure regulated substance}} \times \text{Mole fraction of regulated substance in mixture}$$

As an alternative, the owner or operator may calculate the SHI of the mixture using equilibrium vapor pressure for the pure regulated substance above the mixture at 20°C.

6.2.2.2 If the SHI calculated for the mixture is \$8000 then the mixture shall be subject to the provision of this regulation.

6.2.2.3 The sufficient quantity for the mixture shall be calculated as follows:

6.2.3 Calculation of Potential Release Quantity (PRQ). Owners or operators with a regulated toxic substance present in a process that is equal to or greater than the sufficient quantity shall calculate the maximum PRQ in accordance with the provisions of paragraph 6.5.2.8.

6.2.4 Applicability. If any potential release quantity equals or exceeds the sufficient quantity, then the owner or operator shall develop and implement a risk management program in accordance with Section 6.1.2.

6.3 Additional Delaware Regulated Flammable and Combustible Substances

6.3.1 Flammable and Combustible liquids. The following flammable and combustible liquids and gases that are handled, used, produced, or stored equal to or greater than their sufficient quantities shall be regulated.

6.3.1.1 All flammable gases (a regulated flammable substance that exists as a gas at standard pressure and temperature).

6.3.1.2 Flammable and combustible liquids that are held at or above their atmospheric boiling point (benzene, gasoline and hexane have been included in Table 5 as examples of these higher boiling combustible substances which can be regulated if enough is present to form a vapor cloud greater than the sufficient quantity); and

6.3.1.3 Flammable and combustible liquids which are held below ambient temperatures through refrigeration, but whose vapor pressure at 86°F is greater than one atmosphere.

6.3.2 Flammable and combustible liquid exemption. Flammable and combustible liquids handled, used, produced or stored in atmospheric tanks below their atmospheric boiling point without the benefit of chilling or refrigeration are not regulated herein.

6.3.3 Partial list of flammable and combustible liquids. Table 5 lists some of the most common flammable and combustible substances and their sufficient quantity release rates at a distance of 100 meters in pounds per minute.

Table 5: Partial List of Delaware Regulated Flammable Substances

Chemical Name	CAS #	Boiling Point (EF)	Sufficient Quantity (lbs/min)	EPA Listed
Acetaldehyde	75-07-0	69	4100	F
Acetylene	74-86-2	-118	1900	F
Ammonia	7664-41-7	-28	6700	T
Benzene	71-43-2	176	2600	
1,3 Butadiene	106-99-0	24	2800	F
Butane	106-97-8	31	3000	F
Butene	25167-67-3	21	2800	F
1-Butene	106-98-9	37.8	2700	F
2-Butene	107-01-7	37.8	2700	F
2-Butene trans	624-64-6	34	2800	F
2-Butene cis	590-18-1	38.7	2700	F
Carbon monoxide	7791-21-1	-314	10000	
2-Chloropropylene [1-Propene, 2-chloro]	557-98-2	73	8000	F

Cyclopropane	75-19-4	-29	2800	F
Difluoroethane [Ethane, 1,1-difluoro-]	75-37-6	-61	7300	F
Dimethylamine	124-40-3	45	3000	F
Dimethylpropane [Propane, 2,2-dimethyl-]	463-82-1	49	2900	F
Ethane	74-84-0	-128	2800	F
Ethyl acetylene	107-00-6	47	3000	F
Ethyamine	75-04-7	62	4000	F
Ethylene	74-85-1	-155	2300	F
Ethylene oxide	75-21-8	51	3300	T
Ethyl chloride	75-00-3	54	4600	F
Gasoline	8006-61-9	100-400	3300	
Hexane	100-64-3	156	2800	
Hydrogen	1333-74-0	-422	300	F
Isobutane [Propane, 2-methyl]	75-28-5	11	2900	F
Isopentane [Butane, 2-methyl]	78-78-4	82	2900	F
Methane	74-82-8	-259	2500	F
Methylamine	74-89-5	21	3900	F
3-Methyl-1-butene	563-45-1	68	3000	F
Methyl Ether	115-10-6	-11	4200	F
2-Methylpropene [1-Propene, 2-methyl-]	115-11-7	20	2900	F
1,3 Pentadinene	504-60-9	-45	2900	F
Propane	74-98-6	-44	2700	F
Propylene	115-07-1	-53	2600	F
1-Propyne	74-99-7	-10	2200	F
Silane	7803-62-5	-169	2200	F
Tetramethylsilane	75-76-3	80	3600	F
Trimethylamine	75-50-3	38	3000	F
Vinyl chloride	75-35-4	7	5300	F
Vinyl fluoride	75-38-7	-97.5	6000	F
Vinyl methyl ether	107-25-5	43	4100	F

6.3.4 Calculation of the sufficient quantity. The sufficient quantity release rate for all flammable and combustible substances at a distance of 100 meters from the stationary source boundary shall be calculated using the following formula and by using propane as the release rate reference substance:

$$SQR_{Rx} = SQR_{Rp} \left(\frac{MW_x}{MW_p} \right)^{0.81} \left(\frac{LFL_x}{LFL_p} \right)^{0.72} \left(\frac{BP_p + 294}{BP_x + 294} \right)^{0.33} \left(\frac{HC_p}{HC_x} \right)^{0.20}$$

$SQRR_x$ = Sufficient Quantity Release Rate for Substance x in lbs vapor/min

$SQRR_p$ = Sufficient Quantity Release Rate for Propane in lbs vapor/min

MW_x = Molecular weight of Substance X

MW_p = Molecular weight of Propane = 44

LFL_x = Lower Flammable Limit of Substance X

LFL_p = Lower Flammable Limit of Substance

Propane = 2.1%

BP_x = Boiling Point of Substance X in $\times K$

BP_p = Boiling Point of Propane in $\times K = 229EK$

HC_p = Heat of Combustion of Propane in Btu/lb = 19,944 Btu/lb

HC_x = Heat of Combustion of Substance X in Btu/lb

6.3.5 Calculation of Potential Release Quantity . Owners or operators with a regulated flammable or combustible substance present in a process that is equal to or greater than the sufficient quantity shall calculate the maximum PRQ in accordance with the provisions of paragraph 6.5.2.8.

6.3.6 Applicability. If any potential release quantity equals or exceeds the sufficient quantity, then the owner or operator shall develop and implement a risk management program in accordance with Section 6.1.2.

6.4 Delaware Regulated Explosive Substances

6.4.1 Delaware regulated explosive substances are listed in Table 6 with their sufficient quantities in pounds at 100 meters.

Table 6: Delaware Regulated Explosive Substances

Chemical Name	CAS #	Sufficient Quantity (lbs)	EPA Listed
Alkylaluminums (as tri-n-butylaluminum)	1116-70-7	4700	
Ammonium perchlorate	7790-98-9	6900	
Ammonium nitrate	6484-52-2	6200	
Ammonium permanganate	13446-10-1	6900	
Bromine trifluoride	7787-71-5	15000	
3-Bromopropyne	106-96-7	6100	
Butyl Hydroperoxide (tertiary)	75-91-2	3600	
Butyl Perbenzoate (tertiary)	614-45-9	6300	
Butyl Peroxyacetate (tertiary)	107-71-1	4300	

Butyl Peroxypivalate (tertiary)	927-07-1	8600	
Cellulose nitrate (not explosive grade)	9004-70-0	2300	
Chlorodiethylaluminum	96-10-6	4100	
1-Chloro-2,4-dinitrobenzene	97-00-7	3000	
Cumene hydroperoxide	80-15-9	4400	
Diacetyl peroxide (55% solution)	110-22-5	4200	
Dibenzoyl peroxide	94-36-0	6100	
Dibutyl peroxide (Tertiary)	110-05-4	4700	
Diethylzinc	557-20-0	7700	
Diisopropyl peroxydicarbonate	105-64-6	5200	
Dilauroyl peroxide	105-74-8	5800	
2, 4-Dinitroaniline	97-02-9	3000	
1,2-Dinitrobenzene, ortho	528-29-0	2700	
1,3-Dinitrobenzene, meta	99-65-0	2700	
1,4-Dinitrobenzene, para	100-25-4	2700	
2,3-Dinitrotoluene	602-01-7	3100	
2,4-Dinitrotoluene	121-14-2	3100	
2,5-Dinitrotoluene	619-15-8	3100	
2,6-Dinitrotoluene	606-20-2	3100	
3,4-Dinitrotoluene	610-39-9	3100	
3,5-Dinitrotoluene	618-85-8	3100	
Ethyl methyl ketone peroxide	19393-67-0	2700	
Ethyl nitrite	109-95-5	2800	F
Hydrogen peroxide (52% by weight or greater)	7722-84-1	5700	
Hydroxylamine	7803-49-8	2500	
2-Nitroaniline, ortho	88-74-4	3800	
3-Nitroaniline, meta	90-09-2	3800	
4-Nitroaniline, para	100-01-6	3800	
Nitroethane	79-24-3	2800	
Nitromethane	75-52-5	2300	
Perchloric acid	7601-90-3	12000	
Peroxyacetic Acid (60% acetic acid solution)	79-21-0	3200	T
Picric acid	88-89-1	2500	
Propyl Nitrate (normal)	627-13-4	2700	
Tetrafluoroethylene monomer	116-14-3	7500	F
1,2,4-Trinitrobenzene		2300	
2,3,4-Trinitrotoluene	602-29-3	2600	
2,3,5-Trinitrotoluene		2600	
2,3,6-Trinitrotoluene		2600	
2,4,5-Trinitrotoluene	610-25-3	2600	
2,4,6-Trinitrotoluene	118-96-7	2600	
3,4,5-Trinitrotoluene		2600	

* When data was not available, TNT equivalents assumed to be 1:1. Processes subject to this section may use actual data in calculating sufficient quantity.

6.4.2 Calculation of Potential Release Quantity. The potential release quantity for explosive substances is the sum of all physical quantities which are used, handled, produced, or stored in the process and which are neither separated by a distance of 100 meters nor are barricaded as defined in the explanatory notes for NFPA 495, Table 6-4.1.

6.4.3 Applicability. If any potential release quantity equals or exceeds the sufficient quantity, then the owner or operator shall develop and implement a risk management program in accordance with Section 6.1.2.

6.5 Delaware Hazard Assessment

6.5.1 The Delaware Hazard Assessment. The owner or operator of a stationary source subject to Section 6.1.2 shall prepare a Delaware worst-case release scenario analysis as provided in Section 6.5.2 of this section and complete the five-year accident history as provided in Section 5.42. The owner or operator of a Program 2 process must comply with Section 5.0 Subpart C and the owner or operator of a Program 3 process must comply with Section 5.0 Subpart D. The Delaware hazard assessment shall include:

6.5.1.1 An estimate of the potential release quantity;

6.5.1.2 A dispersion analysis in the case the scenario is for a regulated toxic, flammable or combustible substance;

6.5.1.3 An overpressure grid in the case the scenario is for a regulated explosive substance; and

6.5.1.4 A consequence analysis of the effects on surrounding populations.

6.5.2 Off-site consequence analysis parameters.

6.5.2.1 Endpoints. For analyses of off-site consequences, the following endpoints shall be used:

6.5.2.1.1 Toxic substances. The toxic endpoints that shall be used in determining the distance to endpoint are as follows and the order that follows shall determine which endpoint should be used if a substance is listed on several of the lists named below:

6.5.2.1.1.1 AIHA 1997, ERPG-3 will be considered before;

6.5.2.1.1.2 Acute Toxicities from New Jersey "Toxic Catastrophe Prevention Act" (TCPA) which will be considered before;

6.5.2.1.1.3 Levels of concern from EPA's "Technical Guidance for Hazard Analysis: Emergency Planning for Extremely Hazardous Substances, December 1987" also known as the *Green Book*.

6.5.2.1.2 Flammable substances. The endpoint for regulated flammable and combustible substances shall be the radiant heat necessary to create second degree burns from a vapor cloud fire 100 meters from

the source of the release or 1020.48 kJ/sec m². The dispersion analysis shall account for movement of the vapor cloud under average Delaware weather conditions prior to ignition.

6.5.2.1.3 Explosive substances. The endpoint shall be the amount of overpressure necessary to cause eardrum rupture 100 meters from the release or 2.3 psi.

6.5.2.2 Wind speed/atmospheric stability class. For the Delaware worst-case release analysis, the owner or operator shall use average Delaware weather conditions consisting of a wind speed of 4.3 meters per second and atmospheric stability class of D.

6.5.2.3 Ambient temperature/humidity. For worst-case release analysis of a regulated toxic substance, the owner or operator shall use 86 EF. An owner or operator may use 25 EC when using the RMP Off-site Consequence Analysis Guidance.

6.5.2.4 Height of release. The worst-case release of a regulated toxic substance shall be analyzed assuming a ground level (0 feet) release.

6.5.2.5 Surface roughness. The owner or operator shall use either urban or rural topography, as appropriate. Urban means that there are many obstacles in the immediate area; obstacles include buildings or trees. Rural means there are no buildings in the immediate area and the terrain is generally flat and unobstructed.

6.5.2.6 Dense or neutrally buoyant gases. The owner or operator shall ensure that tables or models used for dispersion analysis of regulated toxic substances appropriately account for gas density.

6.5.2.7 Temperature of released substance. For worst case, liquids other than gases liquified by refrigeration only shall be considered to be released at the highest daily maximum temperature, based on data for the previous three years appropriate for the stationary source, or at process temperature, whichever is higher.

6.5.2.8 Maximum potential release rates for the Delaware worst-case scenario shall be calculated considering the following:

6.5.2.8.1 Catastrophic line failure (flow from both ends);

6.5.2.8.2 Catastrophic hose failure (flow from both ends);

6.5.2.8.3 Exposure of vessels and equipment to fire;

6.5.2.8.4 Venting of pressure relief valve at relief system design basis; and

6.5.2.8.5 Failure of mitigating systems such as flares, scrubbers, isolation valves, excess flow valves, and cooling systems.

6.5.2.8.6 Graphs and calculations were developed and were included in the “Background Document, September 25, 1989”. These calculation and graphs (produced below reproduced in Appendix A) provide one method of calculating the maximum potential release quantity. The method of calculation must be approved by the Department and submitted with Delaware RMP, if different from the approach described below.

6.5.2.8.6.1 To calculate the potential release quantity of a gas (not a flashing liquid), the following equation may be used to determine the release rate:

$$RR = \frac{(RR_R)(OED)^2}{(OED_R)^2} \left[\frac{(MW)(P)(528)}{(16)(P_R)(T + 460)} \right]^{0.5}$$

where:

RR = the release rate of the actual regulated substance in pounds/min.

RR_R = a the release rate for methane estimated in lbs/min from Appendix A Graph 1 or 2;

OED = the opening equivalent diameter in inches;

MW = the molecular weight of the actual substance released;

P = the pressure inside the vessel or pipe prior to the release in psig;

OED_R = the size of reference opening equivalent diameter from Appendix A Graph 1 or 2;

P_R = the pressure of methane curve from Appendix A Graph 1 or 2 nearest the pressure of the pressure of the actual substance; and

T = temperature of the substance prior to the release in EF;

- For regulated toxic substances the maximum potential release quantity is equal to RR X 60 minutes;
- For regulated flammable and combustible substances the maximum potential release quantity is equal to RR if the release is sustainable for a minimum of 35 seconds. Otherwise it is the actual quantity; and
- A process becomes a covered process and is subject to Section 6.1.2 when the maximum potential release quantity is greater than or equal to the sufficient quantity.

6.5.2.8.6.2 To calculate the potential release quantity for a flashing liquid release, the following equation may be used to determine the release rate:

$$RR = \frac{(RR_R)(OED)^2}{(OED_R)^2} \left[\frac{(Den)(P)}{(39.32)(P_R)} \right]^{0.5}$$

where:

RR = the release rate of the actual regulated substance in pounds/min.

RR_R = the release rate for propane estimated in lbs/min from Appendix A Graph 3 or 4;

OED = the opening equivalent diameter in inches;

Den = the liquid density of the actual substance released prior to the release in lb/ft³;

P = the pressure inside the vessel prior to the release in psig;

OED_R = the size of reference opening equivalent diameter from Appendix A Graph 3 or 4; and

P_R = the pressure of propane curve from Appendix A Graph 3 or 4 nearest the pressure of the pressure of the actual substance.

- For flashing liquids whose boiling points are greater than 5 EC, a pool of cold liquid can form when the storage area is diked. The release rate is used to calculate the size of the pool that is formed by the substance being released. The potential release quantity is calculated based on the surface area of the pool in square feet multiplied by the pool vaporization factor from Appendix A Graph 5. For situations when there is no dike or for flashing liquids whose boiling points are less than or equal to 5 EC, assume that the liquid volatilizes immediately upon release and that RR is the maximum potential release quantity.
- For regulated toxic substances the maximum potential release quantity is equal to RR X 60 minutes;
- For regulated flammable and combustible substances the maximum potential release quantity is equal to RR if the release is sustainable for a minimum of 35 seconds. Otherwise it is the actual quantity; and
- A process becomes a covered process and is subject to Section 6.1.2 when the maximum potential release quantity is greater than or equal to the sufficient quantity.

6.5.2.8.6.3 To calculate the potential release quantity for a liquid release (not a flashing

liquid), the equation below may be used to determine the release rate:

$$RR = \frac{(RR_R)(OED)^2}{(OED_R)^2} \left[\frac{(\text{Den})(P)}{(39.32)(P_R)} \right]^{0.5}$$

where:

RR = the release rate of the actual regulated substance in pounds/min.

RR_R = the release rate for gasoline estimated in lbs/min from Appendix A Graph 6 or 7;

OED = the opening equivalent diameter in inches;

Den = the liquid density of the actual substance released prior to the release;

P = the pressure inside the vessel prior to the release in psig;

OED_R = the size of reference opening equivalent diameter from Appendix A Graph 6 or 7; and

P_R = the pressure of gasoline curve from Appendix A Graph 6 or 7 nearest the pressure of the pressure of the actual substance.

The release rate is used to calculate the size of the pool that is formed by the substance being released. The potential release quantity is calculated based on the surface area of the pool in square feet multiplied by the pool vaporization factor from Appendix A Graph 5.

6.5.2.8.6.4 To determine the potential release quantity, RR calculated above must be doubled if the release is from a pipe or hose where it is possible to get flow from both ends of the breakage; otherwise the PRQ = RR.

- For combustible liquids, a pool of liquid can form when the storage area is diked. The release rate is used to calculate the size of the pool that is formed by the substance being released. The potential release quantity is calculated based on the surface area of the pool in square feet multiplied by the pool vaporization factor from Appendix A Graph 5. For situations when there is no dike, assume that the pool depth is 1 centimeter.
- For regulated toxic substances the maximum potential release quantity is equal to RR X 60 minutes;
- For regulated flammable and combustible substances the maximum potential release quantity is equal to the vapor release rate if the release is sustainable for a minimum of 35 seconds. Otherwise it is the actual quantity; and
- A process becomes a covered process and is subject

to 6.1.2 when the maximum potential release quantity is greater than or equal to the sufficient quantity.

6.5.2.9 For explosive substances, the potential release quantity is the sum of all physical quantities which are used, handled, produced, or stored in the process. Processes separated by a distance of 100 meters or barricaded as defined in NFPA 495, Explanatory notes for Table 6-4.1 "American Table of Distances", shall be considered multiple processes. One method for determining the distance to endpoint for an explosive substance that may be used is the TNT equivalent method such as:

$$D = K W^{1/3}$$

where:

D is the distance to endpoint for a given overpressure;

W is the mass of TNT detonated, and

K is the scaled distance or 24 for 2.3 psi overpressure.

To approximate W, the weight of regulated substance is multiplied by a yield factor (3% to 10%) and is multiplied by the ratio of the heat of combustion of the regulated substance to the heat of combustion of TNT.

6.5.3 Delaware Worst-case release scenario analysis .

6.5.3.1 The owner or operator shall analyze and report in the Delaware Risk Management Plan:

6.5.3.1.1 For Program 1 processes, one worst-case release scenario for each Program 1 process;

6.5.3.1.2 For Program 2 and 3 processes:

6.5.3.1.2.1 One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions defined in Section 6.5.2; and

6.5.3.1.2.2 One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in Section 6.5.2 resulting from an accidental release of regulated flammable substances from covered processes under worst-case conditions defined in Section 6.5.2.

6.5.3.1.2.3 One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in Section 6.5.2 resulting from the detonation of the regulated explosive

substance from covered processes under worst-case conditions defined in Section 6.5.2.

6.5.3.1.2.4 Additional worst-case release scenarios for a hazard class if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case release scenario developed under paragraphs 6.5.3.1.2.1 or 6.5.3.1.2.2 of this section.

6.5.3.2 Parameters to be applied. The owner or operator shall use the parameters defined in Section 6.5.2 to determine distance to the endpoints. The owner or operator may use the methodology provided in the RMP Off-site Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the Department access to the model and describes model features and differences from publicly available models to local emergency planners upon request. The owner or operator may also use the following look-up tables to determine the distance to endpoint (where AQ represents the ratio of the actual quantity of a regulated substance contained in a process to the sufficient quantity for that substance):

Table 7: Distance to Endpoint for Delaware Regulated Toxic Substances ¹

AQ/SQ	Distance to Endpoint (meters)	Distance to Endpoint (miles)
1.0	100	0.06
2.0	143.10	0.09
2.5	161.11	0.10
3.0	177.45	0.11
4.0	208.29	0.13
5.0	235.03	0.15
7.5	294.91	0.18
10.0	346.72	0.22
25.0	590.66	0.37
50.0	905.11	0.56

¹This Table was developed from Section 5.2.2.2 the toxic Distance Multipliers Table II from the “Regulation for the Management of Extremely Hazardous Substances, September 25, 1989.

Table 8: Distance to Endpoint for Delaware Regulated Flammable Substances ²

AQ/SQ	Distance to Endpoint (meters)	Distance to Endpoint (miles)
1.0	100	0.06
2.0	146.29	0.09
2.5	165.89	0.10
3.0	182.62	0.11
4.0	214.83	0.13
5.0	243.90	0.15
7.5	305.90	0.19
10.0	359.30	0.22
25.0	589.41	0.37
50.0	870.80	0.54

²This Table was developed from Section 5.3.3.3 the flammable Distance Multipliers Table IV from the “Regulation for the Management of Extremely Hazardous Substances, September 25, 1989.

Table 9: Distance to Endpoint for Delaware Regulated Explosive Substances ³

AQ/SQ	Distance to Endpoint (meters)	Distance to Endpoint (miles)
1.0	100	0.06
2.0	121.01	0.08
2.5	131.51	0.08
3.0	142.02	0.09
4.0	156.71	0.10
5.0	167.53	0.10
7.5	194.59	0.12
10.0	213.11	0.13
25.0	291.20	0.18
50.0	366.86	0.22

³This Table was adapted from Section 5.4.3.2 the explosive Distance Multipliers Table VI from the “Regulation for the Management of Extremely Hazardous Substances, September 25, 1989.

6.5.3.3 Consideration of passive mitigation. Passive mitigation systems may be considered for the analysis of worst case provided that the mitigation system is capable of withstanding the release event triggering the scenario and would still function as intended.

6.5.3.4 Factors in selecting a worst-case scenario. Notwithstanding the provisions of paragraph

6.5.3.2 of this section, the owner or operator shall select as the worst-case for flammable regulated substances or the worst-case for regulated toxic substances, a scenario based on the following factors if such a scenario would result in a greater distance to an endpoint defined in Section 6.5.2 beyond the stationary source boundary than the scenario provided under paragraph 6.5.3.2 of this section:

6.5.3.4.1 Smaller quantities handled at higher process temperature or pressure; and

6.5.3.4.2 Proximity to the boundary of the stationary source.

6.5.4 Defining off-site impacts-population.

6.5.4.1 The owner or operator shall estimate in the Delaware Risk Management Plan the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in 6.5.2.

6.5.4.2 Population to be defined. Population shall include residential population. The presence of institutions (schools, hospitals, prisons), parks and recreational areas, and major commercial, office, and industrial buildings shall be noted in the RMP.

6.5.4.3 Data sources acceptable. The owner or operator may use the most recent Census data, or other updated information, to estimate the population potentially affected.

6.5.4.4 Level of accuracy. Population shall be estimated to two significant digits or one significant digit if the population is less than 1000.

6.5.5 Defining off-site impacts-environment.

6.5.5.1 The owner or operator shall list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in Section 6.5.2 of this part.

6.5.5.2 Data sources acceptable. The owner or operator may rely on information provided on local U.S. Geological Survey maps or on any data source containing U.S.G.S. data to identify environmental receptors.

6.6 Delaware Risk Management Plan

6.6.1 Submission.

6.6.1.1 The owner or operator subject to 6.1.2 shall submit a single Delaware Risk Management Plan that includes the information required by 6.6.2 through 6.6.10 for all covered processes. The Delaware Risk Management Plan shall be submitted on a form provided by the Department to a location specified by the Department prior to June 21, 1999. The Department may establish procedures for the submission of information under this section on electronic media. The submission of information in accordance with such procedures by owners or operators of covered processes

shall satisfy the associated requirement to submit the information in a paper format.

6.6.1.2 The owner or operator shall submit the first Delaware Risk Management Plan no later than the latest of the following dates:

6.6.1.2.1 June 21, 1999;

6.6.1.2.2 Six months after the date on which a newly regulated substance is first listed in Section 6; or

6.6.1.2.3 The date on which a regulated substance is first present above a threshold quantity in a process.

6.6.1.2.4 Subsequent submissions of Delaware Risk Management Plans shall be in accordance with Section 6.6.10.

6.6.2 Executive summary. The owner or operator shall provide in the Delaware Risk Management Plan an executive summary that includes a brief description of the ~~same elements given in Section 5.155(a) through (g)~~ process, risk management plan and quantity and size of any storage tanks.

6.6.3 Registration. The owner or operator shall complete a single registration form and include it in the Delaware Risk Management Plan. The form shall cover all regulated substances handled in covered processes.

~~The registration shall include the same data that is described in Section 5.160(b).~~

6.6.4 Off-site consequence analysis.

6.6.4.1 The owner or operator shall submit in the Delaware Risk Management Plan information:

6.6.4.1.1 One Delaware worst-case release scenario for each Program 1 process; and

6.6.4.1.2 For Program 2 and 3 processes, one Delaware worst-case release scenario to represent: all regulated toxic substances with any potential release quantity that is greater than the sufficient quantity; all regulated flammable substances with any potential release quantity that is greater than the sufficient quantity; and all regulated explosive substance with any potential release quantity that is greater than the sufficient quantity.

6.6.4.1.3 If additional Delaware worst-case scenarios for toxics, flammables, or explosives are required by Section 6.5.3.1.2.4, the owner or operator shall submit the same information on the additional scenario(s).

6.6.4.2 The owner or operator shall submit in the Delaware Risk Management Plan the following data:

6.6.4.2.1 Chemical name;

6.6.4.2.2 Physical state (toxics and flammables only);

6.6.4.2.3 Basis of results (give model name if used);

6.6.4.2.4 Scenario (explosion, fire, toxic gas release, or liquid spill and vaporization);

6.6.4.2.5 Quantity released in pounds;

6.6.4.2.6 Release rate (toxics and flammables only);

~~(vii) Release duration (toxics and flammables only);~~

~~(viii) Wind speed and atmospheric stability class (toxics and flammables only);~~

6.6.4.2.7 Topography (toxics and flammables only);

6.6.4.2.8 Distance to endpoint;

6.6.4.2.9 Public and environmental receptors within the distance; and

6.6.4.2.10 Passive mitigation considered.

6.6.5 Five-year accident history. The owner or operator shall submit in the Delaware Risk Management Plan the information provided ~~in Section 5.42(b) in the Delaware Risk Management Plan form~~ on each accident covered ~~by Section 5.42(a) that resulted in known on-site or off-site injuries or deaths, evacuations, sheltering in place, on site or offsite property damage or onsite or offsite environmental damage.~~

6.6.6 Prevention program/Program 2. For each Program 2 process, the owner or operator shall provide in the Delaware Risk Management Plan the information indicated in ~~Section 5.170(b) through (k) the Delaware Risk Management Plan form~~. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

6.6.7 Prevention program/Program 3. For each Program 3 process, the owner or operator shall provide the information indicated in ~~Section 5.175(b) through (p) the Delaware Risk Management Plan form~~. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

6.6.8 Emergency response program. The owner or operator shall provide in the Delaware Risk Management Plan the same information that is described in ~~Section 5.180 the Delaware Risk Management Plan form~~.

6.6.9 Certification.

6.6.9.1 For Program 1 processes, the owner or operator shall submit in the Delaware Risk Management Plan the certification statement provided in ~~Section 5.12(b)(4) the Delaware Risk Management Plan form~~.

6.6.9.2 For all other covered processes, the owner or operator shall submit in the Delaware Risk Management Plan a single certification that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

6.6.10 Updates.

6.6.10.1 The owner or operator shall review and update the Delaware Risk Management Plan as specified in paragraph 6.6.10.2 of this section and submit it on a form provided by the Department prior to June 21, 1999.

6.6.10.2 The owner or operator of a covered process shall revise and update the Delaware Risk Management Plan submitted under Section 6.6 within five years of the initial submission or sooner updates as required by the following:

6.6.10.2.1 No later than six months after a newly regulated substance is first listed by the Department;

6.6.10.2.2 No later than the date on which a new regulated substance is first present in an already covered process above a threshold quantity;

6.6.10.2.3 No later than the date on which a regulated substance is present above a threshold quantity in a new process;

6.6.10.2.4 Within six months of a change that requires a revised process hazard assessment or hazard review;

~~(v) Within six months of a change that requires a revised off-site consequence analysis as provided in Section 5.36; and~~

6.6.10.2.5 Within six months of a change that alters the program level that applied to any covered process.

6.6.10.3 If a covered process is no longer subject to this part, the owner or operator shall submit ~~a revised registration certification~~ to the Department within six months indicating that the process is no longer covered.

7.0 Inspections

7.1 Minimum Inspection Components. All documentation required by this regulation shall be maintained by the Owner or operator of the stationary source and shall be available on site for review by the Department. At a minimum, inspections of stationary source risk management programs include:

7.1.1 Review of selected risk management program documentation including evidence of the application of engineering and maintenance standards associated with regulated substance;

7.1.2 A physical onsite inspection of equipment associated with regulated substance; and

7.1.3 Interviews of selected stationary source personnel involved with regulated substance.

7.2 Inspection Protocol. The inspection protocol shall consist of:

7.2.1 Appendix A "PSM Audit Guidelines" from the OSHA Compliance Directive CPL 2-2.45A (change-1) dated September 1994,

7.2.2 EPA audit guidance and protocol, and

7.2.3 The compliance of a covered process shall be determined by physical inspections conducted: by trained and tested state personnel or their designated trained and qualified representatives, and by interviews with stationary source personnel.

7.3 Access to Facilities and Records. The Department has the right to enter any stationary source at any time to verify compliance with this regulation. Inspections for the sole purpose of document review shall be scheduled with owner or operator of the stationary source management with reasonable advance notice, and when possible, mutual agreement.

7.4 Findings of Compliance or Noncompliance. The Department shall issue an inspection report detailing the findings of compliance or noncompliance with the risk management program requirements for each inspection. Reports shall contain the Department's recommendations based on inspection for potential improvements to a facility's risk management program. ~~Department findings of compliance or noncompliance with risk management program requirements shall be provided in writing to the stationary source management no later than forty five (45) days following completion of the inspection. Significant items of noncompliance shall be communicated directly to the stationary source management by the Department during an exit interview. If deficiencies or omissions in the risk management program are identified, the Department shall issue a written notice of noncompliance and recommend program improvements.~~ Within sixty (60) days after receiving the Department's recommendations, the owner or operator of the stationary source shall notify the Department of changes and additions to improve the risk management program or shall present a remediation plan and schedule for the Department's approval.

7.5 Resolution of Findings of Noncompliance.

7.5.1 If the owner or operator of the stationary source and the Department agree on measures to correct risk management program deficiencies or omissions, the parties may enter into a written agreement.

7.5.2 If the Department and owner or operator of the stationary source fail to agree on improvements to the

risk management program following Department notice of noncompliance as provided above and following an administrative hearing with written findings, as provided for in 7 ~~Del.C.~~, Section ~~7716~~ 7715 and Section 11 of this regulation, the Department shall issue an administrative order requiring correction of risk management program deficiencies including a schedule for corrections as provided for in 7 ~~Del.C.~~, Section ~~7715~~ 7714.

7.5.3 If a functioning risk management program is lacking and a situation exists which threatens real and imminent jeopardy to the lives and health of persons in the vicinity of the stationary source, the Department shall promptly seek Chancery Court injunctive relief as provided for in 7 ~~Del.C.~~, Section ~~7715~~ 7714.

8.0 Audits

8.1 RMP Audit. In addition to inspections for the purpose of regulatory development and enforcement, the Department shall audit all RMPs submitted pursuant to Section 5, Subpart G and the Delaware risk management plans submitted under Section 6.6 within ~~six~~ 12 months of the date that they are received by the Department or posted by EPA.

8.2 Access to Information. The Department shall have access to the stationary source, supporting documentation, and any area where an accidental release could occur.

8.3 Preliminary Audit Determination. Based on the audit, the Department may issue the owner or operator of a stationary source a written preliminary determination of necessary revisions to the stationary source's RMP to ensure that the RMP meets the criteria of Section 5 Subpart G. The preliminary determination shall include an explanation for the basis for the revisions, reflecting industry standards and guidelines (such as AIChE/CCPS guidelines and ASME and API standards) to the extent that such standards and guidelines are applicable, and shall include a timetable for their implementation.

8.4 Written response to a preliminary determination.

8.4.1 The owner or operator shall respond in writing to a preliminary determination made in accordance with 8.3 of this section. The response shall state the owner or operator will implement the revisions contained in the preliminary determination in accordance with the timetable included in the preliminary determination or shall state that the owner or operator rejects the revisions in whole or in part. For each rejected revision, the owner or operator shall explain the basis for rejecting such revision. Such explanation may include substitute revisions.

8.4.2 The written response under 8.4.1 of this section shall be received by the Department within 60 days of the issue of the preliminary determination or a shorter

period of time as the Department specifies in the preliminary determination as necessary to protect public health and the environment. Prior to the written response being due and upon written request from the owner or operator, the Department may provide in writing additional time for the response to be received.

8.5 Final Audit Determination. After providing the owner or operator an opportunity to respond under 8.4 of this section, the Department may issue the owner or operator a written final determination of necessary revisions to the stationary source's RMP. The final determination may adopt or modify the revisions contained in the preliminary determination under 8.3 of this section or may adopt or modify the substitute revisions provided in the response under 8.4 of this section. A final determination that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. A final determination that fails to adopt a substitute revision provided under 8.4 of this section shall include an explanation of the basis for finding such substitute revision unreasonable.

8.6 Determination of Violations. Thirty days after completion of the actions detailed in the implementation schedule set in the final determination under 8.5 of this section, the owner or operator shall be in violation of Section 5 Subpart G, 7 Del.C., Section 7714(b)(1) and this section unless the owner or operator revises the RMP prepared under Section 6.0 or Subpart G as required by the final determination, and submits the revised RMP as required under Section 5.150.

8.7 Public Access to Determinations. The public shall have access to the preliminary determinations, responses, and final determinations under this section in a manner consistent with Section 14.1 of this Regulation.

8.8 Nothing in this section shall preclude, limit, or interfere in any way with the authority of Department to exercise its enforcement, investigation, and information gathering authorities concerning this regulation. Nothing in this section shall preclude, limit or interfere in any way with the authority granted to EPA under the Clean Air Act of 1990 and codified at 40 U.S.C. 7401 *et seq.*

9.0 Violations and Penalties

Any person who fails to comply with this regulation shall be subject to the enforcement and penalty provisions set forth in 7 Del.C., Section 7714. A substantially complete risk management program is in compliance with all applicable parts of either Section 5.0 or Section 6.0. Failure to meet these provisions is considered to be substantial non-compliance.

10.0 Hearings

Any public hearing held by the Secretary pursuant to this regulation shall be held in accordance with 7 Del.C., Section 6006, as well as any additional notice and hearing requirements adopted by the Department by regulation.

11.0 Appeals

11.1 Any person(s) whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board in accordance with 7 Del.C., Section 6008.

11.2 Any person(s), jointly or severally, or any taxpayer, or any officer, department board or bureau of the State, aggrieved by any decision of the Environmental Appeals Board, may appeal to the Superior Court in accordance with 7 Del.C., Section 6009.

12.0 State Agency Notification

Every State agency having authority to grant construction or operating permits to covered processes having regulated substances on-site shall notify the Department in writing prior to granting any permits and shall confirm that the owner or operator has been informed of the Regulatory requirements of this regulation.

13.0 Annual Fees

As provided for in 7 Del.C., Section ~~7714~~ 7713.

14.0 Miscellaneous

14.1 Confidential Information. All documents (such as, but not limited to: inspection reports, responses to inspection reports, notices of violation, Administrative Orders and Penalties, correspondences, RMPs and Delaware risk management plans) submitted to the Department or developed by the Department pursuant to this regulation shall be handled consistent with the Freedom of Information Act (29 Del.C., Chapter 100) with the exception of the following which shall be maintained as confidential by the Department as required by 7 Del.C., Section ~~7714~~10(b):

14.1.1 Sections of Inspection Notes containing or relating to trade secrets, and/or commercial or financial information observed, viewed or obtained orally during an inspection that may result in substantial harm to a business' competitive edge.

14.1.2 Sections of Inspection Notes containing the identity of persons interviewed during an inspection.

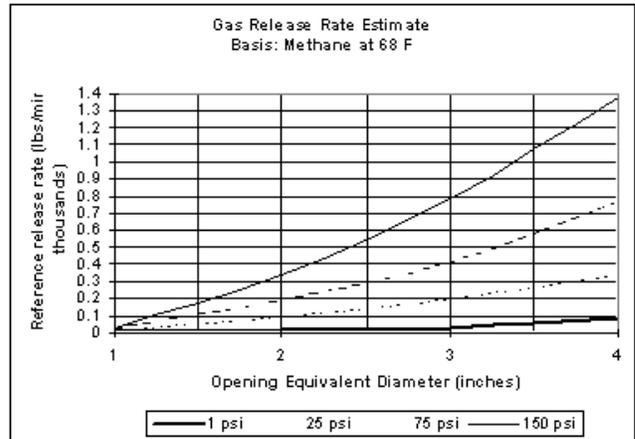
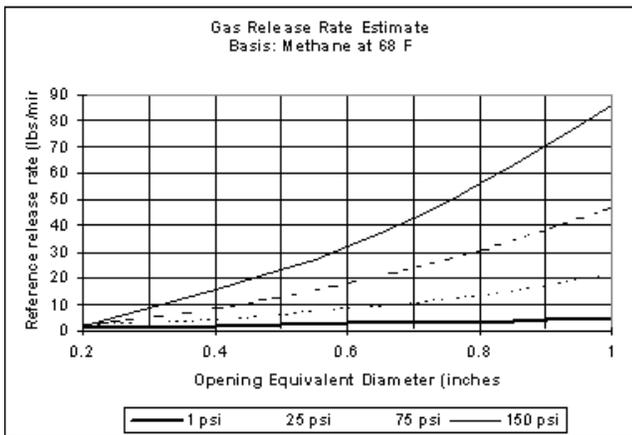
14.2 Severability. If any part of this regulation, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances and the remainder of this regulation shall not be affected and shall be deemed valid and effective.

14.3 Transfer of Registration. Registration under this regulation may be transferred to a new owner provided that an intention to transfer accompanied by a copy of the registration, signed by both the transferor and the transferee, is provided to the Department at least 10 days prior to the transfer. A complete RMP or the Delaware risk management plan must be submitted in accordance with either Section 5.190.2.3 or Section 6.6.10.2.3 whichever is applicable.

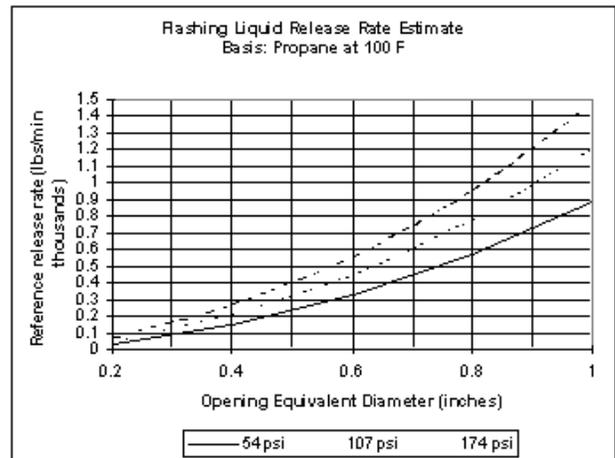
14.4 Scope of Regulations. This regulation shall apply to all covered processes located in whole or in part within the State of Delaware containing one or more regulated substances.

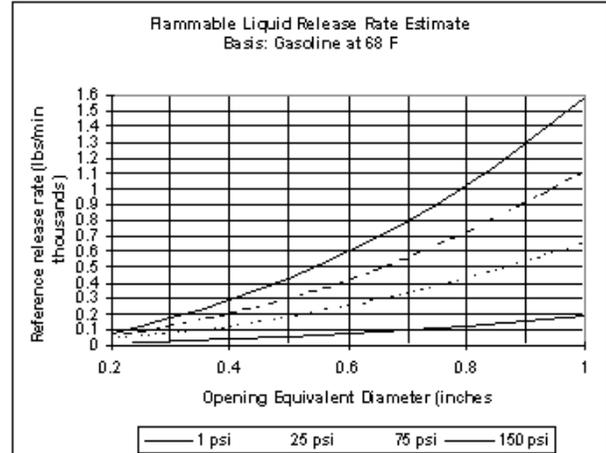
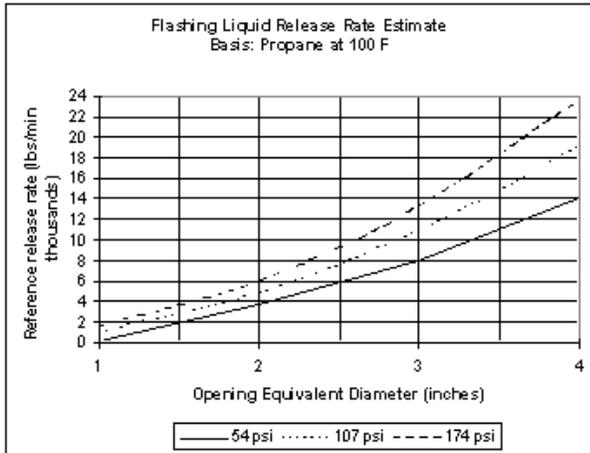
Appendix A

Graphs 1 and 2: Gas Release Estimates for small and large openings

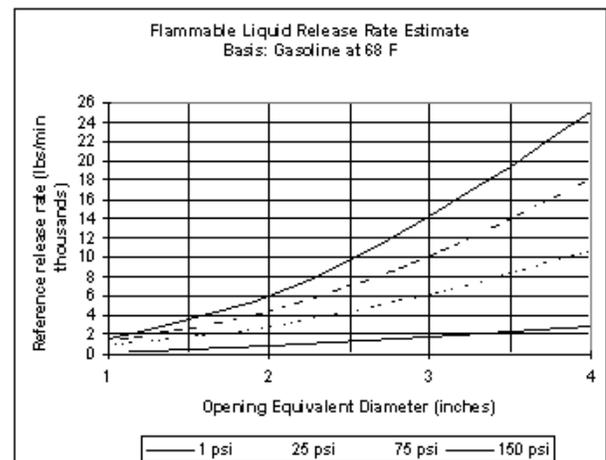
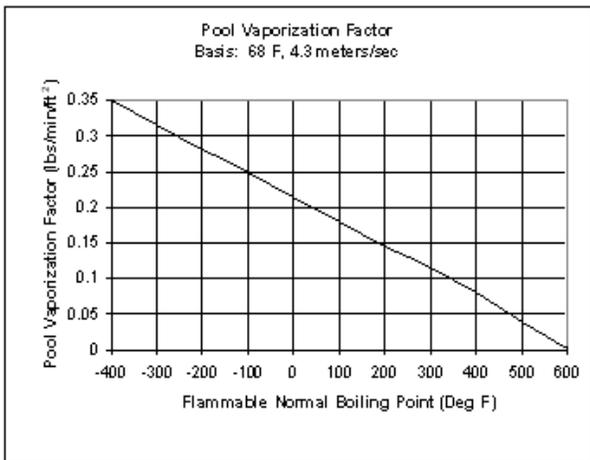


Graphs 3 and 4: Flashing Liquid Release Estimates for small and large openings





Graph 5: Pool Vaporization Factor



Graphs 6 and 7: Flammable Liquid Release Estimates for small and large openings

DIVISION OF SOIL AND WATER CONSERVATION

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

PUBLIC NOTICE

5102 Regulation Governing Beach Protection and the Use of Beaches

1. Title of the Regulations:

Regulations Governing Beach Protection and the use of Beaches

2. Brief Synopsis of the Subject, Substance and Issues

These Proposed Regulations are revisions to existing regulations that have been in effect since 1983. The proposed revisions will increase the effectiveness of the Coastal Construction Program and improve its protection of the beach and dune system. They will also reduce ambiguity within the regulations and limit the amount and type of construction permitted seaward of the Building Line. Redrawing of the Building Line, incorporation of changes to the Beach Preservation Act and the addition of new construction standards for waterfront buildings will all result in less damages to structures and improvements to the natural dune and beach resource.

While this regulatory action is intended to modify currently existing regulations, it was not possible, or preferable, to show additions as underlines, or deletions as strikeouts – as is normally required. This is because the redraft of the regulations was so extensive and the new numbering so drastically different than the previous regulations, that to be comprehensible to the reader, we opted to abandon the normal strike out and underline protocol and instead provide the reader with an index of new provisions with old section numbers and a compilation of major changes to the overall regulation.

3. Possible Terms of the Agency Action

No Sunset Date

4. Statutory Basis or Legal Authority to Act

Title 7, Delaware Code, Chapter 68

5. Other Regulations That May Be Affected by the Proposal

None

6. Notice of Public Comment

A Public Hearing has been scheduled for December 14th at 6:00 p.m., in the DNREC Auditorium

7. Prepared By:

Maria Sadler 302-739-9921 9/26/05

5102 Regulation Governing Beach Protection and the Use of Beaches

1.0 Definitions

~~1.1 As used in these Regulations, the following terms shall have the meanings indicated below, unless the text clearly indicates otherwise:~~

~~“Act” means the Beach Preservation Act of 1972, (Title 7, Del.C. Ch. 68).~~

~~“Beach” means that portion of the shore of any body of water which extends from the mean high water mark inland one thousand feet, or to a roadway for automobiles, whichever is closer.~~

~~“Beach Access Facility” means any structure, improvement or facility constructed, installed or maintained for the primary purpose of obtaining or facilitating access to and from the berm and foreshore of the beach over, on or across the primary coastal dune.~~

~~“Beach Enhancement” means the process of improving or increasing the recreational and/or storm protection value of a beach.~~

~~“Beach Erosion” means the wearing away of a beach by water or the elements.~~

~~“Beach Nourishment” means the process of replenishing a beach with material (usually sand) obtained from another location.~~

~~“Beach Preservation” means the process of maintaining the recreational and/or storm protection value of a beach.~~

~~“Beach Protection” means the process of preventing the decrease of recreational and/or storm protection values of a beach.~~

~~“Berm” means the nearly horizontal part of the beach between the foreshore and primary dune formed by the deposit of material by wave action.~~

~~“Breakwater” means a marine structure constructed to protect a shore area, harbor, anchorage, or basin from the undesirable effects of wave action.~~

~~“Building” means any roofed and walled structure built for permanent or semi-permanent use.~~

~~“Building Line” means the line generally paralleling the coast, set forth on maps prepared by the Division with reference to the National Geodetic Vertical Datum (NGVD) and the Delaware State Plane Coordinate System, and based upon information provided by topographic survey. The Building Line is located as follows:~~

~~a. Along beaches extending from the Delaware/Maryland line to the tip of Cape Henlopen – 100 feet landward of the adjusted seawardmost 10-foot elevation contour above NGVD;~~

~~b. Along beaches extending from the tip of Cape Henlopen to the southernmost limit of Primehook Beach – 100 feet landward of the adjusted seawardmost 7-foot elevation contour above NGVD;~~

~~e. Along beaches extending from the southernmost limit of Primehook Beach to the Old Marina Canal north of Pickering Beach – 75 feet landward of the~~

~~adjusted seawardmost 7-foot elevation contour above NGVD;~~

~~d. or at the landward limits of the Beach, as defined in these Regulations, whichever is most seaward.~~

~~“Bulkhead” means an upright structure or partition built parallel or nearly parallel to the shoreline, primarily to retain or prevent land from sliding and secondarily, to protect upland from beach erosion and damage from wave action. A bulkhead is generally of lighter construction than a seawall.~~

~~“Complete Destruction” means the damage or destruction of any structure by any means whatsoever to the extent that, in the judgment of the Division, 75% or more of the original structure, or if a building, more than 50% of the original foundation pilings, are unsuitable for incorporation into reconstruction of the structure.~~

~~“Construction” means any work or activity which is likely to have a substantial physical effect on existing coastal conditions or natural shore processes. Construction as used in these Regulations shall also include reconstruction, restoration, repair, alteration and placement if said terms are not otherwise included for clarification.~~

~~“Department” means the Department of Natural Resources and Environmental Control.~~

~~“Dike” means a wall or mound built around a low lying area to prevent flooding.~~

~~“Division” means the Division duly authorized by the Secretary as responsible for administering these Regulations.~~

~~“Dune” means a mound, hill or ridge of windblown sand, either bare or covered with vegetation, naturally or artificially accumulated.~~

~~“Dune Zone” means that area lying between the Building Line and elevation contours, which are used as a basis for determining the location of the Building Line. (See Building Line definition.)~~

~~“Emergency” means the existence of beach conditions unreasonably dangerous to persons or property.~~

~~“Excavation” means the process of digging out material.~~

~~“Expansion” means the enlargement of a structure.~~

~~“Filling” means the process of depositing or placing material to raise the level of a certain area.~~

~~“Foreshore” means the part of the shore lying between the crest of the seaward berm (or upper limit of wave action at high tide) and the ordinary low water mark, that is ordinarily traversed by the uprush and backrush of the waves as the tides rise and fall.~~

~~“Geology” means the relationship of the earth and the materials of which it is composed, to the changes which it has undergone, is undergoing, or is likely to undergo.~~

~~“Geomorphology” means the form and general configuration of the earth's surface and the changes that take place in the evolution of land forms.~~

~~“Groin” means a shore protection structure built (usually perpendicular to the shoreline) to trap littoral drift or retard erosion of the shore.~~

~~“Hydraulics” means the effects of water or other fluids in motion.~~

~~“Jetty” means a structure extending into a body of water, and designed to prevent shoaling of a channel by littoral materials, and to direct and confine the stream or tidal flow.~~

~~“Littoral Current” means a longshore current generated by waves breaking at an acute angle to the shoreline, and which moves generally parallel and adjacent to the shoreline within the surf zone.~~

~~“Lowest Living Floor” the lowest portion of the lowest horizontal support member of the lowest enclosed space used for living purposes, which includes working, sleeping, eating, cooking, recreation, or combination thereof. A floor used only for storage shall not be considered a living floor.~~

~~“Maintenance” means any work aimed at keeping a structure in an efficient operating and usable condition. Maintenance does not mean expansion or modification of a structure. Maintenance does not mean changing the general form or extent of the structure.~~

~~“Meteorology” means the atmosphere and its phenomena especially as relating to weather.~~

~~“Modification” means a partial change in the form of a structure.~~

~~“National Geodetic Vertical Datum (NGVD)” means a fixed reference adopted by the U. S. Government as a standard geodetic datum for vertical elevations.~~

~~“Parcel of Real Property” means a single lot, the boundaries of which are set forth in a single deed or similar document.~~

~~“Person” means any legal entity including individual, firm, association, organization, partnership, business trust, corporation, company, contractor, user, operator, owner, or any State or local governmental agency (except as noted in Section 2.3) or public district or any officer or employee thereof.~~

~~“Primary Dune” means that dune which roughly parallels the shoreline in a more or less continuous fashion and is generally the first and largest dune encountered moving landward from the shoreline.~~

~~“Public Beach” means any beach owned in fee simple title by the Federal or State government or any county, city, town or municipality; or any beach for which~~

the State has obtained an easement or agreement for public use.

~~“Regulation”~~ unless stated otherwise, means the Regulations Governing Beach Protection and the Use of Beaches, promulgated pursuant to the Beach Preservation Act of 1972 (7 ~~Del.C.~~ Ch. 68) and all amendments thereto.

~~“Repair”~~ means the act of restoring a structure to good condition after it has been damaged. Repair does not mean expansion or modification of a structure.

~~“Revetment”~~ means a facing of stone, concrete, or similar material built to protect a shore, or shore structure against erosion by wave action or currents.

~~“Roadway”~~ means any improved (hot mix bituminous concrete or Portland cement concrete) public roadway (maintained by any governmental agency for use by the general public) in existence on the effective date of these Regulations.

~~“Sand Fence”~~ means a barrier made of posts, wires and boards or synthetic materials including plastic, nylon and polyester intended primarily to trap and collect wind-blown sand, but which may also be used to channel human and vehicular traffic.

~~“Seawall”~~ means an upright structure separating land and water areas, primarily designed to prevent erosion and other damage to upland areas due to wave action. A seawall is generally of heavier or more massive construction than a bulkhead.

~~“Secretary”~~ means the Secretary of the Department of Natural Resources and Environmental Control.

~~“Shoreline”~~ means the line of intersection of a body of water with the land.

~~“Structure”~~ means any building, pipeline, dock, pier, wharf, boat ramp, groin, jetty, seawall, bulkhead, revetment, or any other piece of work artificially built.

~~“Subdivide”~~ means the lawful division of any parcel of land into smaller parcels.

~~“Substantial Amount”~~ means any amount, the moving, alteration, or removal of which could significantly increase danger of erosion, storm, damage or flooding.

~~“Substantial Change”~~ means any alteration in the existing characteristics of the beach, as determined by the Secretary, that could significantly increase the danger of erosion, storm damage or flooding and including the moving, digging, or removal of beach material or the erection of any permanent or semi-permanent structure.

2.0 Administrative Principles

2.1 Purpose, Application of Current and Earlier Regulations. The primary purpose of these Regulations is to

enhance, protect, and preserve public and private beaches of the State through a permit and letter of approval process. These current Regulations shall not apply to any project for which a valid letter of approval, permit, or extension of the same has been issued by the Division prior to the effective date of these Regulations. However, those provisions of the Department's regulations that governed beach protection and the use of beaches that were in effect prior to the effective date of these current Regulations shall apply to the projects, permits and letters of approval that were authorized or issued before the effective date of these Regulations.

2.2 Approval Requirement

2.2.1 No person shall commence or conduct construction for which approval is required under these Regulations (see 4.0) unless and until a letter of approval or the proper permit has been issued.

2.3 Department Exemption

2.3.1 The Department shall be subject to all the rules and requirements of these Regulations, except that in the performance of its erosion control duties pursuant to the authority granted by the Beach Preservation Act of 1972 (Title 7, ~~Del.C.~~ Ch. 68), the Department shall be exempt from the permit requirements of these Regulations. The Department shall, however, still be subject to any substantive standards and guidelines generally applicable to the construction and placement of shore protection structures and facilities.

2.4 Extensions for Letter of Approval or Permit

2.4.1 These Regulations shall not apply to any project for which a valid letter of approval, permit, or extension of same has been issued by the Division, prior to the effective date of these Regulations. After the effective date of these Regulations no extension shall be granted for a letter of approval or permit issued prior to the effective date of these Regulations. Any letter of approval or permit which was issued without specific time limits has become null and void if construction has not been initiated within one year or completed within two years from August 13, 1981.

2.4.2 An extension to the time limits of a permit or letter of approval that was issued after the effective date of these Regulations may be granted by the Division. Before any such extension may be granted, the person who was issued the letter of approval or permit shall submit a written request for the extension. The written request must be received by the Division at least fifteen (15) days prior to the expiration date of the letter of approval or permit and shall contain a detailed explanation of why the extension is necessary, and the date when the project will be completed. In determining whether such an extension will be granted the Division may consider the following: (1) whether reasonable progress is being made toward completion of the project; and

(2) any changes that may have occurred in state, federal and local laws, regulations, rules, requirements or administrative policy, which are contrary to aspects of the project that had been originally approved by the Division. In lieu of an extension of the time limits in a letter of approval or permit, the Division may require a person to reapply for a letter of approval or a permit if the Division determines that the facts and circumstances relating to a previously approved project require a re-evaluation by the Division.

2.5 Construction Setback Lines – Prior Approvals

2.5.1 At those locations where dune reconstruction has been approved by permit prior to the effective date of these Regulations and a construction setback line mutually agreed upon in writing between an owner/developer and the Division to be the landward toe of the reconstructed dune, that agreed upon line shall prevail over the current Building Line for the purposes of initial construction of a structure upon each affected parcel. Any subsequent additions to, or replacements of, the initially approved structure shall be subject to the Building Line as established pursuant to these Regulations and the appropriate sections thereof. Regardless of the developmental status of the parcels affected by this Section, all construction activities shall be subject to the Building Line upon its future re-establishment pursuant to Section 2.13 of these Regulations.

2.6 Maintenance, Repairs, and Emergency Action

2.6.1 Except as otherwise provided in Section 2.6.2 and 2.6.3, any Person intending to commence any maintenance or repair work on any structure located in part or entirely seaward of the Building Line, shall apply in writing to the Division for a letter of approval or a permit. No person shall commence such maintenance or repair work until after being issued a letter of approval or a permit by the Division. (See also the provisions of 3.0 – Prohibited Activities and 4.0 – Activities Requiring a Permit or Letter of Approval from the Division).

2.6.2 The provisions of Section 2.6.1 shall not apply where maintenance or repair work on a structure located in part or entirely seaward of the Building Line is undertaken pursuant to the following limitations or causes:

2.6.2.1 Where a building is involved, and the location of the finished maintenance or repair work is at or above the lowest living floor.

2.6.2.2 The maintenance or repair work is to a structure, and is necessary because of damage being caused to the structure by some means other than wave action, a flood or erosion.

2.6.2.3 In the event of an extreme emergency, or warning thereof, which may involve grave and imminent danger of substantial property loss and/or personal injuries (e.g., an impending coastal storm), a person

may perform work on a structure that is related to the protection of persons and said structure. However, before a person can commence any such emergency protection work, the person owning the structure on which such work shall be performed, or any agent thereof, shall contact the Division to request approval to perform the emergency protection work. The Division's approval or disapproval may be given to the owner, or agent thereof, either orally or in writing. After the emergency, or emergency warning period, the Division may require the removal of any emergency protection work performed pursuant to the provisions of this Section.

2.7 Restoration or Reconstruction After Destruction

2.7.1 If a structure located seaward of the Building Line is completely destroyed, no person shall undertake any restoration or reconstruction of the destroyed structure before the Division issues the person a permit or letter of approval pursuant to the procedures set forth in 4.0 of these Regulations.

2.8 Siting – Requirements for Construction and Reconstruction of Structures

2.8.1 If a structure is to be either constructed or reconstructed following the complete destruction of the original structure, and such a structure does not have to be located seaward of the Building Line in order to achieve its intended purpose pursuant to Section 3.01 (a)(4) of these Regulations, then such a structure shall be required to be located entirely landward of the Building Line. However, if the Division determines that there is inadequate space available entirely landward of the Building Line for the construction or reconstruction of a completely destroyed structure, said constructed or reconstructed structure shall be physically located as far landward as possible on the parcel of real property in question, taking into consideration all Federal, State and local laws, rules, regulations, and zoning and building ordinances.

2.9 Other Requirements and Approvals

2.9.1 A person who is issued a permit or letter of approval by the Division pursuant to these Regulations is not exempted from obtaining any other permit or approval required by Federal, State or local laws, rules, regulations, and building and zoning ordinances.

2.10 General Permit Considerations

2.10.1 The Division, in considering applications, shall take into account the geology, geomorphology, meteorology and hydraulics of the area.

2.11 Sole Jurisdiction

2.11.1 All structures, devices and facilities for the enhancement, preservation or protection of beaches shall be under the sole jurisdiction of the Department. None of these

shall be changed in any way except as provided in these Regulations.

2.12 Building Line Format

2.12.1 The Building Line shall be shown on topographic maps at a scale of one (1) inch equals fifty (50) feet for all shoreline areas of Delaware Bay and the Atlantic Ocean Coast from, and including, Pickering Beach to the Delaware-Maryland line at Fenwick Island, where privately owned structures, either existing or potential, may be affected by the establishment of the Building Line. The Building Line shall be shown as a series of straight lines connected together at points whose locations are identified by reference to the Delaware State Plane Coordinate System. No point shall be located more than 500 feet from an adjoining point.

2.13 Building Line Re-established

2.13.1 When, in the opinion of the Secretary, storms or other natural phenomena cause a substantial permanent change in the seaward contour used to establish the Building Line, the Division may, following public hearing, re-establish the Building Line from information provided by topographic survey.

2.14 Re-establishment Effects on Lot Status

2.14.1 Re-establishment of the Building Line may place parcels of land, lawfully subdivided after the effective date of these Regulations, in a position of having insufficient space to construct a structure landward of the newly established Building Line. These parcels shall be subject to the appropriate permit requirements of 4.0.

2.15 Savings Clause

2.15.1 If any provision of these Regulations, or the application of such provision to any person or circumstances, is held invalid, the remainder of these Regulations, and the application of such provision to persons or circumstances other than those to which it shall have been held invalid, shall not be affected.

3.0 Prohibited Activities

3.1 Construction Seaward of the Building Line

3.1.1 No person shall commence the construction of any structure, or portion thereof, seaward of the Building Line on any parcel of real property, except where one or more of the following conditions exist:

3.1.1.1 The Division has made a determination during the permit application processing stage that the size of the area of the parcel of real property located landward of the Building Line is inadequate for construction of the proposed structure or a portion thereof. However, the Division's determination as to the adequacy of the area of the parcel of land located landward of the Building Line, or as to

any modification or redesign shall not conflict with any Federal, County or local laws, regulations, or planning, zoning and building ordinances.

3.1.1.2 That the dimensions and location of the structure, or portions thereof, as proposed and other design aspects of the proposed construction project, including, but not limited to, parking lots and landscaping, cannot be modified or redesigned in order to have the final structure or portion thereof located either less seaward or completely landward of the Building Line. (See 5.0 Section 5.3.2 for further explanation of what the Division will examine when a permit application is processed and whether or not the proposed structure, or portion thereof, may have to be modified or redesigned). However, the Division's determination as to the adequacy of the area of the parcel of land located landward of the Building Line, or as to any modification or redesign shall not conflict with any Federal, County or local laws, regulations or planning, zoning and building ordinances. (Note that this exception shall not apply if the provisions of 3.1.1 are applicable to the parcel of land in issue.)

3.1.1.3 Whenever a deck is being constructed along with a new building, and said deck is located at or above the lowest living floor of the building, said deck is also making use of the foundation of said building and said deck shall not extend beyond the most seaward point of any lawfully constructed building or deck of a similar nature that is already existing on any immediately adjacent parcel of real property located within the same subdivision as the parcel of real property on which the building or deck is proposed.

3.1.1.4 The Division has made a written determination that the proposed structure, or a portion thereof, must be located seaward of the Building Line on a parcel of land in order that the intended purpose of the structure, or a portion thereof, will be achieved. The provisions of this Section and subsection may apply to the following types of structures: pipelines, docks, piers, wharves, boat ramps, and other harbor structures, as well as other types of structures that have the purpose of protecting the beach or shore, preventing beach erosion, and carrying out the purposes of the Act and the Regulations. However, for purposes of this Section and subsection, a building, patio, deck, swimming pool, carport or similar type of structure shall not be considered by the Division as being the type of structure that must be located seaward of the Building Line on a parcel of land in order to achieve the intended purpose of the structure. The Division may require that these latter types of structures, or portions thereof, be constructed landward of the Building Line, or not constructed at all.

~~3.1.2~~ Except as provided in subsections ~~3.1.1.3~~ and ~~3.1.1.4~~ of these Regulations, no person shall construct any structure, or portion thereof, on any parcel of real property, or portion thereof, that is located seaward of the Building Line whenever the following facts and circumstances exist:

~~3.1.2.1~~ The parcel of real property, or a portion thereof, on which a proposed structure, or portion thereof, would be constructed, was subdivided from a large parcel of real property after August 13, 1981. In addition, at the time said parcel of real property, or portion thereof, was subdivided from a larger parcel of real property, construction of a structure, or portion thereof, would not have been approved by the Division because the size of the area landward of the Building Line on the smaller subdivided parcel of real property was inadequate. (See Section 2.14 and 4.0 of the Regulations.)

~~3.1.3~~ The provisions of 3.0 of the Regulations have provided for certain exceptions to the general prohibition against construction seaward of the Building Line. However, prior to the commencement of any construction of any structure, or portion thereof, that is included within one or more of the exceptions set forth in said 3.0, the owner of the proposed structure or portion thereof shall apply to the Division for a permit pursuant to the provision set forth in Section 4.5 of the Regulations. The permit application will be processed pursuant to procedures set forth in 5.0 of the Regulations.

~~3.2 Modification or Expansion of Structures Seaward of the Building Line~~

~~3.2.1~~ Before any person shall commence construction of any modification or expansion pursuant to the provisions of this Section, said person shall apply for and be issued a letter of approval or a permit from the Division.

~~3.2.2~~ A person is prohibited from modifying or expanding any structure, or portion thereof, seaward of the Building Line, including those structures, or portions thereof, that were (1) constructed prior to the effective date of these Regulations, or (2) were constructed pursuant to the provisions of Section 2.4 of these Regulations, unless one or more of the following exceptions apply to the proposed modification or expansion at issue:

~~3.2.2.1~~ The provisions of ~~3.1.1.4~~ should be applied to the proposed modification or expansion because the intended purpose of the structure, or portion thereof, that is to be modified or expanded must be achieved. A permit shall be required for work under this Section. See 4.0 of these Regulations.

~~3.2.2.2~~ The modification or expansion consists of only a deck located at or above the lowest living floor of a building, and the modification or expansion makes use of the foundation of said building that existed prior to

~~said modification or expansion. However, any deck or portion thereof, that is modified or expanded pursuant to any provision of this Section shall not extend beyond the most seaward point of any lawfully constructed building or deck of a similar nature that is already existing on any immediately adjacent parcel of real property that is located within the same subdivision as the parcel of real property on which the modification or expansion is proposed. A letter of approval shall be required for work under this Section. See 4.0 of these Regulations.~~

~~3.3 Other Activities~~

~~3.3.1~~ The following activities are prohibited:

~~3.3.1.1~~ The operation of any motorized vehicle or machine on, over or across the primary dune on any State-owned beach except at those locations specified by the Department for such use (see current State Parks Rules and Regulations for additional rules);

~~3.3.1.2~~ Pedestrian traffic on, over or across the primary dune on any State-owned beach except at those locations specified by the Department for such use;

~~3.3.1.3~~ The alteration, moving or removal of any facility, improvement or structure installed or maintained by the Department for enhancement, preservation or protection of any beach; and

~~3.3.1.4~~ The damaging, destruction or removal of any trees, shrubbery, beachgrass or other vegetation growing on any State-owned or maintained beach seaward of the Building Line.

4.0 Activities Requiring a Permit or Letter of Approval from the Division

~~4.1 General Rule~~

~~4.1.1~~ No permit shall be issued for any activity prohibited by any provision of the Regulations. Procedures for processing applications are set forth in 5.0 of the Regulations.

~~4.2 Permit Application; Fee~~

~~4.2.1~~ Any person applying for a permit pursuant to the provisions of 4.0 of the Regulations must apply to the Division on an application form provided by the Division. Any person submitting a permit application form to the Division pursuant to the provisions of 4.0 of the Regulations shall at the same time submit an application fee of \$150.00 for each permit application.

~~4.3 Construction of Beach Erosion Control or Shore Protection Structures or Facilities Seaward of the Building Line~~

~~4.3.1~~ No person shall commence or conduct, without a permit therefor from the Division, construction of any structure or facility on any beach seaward of the Building Line, the primary function of which is beach

erosion control or shore protection including, but not limited to, groins, jetties, seawalls, revetments, dikes, bulkheads, and beach nourishment; except that ordinary dune maintenance, as determined by the Division, including the proper installation of sand fence and the planting and fertilization of stabilizing vegetation, shall not require a permit.

4.4 Construction of Pipelines or Harbor Works Seaward of the Building Line

4.4.1 No person shall commence or conduct without a permit therefor from the Division, construction seaward of the Building Line, or any pipeline, dock, pier, wharf, ramp or other harbor work.

4.5 Construction of a Structure Seaward of the Building Line; Permits; Exception for Beach Access Structures

4.5.1 Except as provided pursuant to the provisions of Sections 4.3, 4.4, or 4.5.3 of the Regulations, before any person commences the construction of any structure, or portion thereof, that would be located seaward of the Building Line, said person must have been issued a permit for the construction by the Division.

4.5.2 Before any permit is issued by the Division pursuant to Section 4.5.1 of the Regulations for the construction of any structure, or portion thereof, seaward of the Building Line, the person applying for the permit must provide the Division with written documentation that the proposed structure, or portion thereof, will be constructed in accordance with Division requirements relating to location and design criteria, which are intended to prevent or minimize any damage to the beach, and also all the provisions of the Act and the Regulations.

4.5.3 A person is not required to follow the requirements of Section 4.5.1 or 4.5.2 if a person intends to construct a structure, or portion thereof, that is going to be used only for the purpose of providing pedestrian access to and from the berm and foreshore across the dune zone. However, before any person commences the construction for such a beach access structure, or any portion thereof, that would be located seaward of the Building Line, said person must have been issued a letter of approval for the construction by the Division. A person may receive said letter of approval after applying to the Division on an application form that shall be made available by the Division. The Division shall process said application form pursuant to the procedures set forth in the provisions of Section 4.8 of the Regulations.

4.6 Other Activities Seaward of the Building Line

4.6.1 No person shall commence or conduct any of the following activities on any beach without a permit therefor from the Division: the alteration, digging, mining, moving, removal or deposition of any substantial amount of

beach or other materials, or the significant removal of vegetation on any beach seaward of the Building Line which may affect enhancement, preservation or protection of beaches.

4.7 Mitigating Measures

4.7.1 In rendering its decision on requests for permits and letters of approval pursuant to these Regulations, the Division shall make a determination regarding the potential adverse effects of the proposed structure or activity. If, in the opinion of the Division the potential for damage to the beach seaward of the Building Line is increased as a result of the proposed structure or activity, the Division may require the applicant to take mitigating measures (including, but not limited to beach nourishment, dune construction, and/or dune maintenance) to reduce such damage potential. When the Division requires such mitigating measures, the applicant, his successors, heirs and assigns, shall be required to maintain these measures for the life of the structure or activity. Failure to comply with the mitigating measures prescribed by the Division shall be cause for removal of the structure or termination of the activity and restoration of the beach, as nearly as possible, to its original condition at the expense of those persons owning the structure or conducting the activity, or for the Division to take the necessary actions to bring the owner into compliance and to place a lien on such property for all reasonable costs and expenses incurred by the Division, whichever action the Division deems most appropriate.

4.8 Construction Activities Landward of the Building Line and Within the Beach Area

4.8.1 No person shall commence or conduct construction of any structure or the alteration, digging, mining, moving, removal or disposition of any substantial amount of beach or other materials landward of the Building Line and within the beach area without a letter of approval from the Division. To obtain the written approval, the applicant shall furnish to the Division a completed application on forms available from the Division.

4.8.2 Upon receipt of an application for approval, the Division shall consider the effect of the proposed project on beach enhancement, preservation and protection. The Division may undertake any investigation or activity it deems necessary to carry out the purposes of this Act. If the Division determines such a project may have a substantial effect on beach enhancement, preservation and protection, the applicant shall be directed to follow the procedures for obtaining a permit applicable under 4.0. The Division shall make a decision on the application that may include terms and conditions which it determines will best implement the purposes of the Act and these Regulations. The Division

shall give written notice with reasons for the decision to the applicant.

5.0 Procedures for Processing Permit Applications

5.1 The Division

5.1.1 Applications shall be considered and permits issued or denied by the Division in accordance with the purposes and intent of the Act and these Regulations.

5.2 Notice

5.2.1 Upon receipt of a permit application in proper form, the Division shall advertise in a daily newspaper of state-wide circulation and in a newspaper of general circulation in the county in which the activity is proposed:

5.2.1.1 That the application has been received;

5.2.1.2 A brief description of the nature of the application; and

5.2.1.3 That comments will be received for 15 calendar days by the Division regarding the application.

5.2.2 The Division shall also mail notice of the above to all adjacent property owners as listed in the permit application, and make the application available for public inspection at the Dover office of the Division. A decision shall not be rendered on any permit application until at least 20 calendar days after notice has been published and mailed to adjacent property owners, and the application has been made available for public inspection, in accordance with this Section.

5.3 Specific Information to be Examined by the Division; Investigatory Authority of the Division and Its Agents; Authority of Division to Require Special Conditions or Modifications

5.3.1 In addition to the general categories of information that are provided for pursuant to Section 2.10 of the Regulations whenever the Division is deciding to issue a Permit pursuant to the Regulations, the Division shall take into consideration any relevant information relating to the following:

5.3.1.1 Any comments received by the Division;

5.3.1.2 The effect of the proposed construction on shoreline recession, beach erosion, flooding, and potential damage to the parcel of real property that is the subject of the permit application, and potential damage to any other parcel of real property, public lands, or personal property;

5.3.1.3 The feasibility of alternative protection from storm damage that may be available;

5.3.1.4 The historical average rate of shoreline change for the general area nearby and including the parcel of real property that is the subject of the permit application;

5.3.1.5 The design modifications which may mitigate the impact of the proposed construction on the part of the beach that is located seaward of the Building Line (see Section 5.3 (b) below for further information); and

5.3.1.6 Any other factors or information that the Division determines to be relevant to the subject matter of the permit and carrying out the purposes and intent of the Regulations and the Act.

5.3.2 In determining if the Division shall require that the dimensions or location of a proposed structure, or portion thereof, or other design aspects are to be modified or redesigned pursuant to the provisions of Section 3.1.1.2, the Division, in addition to what is required in Sections 2.10 and 5.3.1, shall balance the actual and potential hardships or benefits that may be experienced by the person owning the structure or portion thereof against the actual and potential hardships or benefits that the State, the public and adjacent landowners may experience. The Division while carrying out the balancing test may take into consideration the following factors:

5.3.2.1 The purposes and provisions of the Act and the Regulations;

5.3.2.2 The likelihood and amount of actual, or potential for, expenditures of federal and state revenues for maintaining, repairing or restoring the parcel of real property prior to construction, after construction and after any natural disaster (e.g. storm);

5.3.2.3 The protection of the State, the public and any adjacent landowners from actual and potential financial and property loss;

5.3.2.4 The actual and potential financial or personal losses to the owner of the structure or portion thereof;

5.3.2.5 The feasibility of any modification or redesign required by the Division, keep in mind any increased or decreased costs, in achieving the purpose and function of the structure or portion thereof as originally planned;

5.3.2.6 Any design alternatives or amendments to the original designs submitted to the Division by the owner of the proposed structure or portion thereof; and

5.3.2.7 Any other factor the Division determines to be relevant.

5.3.3 The Division or Department, and any agents thereof, may do any of the following acts while attempting to carry out the purposes and intent of the Regulations and the Act, or while processing an application for a permit or request for a letter of approval:

5.3.3.1 Make on-site inspections of any type of structure, or portion thereof, or any real property regulated by the provisions of the Regulations or the Act.

5.3.3.2 Communicate with any party to discuss any matter relating to the Regulations or the Act.

5.3.3.3 Undertake formal or informal investigations or activities as are necessary to carry out the propose and intent of the Regulations and the Act.

5.3.4 In addition to the provisions of Section 4.7 of the Regulations, the Division may establish special permit conditions, and/or require modification of any proposed structure or activity in order to (1) prevent increased erosion damage to the parcel of real property in issue, nearby parcels or real property, or public lands, and/or (2) reduce public expenditures for beach protection.

5.4 Decision

5.4.1 The Division shall make a decision on the application which it determines will best implement the purposes of the Act and these Regulations. The Division shall give written notice with reasons to the applicant, to adjacent property owners as listed in the permit application and to other persons who have requested that they be notified of the decision on that application.

6.0 Appeal From the Division's Decision

6.1 Activity Pending Appeal

6.1.1 The applicant shall not commence any activity regulated under 4.0 until such time as a final determination has been rendered on the matter and the appeal period has expired without an appeal having been taken, or, if appealed, the appeal process has been exhausted.

6.2 Procedures

6.2.1 Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board or bureau of the state, aggrieved by any decision of the Division, may appeal to the Secretary by giving written notice of appeal to the Secretary, and to the applicant if other than the appellant. Such notice shall be by certified or registered mail within twenty (20) calendar days of the Division's decision, and shall specify: (1) the interest of the appellant; (2) the basis of the appeal; and (3) the specific law(s), regulation(s) or other legal authority(ies) alleged to have been violated by the Division's decision. A public hearing may be held on any such appeal, upon request, whenever the Secretary deems the hearing request meritorious. A request for a public hearing shall be deemed meritorious when the appeal is not frivolous and the notice of appeal exhibits a reasonable familiarity with the Division's decision. The public hearing shall be conducted as follows:

6.2.1.1 For any hearing on an application, notification shall be served upon the applicant as summonses are served or by registered or certified mail not less than twenty (20) calendar days before the time of said hearing. Notice shall also be published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State not less than twenty (20) calendar days before the time of said hearing.

6.2.1.2 The appellant may appear personally or be represented by counsel at the hearing and produce any competent evidence in his behalf. The Secretary or his authorized designee may administer oaths, examine witnesses, and issue, in the name of the Department, notices of hearings or subpoenas requiring the testimony of witnesses and production of books, records or other documents relevant to any matter involved in such hearing.

6.2.1.3 A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced by the Secretary or other parties, constitute the record. The Secretary or his authorized designee shall make findings of fact based on the record. The Secretary shall then enter an order that will best further the purposes of the Act and these Regulations, and the order shall include reasons. The Secretary shall promptly give written notice of the order to parties who participated in the hearing.

7.0 Appeal From the Secretary's Decision

7.1 Appeal Procedure

7.1.1 Any person or persons, jointly or severally, or any taxpayer, or other officer, department, board or bureau of the State, aggrieved by a final order of the Secretary may, within thirty (30) calendar days, appeal to the Superior Court as provided in 7 Del.C. §6803(g).

8.0 Cease and Desist Orders, Violations and Penalties

8.1 Cease and Desist Orders

8.1.1 The Secretary shall have the power to issue a cease and desist order to any person who violates any provision of the Act or Regulations. Any such cease and desist order shall expire (1) after thirty (30) days from the date of its issuance, or (2) upon withdrawal of said order by the Secretary, or (3) when the order is superseded by an injunction, whichever occurs first.

8.2 Violations and Penalties

8.2.1 Any person who violates any provision of the Act, or Regulations, or violates a cease and desist order of the Secretary, shall be fined not less than \$100 nor more than \$5,000 or imprisoned for not more than two (2) years, or both, and, in addition, shall reimburse the Department for its

reasonable expenditures in remedying damage created.

8.3 Jurisdiction

~~8.3.3 Justices of the Peace shall have original jurisdiction to hear and determine violations under this Section.~~

9.0 Procedures for Adoption of Changes to the Regulations

9.1 Hearing

~~9.1.1 The Secretary, or his authorized designee, shall hold a public hearing on any changes to the Regulations that he shall propose for adoption. For a hearing on the proposed changes to the Regulations, notification shall be published in a newspaper of general circulation in each county of the State and in a daily newspaper of general circulation throughout the State. Such notification shall include (1) a brief description of the proposed changes to the Regulations, (2) the time and place of the hearing, and (3) the time and place where copies of the proposed changes may be examined and/or obtained. Such notice shall also be sent to any person who has requested notification from the Department by providing their name and mailing address.~~

9.2 Decision

~~9.2.1 Following the public hearing, the Secretary may adopt, with or without modifications, the proposed changes to the Regulations. This adoption shall be a final order for purposes of 7.0.~~

1.0 Introductory Provisions

1.1 Purpose. The purpose of these Regulations is to enhance, protect, and preserve public and private beaches of the State, to mitigate beach erosion and to minimize storm damage through a Permit and Letter of Approval process. The beach provides the benefits of a unique recreational area, storm protection and a natural buffer between the water and upland areas. The guiding principle of these Regulations is that construction activities be limited within the beach to areas landward of the dune protection zone. These Regulations prohibit certain activities and require Permits or Letters of Approval for other activities within the beach area.

1.2 Sole Jurisdiction. Authority to enhance, preserve and protect public and private beaches within the State is vested solely in the Department.

1.3 Application of Current and Earlier Regulations. Activities currently authorized by a Permit or Letter of Approval will continue to be governed by the terms of the Permit or Letter of Approval.

2.0. Definitions

As used in these Regulations, the following terms shall have the meanings indicated below:

“Act” means the Beach Preservation Act, 7 Del.C. Chapter 68 and amendments made thereto.

“Amenity” is a structure or man made element, including but not limited to swimming pools, tennis courts, patio furniture, that enhances the property's attractiveness and or increases the occupant's or user's satisfaction although the feature is not essential to the property's use.

“Base Flood Elevation” The elevation of the 1% annual chance “One Hundred Year” flood, as determined by the Federal Emergency Management Agency for use in the National Flood Insurance Program.

“Beach” means that area from the Delaware/Maryland line at Fenwick Island to the Old Marina Canal immediately north of Pickering Beach, which extends from the mean high water line of the Atlantic Ocean and Delaware Bay landward 1,000 feet and seaward 2,500 feet, respectively, and along the perimeter of Rehoboth, Indian River, Little Assawoman and Assawoman Bays (excluding tributaries) which extend from the mean high water line landward 200 feet and bayward 300 feet, respectively.

“Beach Enhancement” means the process of improving or increasing the recreational and/or protection value of a beach.

“Beach Erosion” or ‘Erosion’ is the wearing away of a beach by water or the elements natural forces such as wave action and currents.

“Beach Nourishment” means the process of replenishing a beach with material (usually sand) obtained from another location by mechanical, hydraulic or other means.

“Beach Preservation” or 'beach erosion control' or 'erosion control' is the protection and control of the beach by the conduct and regulation of work and activities likely to affect the physical condition of the beach or shore, and includes, but is not limited to, erosion control, hurricane protection, coastal flood control, shoreline and offshore rehabilitation.

“Beach Protection” means the process of preventing the decrease of recreational and/or storm protection values of a beach.

“Beach Zone” means the area extending seaward from the seaward toe of the primary dune (vegetation line) or bulkhead line, as shown on the Department's Coastal Vulnerability Assessment Maps.

“Building” means any roofed and walled structure built for temporary or permanent or semi-permanent use.

“Building Line” means a line generally paralleling the coast, seaward of which construction of any kind shall be prohibited without a Permit or Letter of Approval from the Department. The Building Line shall be set forth on maps prepared by the Department with reference to the National

Geodetic Vertical Datum, the Delaware State Plane Coordinate System, and topographic surveys. Within the corporate limits of Rehoboth Beach and Bethany Beach, in commercial areas containing boardwalks and where no natural dune exists, the Building Line shall be along the westerly edge of the boardwalk.

“Bulkhead” means a vertical structure or partition built parallel or nearly parallel to the shoreline, with return walls, designed primarily to retain or prevent land from sliding and, secondarily, to protect upland areas from beach erosion and damage from wave action. A bulkhead is generally of lighter construction than a seawall.

“Construction” includes any work or activity which that is likely to have a substantial change material physical effect on existing coastal conditions or natural shore and inlet processes. Construction as used in these Regulations shall also include reconstruction, restoration, repair, alteration, replacement and placement if said terms are not otherwise included for clarification.

“Department” means the Department of Natural Resources and Environmental Control.

“Dune” means a mound, hill or ridge of windblown sand, either bare or covered with vegetation, naturally or artificially accumulated.

“Dune Crossover” means any structure or improvement constructed or installed for the primary purpose of obtaining or facilitating pedestrian or vehicular access across the primary coastal dune.

“Erosion/Wave Zone” means the area extending landward from the seaward toe of the primary dune or bulkhead line to the landward limit of storm-induced erosion as shown on the Department’s Coastal Vulnerability Assessment Maps. This zone is characterized by dune erosion, significant profile lowering, damaging waves and high velocity flows.

“Expansion” means the enlargement of a structure, or portion thereof, (see Structure definition).

“Flood Zone” means the area extending to the landward limit of stillwater flooding or to the landward limit of wave overtopping, whichever is more landward as shown on the Department’s Coastal Vulnerability Assessment Maps.

“Geology” means the relationship of the earth and the materials of which it is composed, to the changes which it has undergone, is undergoing, or is likely to undergo.

“Geomorphology” means the form and general configuration of the earth’s surface and the changes that take place in the evolution of land forms.

“Groin” means a shore protection structure constructed (usually perpendicular to the shoreline) to retard erosion of an existing beach by trapping littoral drift.

“Lowest Living Floor” means the lowest portion of the lowest horizontal support member of the lowest enclosed space used for living purposes, which includes working, sleeping, eating, cooking, or combination thereof. A floor used only for storage shall not be considered a living floor.

“Maintenance” means any work aimed at keeping a structure in an efficient operating and usable condition. Maintenance does not mean expansion or modification of a structure. Maintenance does not mean changing the general form or extension of the structure.

“Material Physical Effect” means, including but not limited to, any alteration to the existing characteristics of the beach that could significantly increase the danger of erosion, storm damage or flooding and includes the moving, digging, or removal of beach material or the erection of any temporary or permanent structure.

“Modification” means a change in the form of a structure.

“North American Vertical Datum (NAVD)” means a fixed reference adopted by the U. S. Government as a standard geodetic datum for vertical elevations.

“Parcel of Real Property” means any land owned by one or more persons, the boundaries of which are set forth in a single deed, series of deeds, or similar document.

“Person” means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision, or duly established legal entity.

“Primary Dune” means that dune which roughly parallels the shoreline in a more or less continuous fashion and is generally the first and largest dune encountered moving landward from the shoreline.

“Private Beach” means any beach which is not a public beach as defined in the Act.

“Public Beach” means any beach owned in fee simple by the Federal or State government or any county, city, town or municipality; or any beach for which the State has obtained an easement or agreement for public use.

“Regulations” unless stated otherwise, means the Regulations Governing Beach Protection and the Use of Beaches, promulgated pursuant to the Beach Preservation Act, 7 Del.C. Chapter 68 and amendments made thereto.

“Repair” means the act of restoring a structure to good condition after it has been damaged or deteriorated by any cause. Repair does not mean expansion or modification of a structure.

“Revetment” means a non-vertical facing of stone, concrete, or similar material built to protect a shore, or shore structure against erosion by wave action or currents and having a specific engineered design.

“Sand Fence” means a barrier made of posts, wires and wood slats (1/2" thick or less by 1-1/2" wide or less) or synthetic materials including flexible plastic, nylon and polyester intended primarily to trap and collect wind-blown sand, but which may also be used to channel human and vehicular traffic.

“Seawall” means an upright structure separating land and water areas, primarily designed to prevent erosion and other damage to upland areas due to wave action. A seawall is generally of heavier or more massive construction than a bulkhead.

“Secretary” means the Secretary of the Department of Natural Resources and Environmental Control.

“Shoreline” means the line of intersection of a body of water with the land.

“Smallest Subsets of Lots” means smallest identifiable set of lots that exist within a subdivision or community separated by either dedicated public walkways, roads, or subdivision boundaries. If there are no roads or walkways separating sections within a subdivision, then the smallest set of lots shall be limited to 7 lots.

“Structure” means any building, deck, walkway, pipeline, dock, pier, wharf, boat ramp, groin, jetty, seawall, bulkhead, revetment, or any other piece of work artificially built or placed.

“Substantial Amount” means any amount of material, the moving, alteration, or removal of which could significantly increase danger of erosion, storm damage or flooding.

“Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial Improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement is started, or, if the structure is damaged and is being restored, before the damage occurred.

“Temporary Structure” means any portable and easily removable non-habitable building, shed, ramp, steps or walkway that can be easily removed from the site within a short time frame using minimal equipment and/or man power.

“Wave/Overwash Zone” means the area extending from the landward limit of the Erosion/Wave Zone to a point indicated by calculations and/or historic overwash penetration as shown on the Department’s Coastal Vulnerability Assessment Maps. This zone is characterized

by one or more of the following: damaging waves, high velocity flows and deposition of overwash sediments.

3.0 Permit and Letter of Approval Application Procedures

3.1 General Rules

The Department shall consider and review all Permit and Letter of Approval applications and they shall be approved or denied in accordance with the Act and these Regulations. No Permit or Letter of Approval shall be issued for any activity prohibited by any provision of the Act or these Regulations.

3.2 Application Fees

Any person applying for a Permit or Letter of Approval pursuant to these Regulations must apply to the Department on an application form provided by the Department and shall, at the same time, submit the required application fee.

3.3 Mitigating Measures

Applications for Permits and Letters of Approval shall incorporate all reasonable means and methods to avoid or minimize any adverse impacts of the proposed activity. These measures shall be implemented at the applicant's expense and may include actions that will (1) avoid or minimize any adverse impacts of the proposal; (2) restore the affected environment; or (3) compensate for the adverse impacts by replacing or providing substitute resources.

In rendering its decision on requests for Permits and Letters of Approval pursuant to these Regulations, the Department shall make a determination regarding the potential adverse effects of the proposed structure or activity. If, in the opinion of the Department, the potential for damage to the beach [seaward of the building line] is increased as a result of the proposed structure or activity, the Department may require the applicant to take measures (including, but not limited to beach nourishment, dune construction, and/or dune maintenance) to reduce such damage potential. When the Department requires such mitigating measures, the permit applicant shall be required to maintain these measures for the life of the structure or activity. Failure to comply with the mitigating measures required by the Department shall be cause for removal of the structure or termination of the activity and restoration of the beach.

3.4 Procedures for Processing Permit Applications

Upon receipt of a Permit application in proper form, the Department shall post a public notice stating: a) that the application has been received; b) a brief description of the nature of the application; and c) that Public comments will be received for fifteen (15) days by the Department regarding the application.

The Department shall also mail notice to immediately adjacent property owners listed in the Permit application, and make the application available for public inspection at the Department's Dover office. A decision shall not be rendered on any Permit application until at least twenty (20) calendar days after notice has been published and mailed to adjacent property owners, and the application has been made available for public inspection, in accordance with this section.

3.5 Specific Information to be Considered by the Department

Whenever the Department is deciding whether to issue a Permit or Letter of Approval or is determining if the Department shall require that the dimensions or location of a proposed structure, or portion thereof, or other design aspects are to be modified or redesigned pursuant to these Regulations, the Department may take into account the geology, geomorphology, meteorology, and hydraulics of the area in addition to any other relevant information including, but not limited, to the following:

3.5.1 Any comments received by the Department;

3.5.2 The Act and the Regulations;

3.5.3 The effect of the proposed construction on shoreline recession, beach erosion, flooding, and potential damage to the parcel of property that is the subject of the Permit application; and potential damage to any other parcel of real property, public lands, or personal property;

3.5.4 The feasibility of alternative protection from storm damage that may be available;

3.5.5 The historical average rate of shoreline change for the general area nearby and including the parcel of real property that is the subject of the Permit application;

3.5.6 Any design modifications which may mitigate the impact of the proposed construction;

3.5.7 The likelihood and amount of actual, or potential for, expenditures of federal and state revenues for maintaining, repairing or restoring the parcel of real property prior to construction, after construction, and after any natural disaster;

3.5.8 The protection of the state, the public and any adjacent landowners from actual and potential financial and property loss;

3.5.9 The feasibility of any modification or redesign required by the Department, keeping in mind any increased or decreased costs, in achieving the purpose and function of the structure or portion thereof as originally planned;

3.5.10 Any design alternatives or amendments to the original design submitted to the Department by the owner of the proposed structure or portion thereof; and

3.5.11 Any other factors or information that the Department determines to be relevant to the subject matter of the Permit.

3.6 Department Decision.

The Department shall make a decision on the application that may include terms and conditions that it determines will best implement the purposes of the Act and these Regulations. The Department shall give written notice with reasons for the decision to the applicant.

Upon receipt of an application for a Permit or Letter of Approval, the Department shall consider the effect of the proposed activity on beach enhancement, preservation and protection. The Department may undertake any investigation or activity it deems necessary to carry out the purposes of the Act. If the Department determines a project may have a substantial effect on beach enhancement, preservation and protection, the applicant shall be directed to follow the procedures for obtaining a Permit applicable under Section 6.0. The Department may require modification of any proposed structure or activity in order to: prevent increased erosion damage to the property at issue, nearby parcels of property, or public lands; reduce public expenditures for beach protection; or prevent or reduce storm debris damage.

3.7 Department Exemptions

The Department shall not be subject to the Permit or Letter of Approval requirements of the Act and these Regulations in the performance of its erosion control duties. The Department will, however, be guided by substantive standards generally applicable to the construction and placement of shore protection structures and facilities.

3.8 Savings Clause

If any provision of these Regulations, or the application of such provisions to any person or set of circumstances is held invalid, the remainder of these Regulations and the application of such provision to persons or circumstances other than those held invalid, shall not be affected.

3.9. Other Requirements and Approvals

A person who is issued a Permit or Letter of Approval by the Department pursuant to these Regulations is not exempted from obtaining any other Permit or approval required by Federal, State or local laws, rules, Regulations, and building and zoning ordinances.

4.0 Building Line

The Department's objective is to confine all construction to the area completely landward of the Building Line. The

Building Line is intended to separate the area acceptable for construction and the area which is not.

4.1 Location of Building Line

The Building Line shall be shown on topographic maps prepared by the Department with reference to the North American Vertical Datum (NAVD), and the Delaware State Plane Coordinate System for all shoreline areas of Delaware Bay and the Atlantic Ocean coast of Delaware from and including, Pickering Beach to the Delaware-Maryland line at Fenwick Island. The Building Line shall be shown as a series of straight lines connected together at points whose locations are identified by reference to the Delaware State Plane Coordinate System. No point shall be located more than five hundred (500) feet from an adjoining point. The Building Line designated on the maps shall be conclusive for the purpose of the Act.

4.2 Building Line Re-Established

When the Secretary determines that storms or other natural phenomena have caused a substantial permanent change in the seaward contour used to establish the Building Line, the Department may, re-establish the Building Line from information provided by topographic survey. That Building Line shall be established using the following formula:

4.2.1 Along beaches extending from the Delaware/Maryland line to the tip of Cape Henlopen - 100 feet landward of the adjusted seaward most 9-foot elevation contour above NAVD;

4.2.2 Along beaches extending from the tip of Cape Henlopen to Rosemary Street at the southern most limit of Primehook Beach - 100 feet landward of the adjusted seaward most 6-foot elevation contour above NAVD;

4.2.3 Along beaches extending from Rosemary Street at the southernmost limit of Primehook Beach to the Old Marina Canal north of Pickering Beach - 75 feet landward of the adjusted seaward most 6-foot elevation contour above NAVD.

4.3 Mapped Areas without existing Building Line

When an applicant proposes to develop a parcel of real property which does not currently have a Building Line established, that line shall be established for the new development using the formula outlined in Section 4.2 above. All construction in these areas must be located landward of the Building Line.

5.0 Activities Entirely Landward of the Building Line

No person shall commence or conduct construction, modification, repair, expansion, reconstruction, relocation or maintenance of any structure entirely landward of the Building Line in the area defined as beach or conduct the alternation, digging, mining, moving, removal or deposition

of any substantial amount of beach materials, or the significant removal of vegetation unless and until a Permit or Letter of Approval has been issued.

5.1 Letter of Approval Requirements for Construction Activities Entirely Landward of the Building Line

Before any Letter of Approval is issued by the Department for the construction of any structure, or portion thereof, in the area defined as beach and landward of the Building Line, the person applying for the Letter of Approval must provide the Department with written documentation and plans indicating that the proposed structure, or portion thereof, will be constructed in accordance with the Act and these Regulations.

5.2 Application Determination

Upon receipt of an application for a Letter of Approval proposing construction in the area defined as beach but entirely landward of the Building Line, the Department shall consider the effect of the proposed activity on beach enhancement, preservation and protection. The Department may undertake any investigation or activity it deems necessary to carry out the purpose of the Act. If the Department determines the proposed activity may have a substantial effect on beach enhancement, preservation or protection, the applicant shall be directed to follow the procedures for obtaining a Permit in Section 6.0.

5.3 Maintenance, Repair and Relocation of Habitable Structures

Any person intending to commence any maintenance or repair work on a structure or planning to relocate a structure located landward of the Building Line in the area defined as beach, shall apply in writing to the Department for a Letter of Approval, except as specified in Section 5.4. No person shall commence maintenance or repair work until after being issued a Letter of Approval by the Department.

5.4 Maintenance and Repair Not Requiring a Permit or Letter of Approval

A Letter of Approval is not required when maintenance or repair work is undertaken on a lawfully constructed structure located landward of the Building Line in the area defined as beach and;

5.4.1 The location of the maintenance or repair work is at or above the lowest living floor and within the perimeter of the existing lawfully constructed structure and;

5.4.2 The maintenance or repair work consists solely of non-structural work such as repainting, replacement of shingles or siding or replacement of windows and doors and any cleaning necessary to maintain the structure.

6.0 Activities Entirely or Partially Seaward of the Building Line

No person shall commence or conduct construction, modification, repair, expansion, reconstruction, relocation or maintenance of any structure seaward of the Building Line in the area defined as beach or conduct the alteration, digging, mining, moving, removal or deposition of any substantial amount of beach materials, or the significant removal of vegetation unless and until a Permit or Letter of Approval has been issued.

6.1 Permit Requirements

6.1.1 Construction Seaward of the Building Line. Before any Permit is issued by the Department for the construction of any structure, or portion thereof, seaward of the Building Line, the person applying for the Permit must provide the Department with written documentation and plans indicating that the proposed structure, or portion thereof, will be constructed in accordance with the Act and these Regulations.

6.1.2 Construction of any structure or portion thereof, seaward of the Building Line on any parcel of real property is prohibited unless, the Department has made a determination during the permit application review process that:

6.1.2.1 A structure can be built on the proposed parcel without posing an unacceptable risk to human health or the environment, or the beach resource or the physical safety of the property owner or others, and

6.1.2.2 The size of the area of the parcel of real property located landward of the building line is inadequate for construction of proposed structure or portion thereof; and

6.1.2.3 The dimensions and location of the structure, or portion thereof, and other design aspects of the proposed construction project, including but not limited to, entrance ways, parking lots and landscaping, cannot be modified or redesigned in order to have the final structure or portion thereof located either less seaward or completely landward of the Building Line in accordance with the four-step process outlined in sections 6.1.2.3.1 through 6.1.2.3.4. A person is not required to follow the requirements of the four-step process if they demonstrate through the submission of a sealed survey of the lot, that all construction will be located entirely landward of the Building Line. In this case, the applicant must apply for a Letter of Approval as required by Section 5.0.

6.1.2.3.1 All construction must begin at the setback line established for the landward property boundary by the county or town in which the property is located. Porches, decks and entrance ways are not permitted along this wall of the building, except those which are

recessed into the exterior wall of the structure or alongside the structure. Steps may extend into setbacks as long as permissible by county and local regulations, and;

6.1.2.3.2 The structure must occupy all of the area available between the side yard setbacks, and;

6.1.2.3.3 The square footage of the foot print of the structure (living area only, not including open porches and decks) shall not exceed the average square footage that exists among adjacent structures within the smallest subset of lots, and;

6.1.2.3.4 Seaward penetration over the Building Line shall not exceed the average encroachment that exists among adjacent structures within the smallest subset of lots. Any decks constructed along with the structure must meet the requirements of Section 6.1.8.

6.1.3 Other Structures

Construction proposed seaward of the Building Line shall be free of non-essential portions of the dwelling unless they are raised above Base Flood Elevation, are within the perimeter of the building and supported by the building foundation. Non-essential portions of the dwelling include, but are not limited to, showers, decks, patios, benches, garages, carports, vehicle ramps, basement areas, retaining walls, landscaping structures, birdhouses, fences (other than sand fence or lattice), steps, solid driveways and parking areas, swimming pools, propane tanks, flag poles, and other non-living space portions of the dwelling.

6.1.4 Maintenance, Repair and Relocation of Structures

Any person intending to commence any maintenance or repair work on any structure seaward of the Building Line in the area defined as beach, shall apply in writing to the Department for a Permit or a Letter of Approval, except as specified in Section 6.1.6. No person shall commence maintenance or repair work until after being issued a Permit or a Letter of Approval by the Department.

6.1.4.1 If the proposed maintenance or repair is to an amenity located seaward of the Building Line, below the first living floor and below Base Flood Elevation, the Department shall require elevation of the amenity to a level at or above Base Flood Elevation and relocation of the structure as far landward as possible to facilitate growth of the dune and to prevent loss of the amenity during storm events. A Permit or Letter of Approval from the Department is required for this maintenance or repair work.

6.1.4.2 In the event the proposed maintenance or repair work involves raising or removing a structure from its foundation and the structure is located seaward or partially seaward of the Building Line, the Department shall require relocation of the structure completely landward of the Building Line or as far landward on the lot as possible.

6.1.4.3 In the event the proposed maintenance or repair work involves a substantial improvement and the structure is located seaward or partially seaward of the Building Line, the Department shall require relocation of the structure completely landward of the Building Line or as far landward on the lot as possible.

6.1.5. Restoration or Reconstruction after Substantial Damage or Removal, Siting Requirements

6.1.5.1 If a structure in the area defined as beach is substantially damaged or removed from its foundation, no person shall undertake any restoration or reconstruction of the substantially damaged or removed structure before the Department issues the person a Permit or Letter of Approval.

6.1.5.2 If a structure is to be either constructed or reconstructed following substantial damage or removal of the original structure, the structure must be located entirely landward of the Building Line or as far landward on the lot as possible. Siting requirements for reconstruction of the substantially damaged or removed structure will be determined based on the requirements of Sections 5.0 and 6.0.

6.1.6 Maintenance and Repair Not Requiring a Permit or Letter of Approval

A Permit or Letter of Approval is not required when maintenance or repair work is undertaken on a lawfully constructed structure located in the area defined as beach and,

6.1.6.1 The location of the maintenance or repair work is at or above the lowest living floor and is within the perimeter of the existing lawfully constructed structure and,

6.1.6.2 The maintenance or repair work includes consists solely of non-structural work such as repainting, replacement of shingles or siding or replacement of windows and doors and any cleaning necessary to maintain the structure.

6.1.7 Modification or Expansion of Structures

6.1.7.1 Modification or expansion of an existing structure, or portion thereof, seaward of the Building Line, including those structures or portions thereof, that were constructed prior to the Act and the Regulations is prohibited unless one or more of the following apply to the proposed modification or expansion and a Permit or Letter of Approval has been issued by the Department:

6.1.7.1.1 The modification or expansion consists of only a deck located at or above the lowest living floor of a building, or above the Base Flood Elevation, and the modification or expansion makes use of the foundation of the building, (e.g., by cantilevering or knee brace) that existed prior to the modification or expansion.

However, any deck or portion thereof, that is modified or expanded pursuant to any provision of this Section shall not extend beyond a point that is the average distance seaward of the Building Line of existing lawfully constructed buildings or decks of a similar nature that already exist on the parcel of real property located within the smallest subset of lots, within the same subdivision. Excavation or alteration of the existing dune or vegetation is prohibited to accommodate the construction of the deck. The area underneath the deck shall remain open and free of obstruction.

6.1.7.1.2 The modification or expansion of an existing structure is limited to the area contained within the existing walls of the structure and is limited to the area at or above the lowest living floor.

6.1.8 Decks

Whenever a deck is proposed for construction along with a new building structure, and the deck is proposed to be located at or above the lowest living floor of the structure building, or above Base Flood Elevation, and the deck is proposing to make use of the foundation of the structure (e.g. by cantilevering or knee brace) the deck shall not extend beyond a point that is the average distance seaward of the Building Line of existing lawfully constructed bstructures uildings or decks that already exist on the parcels of real property located within the smallest subset of lots, within the same subdivision as the parcel of real property on which the structure building or deck is proposed. The area underneath the deck below Base Flood Elevation shall remain open and free of all obstructions.

6.1.9 Seasonal Structures

The placement of seasonal or otherwise temporary structures seaward of the building line and seaward of the dune on the dry beach may be allowed with a Letter of Approval from the Department. It must be demonstrated by the applicant that the design and deployment of the temporary structure can be done so that the structure can be easily removed or otherwise relocated landward of the building line in a short time frame. Temporary structures must be removed from the site during the off-season and in the case of the threat of a coastal storm.

6.1.10 Pedestrian Access Structures and Dune Maintenance

Before any person commences the construction or placement of a pedestrian dune crossover, or any portion thereof, the person must have a Letter of Approval.

6.1.10.1 A person is not required to obtain a Permit or Letter of Approval if they are conducting ordinary dune maintenance, as determined by the Department, including the installation of sand fence and the planting of

and fertilization of stabilizing vegetation. Mechanical movement of sand requires a Permit or Letter of Approval from the Department.

6.1.11 Erosion Control or Shore Protection Structures

The use of walls to protect properties from ocean forces is discouraged. Maintenance of an adequately wide beach and dune system is preferred. Construction of any structure or facility having the primary function of beach erosion control, shore protection, or property protection including, but not limited to groins, jetties, seawalls, revetments, dikes, bulkheads, or any pipeline, dock, pier, wharf, ramp or other harbor work may be permitted if it is demonstrated that all other means of beach erosion control, shoreline protection or beach enhancement will not be effective.

If a bulkhead, revetment or other protective structure is damaged during a storm a permit must be obtained from the Department to make repairs. If less than 50 % of the original structure is sound and functional and suitable for incorporation into reconstruction of the structure, the alternatives to replacing the structure shall be considered in the permit review process.

6.1.12 Beach Nourishment

Beach nourishment requires the issuance of a Permit from the Department to assure proper design.

7.0 Prohibited Activities

7.1 No person shall:

7.1.1 Operate any type of motorized vehicle or machine on or across the primary dune on any beach except at locations approved or permitted by the Department;

7.1.2 Transport or store any type of boat across or on the primary dune on any beach except at locations approved or permitted by the Department;

7.1.3 Walk on or over or across the primary dune of any state-owned beach except at locations approved or permitted by the Department;

7.1.4 Alter, move or remove any structure, facility or improvement installed or maintained by the Department; or

7.1.5 Damage, destroy or remove any tree, shrubbery, beach grass or other vegetation growing on any State owned or maintained beach.

7.2 Construction of any structure or portion thereof, seaward of the Building Line in a subdivision created after the [effective date of these Regulations] is prohibited.

7.3 Construction of any structure, or portion thereof, on any lot or parcel of real property that is located entirely seaward of the Building Line that was not owned by the

applicant on the [effective date of these Regulations] is prohibited.

7.4 Construction of any structure, or portion thereof, on any lot or parcel of real property that is located entirely seaward of the building line is prohibited when the lot or parcel in question was created by subdivision of a larger parcel into smaller parcels or lots after August 13, 1981.

8.0 Construction Standards

“Previous storms have repeatedly shown the vulnerability of certain types of construction, particularly older, at-grade or inadequately elevated buildings close to the shoreline....Recent coastal siting and construction standards, through improved, still leave coastal development vulnerable to damage or destruction during severe storms. The potential consequences of not further improving coastal siting and construction standards are great loss of residential and commercial property, business interruption and job loss, and of course, the threat to human life itself.¹

Recognizing the above, the Department conducted a Coastal Hazard Vulnerability Study to 1) better define the nature and extent of the coastal hazards along Delaware's Atlantic Ocean and Delaware bay shorelines, 2) to map coastal hazard zones reflecting present day shoreline conditions, 3) to map future (30-year) hazard zone locations along the Atlantic Ocean and Delaware Bay shorelines, and 4) to supplement existing building codes and regulations with standards specifically tailored to the identified hazard zones. Hazard zones that reflect local coastal morphology and anticipated storm effects expected during northeasters and hurricanes, including the 100-yr flood event (1% annual chance of occurring) and a Category 3 hurricane, were identified and mapped using April 1997, digital aerial orthophotographs. These zones which include the Beach Zone, the Erosion/Wave Zone, the Wave/Overwash Zone, the Flood Zone, and the projection of those future hazard zones into the future, are shown on base maps. In order to minimize future storm damage along Delaware's coastline, the Department recommends and/or requires construction standards in each of these zones. Recommended standards will be published separately in a supplemental document titled Delaware's Recommended Coastal Construction Standards. At a minimum, the Department will require the following construction standards in the Beach, Erosion/Wave Zone and the Wave Overwash Zone. Determination of the zone a property is located in will be made by reviewing the Department's Coastal Vulnerability Assessment Maps

1. Coastal Vulnerability and Construction Standards Study, September 17, 1997.

mentioned above. If any portion of the structure is located in the Beach Zone or Erosion Zone then the entire structure must meet the requirements for the applicable zone.

8.1 Construction in the Beach Zone and Erosion Zone and In Locations Seaward of the Building Line

8.1.1 Foundations

All new buildings shall be constructed on a piling foundation, designed (by a registered professional engineer or architect licensed in the State of Delaware) and constructed to prevent floating, collapse or lateral displacement of the building during design flood conditions. Foundation design shall consider the effects of all flood, wave, wind and other loads anticipated during design flood conditions, and shall also consider the effects of the storm-induced erosion and long term erosion.

Pile foundations tips shall be driven to a minimum depth of -11.0 ft. NAVD.

8.1.2 Floor Elevation Requirements

All new buildings and new construction shall be elevated such that the bottom of the lowest structural member is at or above the Base Flood Elevation.

8.1.3 Enclosures

The areas below Base Flood Elevation shall be unenclosed or enclosed only with light weight open wood lattice or screening. Storage areas and areas for building access with wood floors must be elevated above Base Flood Elevation and supported by the existing pile foundation.

8.1.4 Ground Level Surfaces

Seaward of the Building Line all constructed ground level surfaces (e.g. parking areas and driveways) shall be permeable materials consisting of fill, crushed shell, gravel or driveway stone (1/2" or smaller in circumference). Concrete, concrete pavers, asphalt or other solid surfaces are prohibited.

8.1.5 Utilities

Wiring, plumbing, duct work and other utility components shall be located above Base Flood Elevation. All utility connections servicing the elevated building must be attached to the landward side of foundation piles when possible

8.1.6 Decks

Decks constructed in a location seaward of the Building Line must make use of the foundation of the building (e.g. by cantilevering or knee brace), must meet the requirements of Section 6.1.83.019a0936.1.8) of these Regulations and shall be designed by a professional engineer or architect.

8.1.7 Access stairs for buildings or decks

Stairs for accessing buildings or decks shall be supported by the existing foundation of the structure. Stairs for accessing decks shall be located within

the footprint of the deck or shall be located landward of the deck. The steps shall descend in a landward direction. Access due to special medical needs will be addressed on a case by case basis.

8.1.8 Retaining Walls

Due to the potential for the redirection of floodwaters onto other properties or into structures as a result of wave reflection off of the vertical wall, the construction of retaining walls are not permitted in these zones or in areas located seaward of the Building Line.

8.1.9 Pedestrian Dune Crossovers

Crossover widths will be set in the application process and will vary depending upon the amount of pedestrian use. The break down will be as follows:

8.1.9.1 Crossovers serving one or two family residences

8.1.9.2 Crossovers serving 3-9 single family residences

8.1.9.3 Crossovers serving 10 or more single family residences

In new subdivisions, adjacent property owners are required to share crossovers in order to minimize damage to the dunes. Older subdivisions will be required to share crossovers whenever possible and practicable. Crossovers for persons with special needs will be evaluated on a case by case basis.

8.2 Construction in the Wave/Overwash Zone and Landward of the Building Line.

8.2.1 Foundations

All new buildings shall be constructed on a piling foundation, designed (by a professional engineer or architect licensed in the State of Delaware) and constructed to prevent floatation, collapse or lateral displacement of the building during design flood conditions. Foundation design shall consider the effects of all flood, wave, wind and other loads anticipated during design conditions, and shall consider the effects of storm-induced erosion and long term erosion.

Foundation pilings for structures within this zone shall be at least 10.0 ft. below the lowest original grade at the building site, or deeper as dictated by design calculations.

8.2.2 Floor Elevation Requirements

All new buildings must be elevated such that the bottom of the lowest horizontal structural member is at or above Base Flood Elevation.

8.2.3 Enclosures

The area below Base Flood Elevation shall be unenclosed or enclosed only with light weight open wood lattice, screening or breakaway walls. Enclosed areas shall

be used only for parking, building access or storage and shall not be used a habitable space. Breakaway walls shall include openings that allow the automatic entry and exit of flood waters.

8.2.4 Ground Level Surfaces

Landward of the Building Line all constructed ground level surfaces (e.g., parking areas and driveways) shall be designed to break free of the piling foundation under design flood and erosion conditions.

8.2.5 Utilities

Wiring, plumbing, duct work and other utility components shall be located at or above Base Flood Elevation. All utility connections servicing the elevated buildings must be attached to the landward side of foundation piles when possible.

8.2.6 Porches and Decks

Foundation for porches and decks constructed in a location landward of the Building Line shall meet the same foundation requirements as the elevated building.

9.0 Appeal from the Department’s Decision

9.1 Right of Appeal

Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board or bureau of state, aggrieved by any decision of the Secretary, may appeal to the Superior Court as provided in 7 Del.C. §6803(d).

10.0 Cease and Desist Orders and Penalties

10.1 Cease and Desist Orders

The Secretary shall have the power to issue a cease and desist order to any person who violates the Act or Regulations. Any such cease and desist order shall expire (1) after thirty (30) days from the date of its issuance, or (2) upon withdrawal of said Order by the Secretary, or (3) when the order is superseded by an injunction, whichever occurs first.

10.2 Penalties

Any person who violates any provision of the Act, or Regulations, or violates a cease and desist order of the Secretary, shall be liable for penalties pursuant to 7 Del.C. §6807.

DEPARTMENT OF STATE

PUBLIC SERVICE COMMISSION

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

NOTICE OF PROPOSED ADOPTION OF NEW “ELECTRIC SERVICE RELIABILITY AND QUALITY STANDARDS” REGULATION BY THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE CONSIDERATION OF RULES, STANDARDS, AND INDICES TO ENSURE RELIABLE ELECTRICAL SERVICE PSC BY ELECTRIC DISTRIBUTION COMPANIES (OPENED SEPTEMBER 26, 2000; REOPENED OCTOBER 11, 2005) | PSC REGULATION DOCKET NO. 50

By PSC Order No. 6298 (Nov. 4, 2003), the Public Service Commission (“PSC”) adopted its “Electric Service Reliability and Quality Standards” regulation to govern the operations of the two PSC-jurisdictional electric distribution utilities, Delmarva Power and Light Company and the Delaware Electric Cooperative, Inc. Those rules imposed interim annual reporting requirements on the two electric distribution utilities related to their baseline reliability expenditures and also adopted interim electric service reliability and quality benchmarks. These interim requirements have governed during the period running from 2003 through 2005.

On October 11, 2005, by PSC Order No. 6745 (Oct. 11, 2005), the PSC proposed to supercede the prior interim regulation with its new “Electric Service Reliability and Quality Standards” (“ESR and QS”). As with the interim rule, the new proposed ESR and QS regulation imposes operational and reporting requirements related to reliability on electric distribution utilities. In addition the new regulation also includes a reporting requirement for electric generation companies located in Delaware. The new regulation changes some of the reliability standards originally utilized in the interim regulation in light of actual past experience under the Outage Management Systems used during the tenure of the interim regulation. The new ESR and QS regulation also includes provisions related to: (a) expected responses for restoration of services after storms; (b) public input into the preparation of planning studies; and (c) the adoption of specific inspection and maintenance requirements by distribution utilities. In addition, the new ESR and QS would now impose certain reporting

requirements on entities operating electric generation facilities located in Delaware. The PSC has the authority to adopt the new ERS and QS rule under 26 Del.C. §§209(a), 1002(a)(1), and 1008.

You may review the proposed new ERS and QS regulation and Order No. 6745 in the November 2005 edition of the *Delaware Register of Regulation*. You may also review the Order and regulation at the PSC's Internet website located at www.state.de.us/delpsc. Written copies of the proposed regulation are also available at the PSC's Dover office, at the address set forth below, at the cost of \$0.25 per page.

Pursuant to 29 Del.C. §§1133 and 10115, the PSC now solicits written suggestions, compilations of data, briefs, comments, or other written documents concerning the proposed new ERS and QS regulation. If you wish to submit such written materials, you must file an original and ten copies of such materials at the PSC office at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904
Attn: Reg. Dckt. No. 50

If you able, you should also file an electronic copy of such materials as an attachment to an Internet e-mail message addressed to robert.howatt@state.de.us. You must accompany your written materials with a document setting forth your name, your organization (if any), address, telephone and facsimile numbers, and Internet e-mail address. **You must file such materials with the PSC on or before Monday, December 5, 2005.**

In addition, pursuant to 26 Del.C. §209(a) and 26 Del.C. §10117, the PSC will conduct an initial public hearing on the proposed new ESR and QS regulation on Wednesday, December 21, 2005. The hearing will be held at the following location beginning at 10:00 a.m.:

Third Floor Conference Room
Carvel State Office Building
820 North French Street
Wilmington, Delaware

At the hearing, persons or entities can also present their views concerning the proposed new ERS and QS regulation. If you do not file written materials or do not intend to appear at the public hearing but still wish to be included on the participant list in this matter in order to be notified of further proceedings, you must file a letter with the PSC requesting

to be included on the participant list. That letter must be filed by Monday, December 5, 2005.

If you have questions or desire further information about this matter, you can contact the PSC at 1-800-282-8574 (Delaware only) or at (302) 739-4247 (text telephone also). You can also address your inquiries by Internet e-mail to robert.howatt@state.de.us. If you are disabled and need assistance to review materials or participate, please contact the PSC in order to make arrangements for such assistance.

ORDER NO. 6745

AND NOW, this 11th day of October, A.D., 2005;

WHEREAS, in PSC Order No. 6298 (Nov. 4, 2003), the Commission adopted the Electric Service Reliability Quality Regulation, which included interim benchmark standards and directed in that Order that Staff develop and propose a final regulation for implementation by January 2006;

AND WHEREAS, in compliance with that Order, on November 19, 2004, Staff published a Notice of Intent to establish a final regulation and scheduled several workshops to discuss reliability issues, which were held between December 2004 and April 2005;

AND WHEREAS, as a result of those workshops and after consideration of all input from the various interested parties, Staff revised the draft regulation and forwarded it to all interested parties for informal review and comment;

AND WHEREAS, upon review of the comments of the interested parties and after further meetings with both of Delaware's electric distribution companies, Delmarva Power and Light Company and Delaware Electric Cooperative, Inc., Staff produced a final revised draft of the regulation for consideration by the Commission, a copy of which is attached hereto as Exhibit "A;"

AND WHEREAS, it appears that there are differences of opinion on the proposed content of the revised draft regulation and the positions of various parties disagree with Staff's proposed changes, making it unlikely that a settlement will be forthcoming on some of the key elements of the draft regulation;

AND WHEREAS, the Commission believes that the proposed revised regulation should be published in the *Delaware Register of Regulations* providing public notice of the revised rulemaking to develop a final regulation and appoint a Hearing Examiner to oversee the effort.

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

1. That the Secretary is directed to send this Order along with the proposed revised regulation to the Delaware Registrar of Regulations for publication in the next issue of the *Delaware Register of Regulations*.

2. That Ruth A. Price is designated as Hearing Examiner in this matter pursuant to the terms and provisions of 26 **Del.C.** §502 and 29 **Del.C.** ch. 101 with the authority to receive all written comments and/or testimony, briefs, or other written materials concerning the proposed rules submitted by the Commission Staff and shall organize, classify, summarize, and make recommendations with respect to such materials and proposed rules and regulations. In addition, the Hearing Examiner may conduct such public hearings, including evidentiary hearings, upon due public notice as she deems required or advisable concerning the proposed rules and regulations.

3. That James McC. Geddes, Esquire, continues as Rate Counsel in this matter and participants are notified that the cost of this proceeding will be assessed under the provisions of 26 **Del.C.** §114(b)(1) and 26 **Del.C.** §1012(c)(2).

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

BY ORDER OF THE COMMISSION:

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

ATTEST:

Norma J. Sherwood, Acting Secretary

E X H I B I T **"A"**

**Electric Service Reliability
and Quality Standards**

JANUARY 2006

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A. Purpose and Scope

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

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

3) Compliance with this regulation is a minimum standard. Compliance does not create a presumption of safe, adequate and proper service. Each EDC needs to exercise their professional judgment based on their systems and service territories. Nothing in this regulation relieves any utility from the requirement to furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so. (26 **Del.C.**, §209)

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

5) Each generation company operating in the state is required to provide the Commission with an annual assessment of their electric supply reliability as specified in Section J.

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

7) EDCs are responsible for maintaining the reliability of electric service to all their customers in the state of Delaware. Pursuant to this requirement, EDCs may be

subject to penalties as described in Section M or 26 Del.C., §1019.

8) EDCs are required to explore the use of proven state of the art technology, to provide cost effective electric service reliability improvements.

B. Definitions

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

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

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

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

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

“Benchmark” means the standard service measure of SAIFI, CAIDI and Constrained Hours of Operation as set forth in this regulation.

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

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

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

“Constrained hours of operation” means the hours of electric system operation during which time there are limits, transfer constraints or contingencies on the PJM DPL Zone delivery system that require off-cost dispatch of generating facilities. Total constrained hours exclude offcost operations attributable to generation or transmission forced outages, generation or transmission construction or any unrelated third party actions.

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

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

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

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

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

“Customers Experiencing Long Interruption Durations8 (‘CELID8’) represents the total number of customers that have experienced a cumulative total of more than eight hours of outages.

“Customers Experiencing Multiple Interruptions8 (‘CEMIS8’) is an index that represents the total number of customers that have experienced nine or more interruptions in a single year reporting period.

$$\text{CEMIS8} = \frac{\text{Total number of customers that experienced more than eight (8) sustained interruptions}}{\text{Total number of customers served}}$$

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

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

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

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

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

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

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

"Electric Supplier" means a person or entity certified by the Commission that sells electricity to retail electric customers utilizing the transmission and/or distribution facilities of a nonaffiliated electric utility, as further specified in 26 Del.C., §1001.

"Forced outage" means the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons or a condition in which the equipment is unavailable due to unanticipated failure.¹

"Forced outage rate" means the hours a generating unit, transmission line, or other facility is removed from service, divided by the sum of the hours it is removed from service plus the total number of hours the facility was connected to the electricity system expressed as a percent.²

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

they shall be considered one continuous forced outage.³

"Generation company" means a private or publicly owned company that owns or leases, with right of ownership, plant, equipment and facilities in the state of Delaware, rated in excess of 25 MVA and capable of supplying electric energy to the transmission and/or distribution system.

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

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

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

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

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

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

"Major Event" means an event consistent with the I.E.E.E.1366, Guide For Electric Power Distribution Reliability Indices standard as approved and as may be

1. North American Electric Reliability Council – "Glossary of Terms", August 1996
 2. North American Electric Reliability Council – "Glossary of Terms", August 1996

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

revised. For purposes of this regulation, changes shall be considered to be in effect beginning January 1 of the first calendar year after the changed standard is adopted by the I.E.E.E. Major event interruptions shall be excluded from the EDC's SAIFI, CAIDI and Constrained Hours measurements for comparison to reliability benchmarks. Interruption data for major events shall be collected, and reported according to the reporting requirements outlined in Section K.

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

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

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

"Outage Management System ('OMS')" means a software operating system that provides database information to effectively manage service interruptions and minimize customer outage times.

"Pre-restructuring" refers to the five-year time frame prior to Delaware's adoption of 26 Del.C., Chapter 10, Electric Utility Restructuring Statute (1995-1999).

"PJM Interconnection, L.L.C. ('PJM')" means the Regional Transmission Organization or successor organization that is responsible for wholesale energy markets and the interstate transmission of energy throughout a multi-state operating area that includes Delaware.

"Power quality" means the characteristics of electric power received by the customer, with the exception of sustained interruptions and momentary event interruptions. Characteristics of electric power that detract from its quality include waveform irregularities and voltage variations—either prolonged or transient. Power quality problems shall include, but are not limited to, disturbances such as high or low voltage, voltage spikes or transients, flicker and voltage sags, surges and short-time overvoltages, as well as harmonics and noise.

"Preventive maintenance" means the planned maintenance, usually performed to preclude forced or

unplanned outages, and which allows delivery facilities to continue functioning at an acceptable level of reliability.

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

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

Security - The ability of the electric system to withstand sudden disturbances such as electric short circuits or unanticipated loss of system elements.¹

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

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

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

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

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

"Supervisory Control And Data Acquisition ('SCADA')" is an electronic communication and control system that provides electrical system operating information and mechanisms to remotely control energy flows and equipment.

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

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

1. ERC definition - NERC's Reliability Assessment 2001–2010, dated October 16, 2001.

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

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

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

C. Electric Service Reliability and Quality

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

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

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

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

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

6) Each generation company in accordance with Section J. shall submit to the Commission on or before April 30 of each year, a Performance Report that evaluates their reliability of energy supply.

7) Each EDC shall ensure that distribution system generation interconnection requirements are consistent with the I.E.E.E. 1547 series, “Standard for Interconnecting Distributed Resources with Electric Power Systems, as currently approved and as may be revised.

8) Each EDC shall file and maintain with the Commission a copy of the technical requirements for distribution system generation interconnection.

D. Reliability and Quality Performance Benchmarks

1) The measurement of reliability and quality performance shall be based on annual SAIFI, CAIDI and Constrained Hours of Operation measures for each EDC. SAIFI and CAIDI calculations shall include all Delaware customer outages, excluding major events, and shall be reported by its distribution, substation and transmission components. The Constrained Hours of Operations shall be based on peninsula (DPL Zone) transmission system contingency limitations that require the dispatch of off-cost generation, excluding generation or transmission forced outages, generation or transmission construction or any unrelated third party actions.

2) Each EDC shall maintain their electric service reliability and quality performance measures within the benchmark standard of this Section D., paragraph 3). SAIFI, CAIDI and Constrained Hours of Operation performance shall be measured each calendar year. Annual SAIFI, CAIDI and Hours of Constrained Operation performance equal to or better than the acceptable reliability level meets the standard of this regulation. When performance does not meet the acceptable reliability level, further review and analysis are required. The EDC may be subject to penalties as defined in Section M and subsequent corrective actions may be required.

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

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

i) Delaware Electric Cooperative SAIFI shall be 3.9 interruptions; and

ii) Delmarva Power SAIFI shall be 1.9 interruptions.

b) The system CAIDI benchmark, which is based on pre-restructuring levels of performance and adjusted to

reflect a 1.75 standard deviation of data variability and the transition to an OMS system shall be as follows:

- i) Delaware Electric Cooperative CAIDI shall be 192 minutes; and
- ii) Delmarva Power CAIDI shall be 157 minutes.

c) Based on the PEPCO/Conectiv merger settlement, the Constrained Hours of Operation benchmark standard shall be 600 hours for each EDC.

4) Each EDC shall track and report its annual performance and three-year average performance against benchmark standards in accordance with Section J.

5) Each EDC shall track and report its annual CEMIs and CELID8 performance in accordance with Section J.

E. Reliability and Quality Performance Objectives

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

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

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

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

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

F. Power Quality Program

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

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

3) Each EDC shall maintain records of customer power quality concerns and EDC response. These records

shall be made available to the Commission Staff upon request with 30 days notice.

G. Inspection and Maintenance Program

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

2) As a maintenance minimum, each EDC shall inspect and maintain as necessary its power transformers, circuit breakers, substation capacitor banks, automatic 3-phase circuit switches and all 600 amp or larger manually operated, gang transmission circuit tie switches at least once every two (2) years.

3) As a maintenance minimum, each EDC shall inspect all right-of-way vegetation at least once every four (4) years and trim or maintain as necessary. Vegetation management practices should be applied at least once every four (4) years except where growth or other assessments deem it unnecessary.

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

H. Delivery Facility Studies

1) Each EDC shall perform system load studies to identify and examine potential distribution circuit overloads, distribution substation and distribution substation supply circuit single contingencies and all transmission system single and double contingencies as specified by NERC, MAAC, Reliability First Corp. and PJM or successor requirements. Double contingency analysis should include supply service contingencies that may cause overloads or outages on the EDC's system. Where NERC, MAAC, Reliability First Corp. or PJM requirements are not applicable, the EDC shall at a minimum examine circuit and equipment overloads under normal and single contingency conditions at peak load, with and without ALM or other demand response mechanisms. The EDC shall identify all projects and/or corrective actions that are planned to mitigate reliability loading issues identified in the study.

2) Delivery facility planning studies will be performed annually under conditions specified by NERC, MAAC, Reliability First Corp. and PJM or their successor organization's planning requirements, or as specified in H., 1). Studies shall identify required projects and/or planned corrective actions. For any study resulting in a thermal overload or an out-of-range voltage level, the study shall be

performed again after the implementation of Active Load Management (ALM), system switching or reconfiguration.

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

I. Planning and Studies Report

1) Prior to March 31 of each year, each EDC shall convene a stakeholder meeting offering opportunity for interested parties to discuss electric service reliability or quality concerns within Delaware. Such meeting shall be limited to discussion of publicly available information and at a minimum be open to generation companies, electric suppliers, municipalities or other EDCs, PJM, state agencies and wholesale/retail consumers. Each EDC shall consider the resulting issues and include mitigation efforts in annual plans as appropriate.

2) By March 31 of each year, each EDC shall submit a reliability planning and studies report to the Commission for review. The report will identify current reliability objectives, load study results and planned actions, projects or programs designed to maintain the electric service reliability and quality of the delivery facilities.

3) The report shall include the following information:

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

b. Delivery load study results as described in Section H, to include at a minimum the information for both year b and year c as specified in Section H, paragraph 3);

c. Description and estimated cost of capital projects planned to mitigate loading or contingent conditions identified in load studies or required to manage hours of congestion;

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

e. The EDC's inspection and maintenance program, any amendments as required in Section G., and any specific actions aimed at reducing outage causes;

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

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

h. Summary of any issues that resulted from the EDC stakeholder meeting and any projects or planning changes that may have been incorporated as a result of such meeting.

J. Annual Performance Report

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

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

a. SAIFI, and CAIDI measures:

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

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

b. Constrained hours of operation:

i) Current year and three-year average for the EDC's DPL Zone transmission system; and

ii) Current year for the EDC's DPL Zone, classified by cause.

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

4) The Performance Report shall include annual information that provides the Commission with the ability to assess the EDC's efforts to maintain reliable electric service to all customers in the state of Delaware. Such reporting shall include the following items:

a. Current year expenditures, labor resource hours, and progress measures for each capital and/or

maintenance program designed to support the maintenance of reliable electric service, to include:

- i. Transmission vegetation maintenance;
- ii. Transmission maintenance, excluding vegetation, by total, preventive, and corrective categories;
- iii. Transmission capital infrastructure improvements;
- iv. Distribution vegetation maintenance;
- v. Distribution maintenance, excluding vegetation, by total, preventive and corrective categories;
- vi. Distribution capital infrastructure improvements;
- vii. Transmission and Distribution progress per Section G, 2) & 3); and
- viii. Any related process, practice or material improvements.

b. Current year OMS data to include:

- i. Number of outages by outage type;
- ii. Number of outages by outage cause;
- iii. Total number of customers at year end;
- iv. Total number of customers that experienced an outage; and
- v. Total customer minutes of outage time.

c. Current year CELID8 and CEMI8 results, exclusive of major events, including any efforts being made to reduce the occurrences of multiple outages or long duration outages.

d. Current year customer satisfaction or other measures the EDC believes are indicative of reliability performance.

5) The Performance Report shall include a summary of each major event for which data was excluded, and an assessment of the measurable impact on reported performance measures.

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

- a. For not meeting SAIFI, an analysis of the customer service interruption causes for all delivery facilities that significantly contributed to not meeting the benchmark;
- b. For not meeting CAIDI, an analysis of the duration of service interruptions for all delivery facilities by dispatch, response and repair times that significantly contributed to not meeting the benchmark;
- c. For not meeting Constrained Hours of Operation, an analysis of significant constraints by cause;
- d. A description of any corrective actions that are planned by the EDC and the target dates by which the corrective action shall be completed; and

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

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

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

9) By April 30 of each year, each generation company shall submit an annual Reliability Performance Report. The performance report shall include the individual unit and average station forced outage rates and any anticipated changes that may impact the future adequacy of supply. Each generation company shall also provide the Commission with at least a one-year advanced notification of any planned unit retirements, planned re-powerings or planned long-term unit de-ratings.

K. Major Event Report

1) Each EDC shall notify the Commission of major events as soon as practical, but not more than 36 hours after the onset of a major event. Initial notification is required when more than 10% of an EDC's customers experience a sustained outage during a 24 hour period; however, I.E.E.E. 1366 standard shall apply to all performance calculations.

2) Each EDC is expected to restore 95% of all customers experiencing a major event within three (3) days and 100% within five (5) days. Performance not meeting this level will require further review, analysis and explanation. The EDC may be subject to subsequent corrective actions and penalties as permitted by 26 Del.C. §1019.

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

- a. The date and time when the EDC's major event control center opened and closed;
- b. The total number of customers out-of-service over the course of the major event in six hour increments;
- c. The date and time when 95% of customers and the last customer affected by a major event was restored;
- d. The total number of trouble assignments repaired, by facility classification (poles, miles of wire, transformers);
- e. The time at which the mutual aid and non-company contractor crews were requested, arrived for duty

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

f. A timeline profile in six-hour increments of the number of company line crews, mutual aid crews, non-company contractor line and tree crews working on restoration activities during the duration of the major event, summarized by total number of line, bucket, trouble, and tree types.

L. Prompt Restoration of Outages

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

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

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

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

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

M. Penalties and Other Remedies

1) Private or investor owned utilities and cooperatives, operating in Delaware under the regulation of the Commission, are subject to penalties and other remedial actions in accordance with 26 Del.C., § 205(a), § 217, and § 1019. The Commission shall be responsible for assessing any penalty under this section, consistent with Delaware law. In determining if there should be a penalty for violation of a reporting requirement or benchmark standard and, if so, what the penalty amount should be, the Commission shall consider the nature, circumstances, extent and gravity of the violation including the degree of the EDC's culpability and history of prior violations and any good faith effort on the part of the EDC in attempting to achieve compliance. Such

penalty shall not exceed \$5,000 for each violation, with the overall penalty not to exceed an amount reasonable and appropriate for the violation (maximum of \$600,000 per year per reporting or standard violation). Each day of noncompliance shall be treated as a separate violation. In the case of an electric cooperative, in violation of a reporting requirement or benchmark standard, the Commission shall not assess any monetary penalty that would adversely impact the financial stability of such an entity and any monetary penalty that is assessed against an electric cooperative shall not exceed \$1,000 for each violation, which each day of noncompliance shall be treated as a separate violation (maximum of \$60,000 per year per reporting or standard violation). Nothing in this section relieves any private or investor owned utility or cooperative from compliance or penalties, that may be assessed due to non-compliance with any requirement set forth under any other regulation, statute or order.

2) An EDC shall be considered in violation of the SAIFI, CAIDI or Constrained Hours of Operation performance benchmark standard when the annual year-end cumulative measure exceeds the benchmark standard. The term of the violation shall extend for the period of time during which the performance measure exceeded the benchmark standard, except in the case of the non-cumulative CAIDI measure, where such term of violation shall extend for the period of time after which a rolling 12 month measure exceeds the benchmark standard.

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

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

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

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

N. Outage and Control Systems

1) Each EDC shall implement and maintain an Outage Management System (OMS) and a Supervisory Control and Data Acquisition System (SCADA) as described in this section by January 1, 2007.

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

3) The OMS should permit the EDC to:

- a. Group customers who are out of service to the most probable interrupting device that operated;
- b. Associate customers with distribution facilities;
- c. Generate street maps indicating EDC outage locations;
- d. Improve the management of resources during a storm;
- e. Improve the accuracy of identifying the number of customers without electric service;
- f. Improve the ability to estimate expected restoration times;
- g. Accurately identify the number and when customers were restored; and
- h. Effectively support the dispatch of crews and/or service personnel.

4) The SCADA system, at a minimum, shall consist of a remote monitoring and operating ability for all major substation equipment integral to maintaining the reliability of the system. The system will have the ability to:

- a. Monitor and record critical system load data and major equipment status;
- b. Provide remote operational control over major equipment; and
- c. Incorporate generally accepted utility industry safety and security standards.

O. Reporting Specifications and Implementation

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

2) Reports shall be submitted as an original and 5 paper copies with one additional copy submitted electronically to the Secretary, Delaware Public Service Commission, with certification of authenticity by an officer of the corporation. The electronic copy may be posted on the Delaware Public Service Commission's Internet website.

3) Each EDC or generation company may request that information, required under this regulation, be classified as confidential, proprietary and/or privileged material. The requesting party must attest that such information is not subject to inspection by the public or other parties without execution of an appropriate proprietary agreement. Each party requesting such treatment of information is also obligated to file one (1) additional electronic and paper copy of the information, excluding the confidential or proprietary information. The Commission, in accordance with Rule 11, Rules of Practice and Procedure of the Delaware Public Service Commission, effective May 10, 1999, will treat such information as "confidential, not for public release" upon receipt of a properly filed request. Any dispute over the confidential treatment of information shall be resolved by the Commission, designated Presiding Officer or Hearing Examiner.

4) This regulation is effective January 1, 2006.

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.

**DELAWARE COUNCIL ON POLICE
TRAINING**

Statutory Authority: 11 Delaware Code,
Section §8404(a)(14) (11 Del.C. §8404(a)(14))

ORDER

Summary of the Evidence and Information Submitted

The Chairman of the Council on Police Training approves the proposed regulation as published in the Delaware Register of Regulations on October 3, 2005. Notices of the proposed regulation were published in The News Journal and the Delaware State News on September 19 and 20, 2005, respectively, in the form attached hereto as Exhibits A and B. The notices invited written comments (none were received). The notices also invited the public to attend a hearing on October 11, 2005 to comment on the proposed regulation. No members of the public attended the hearing.

Findings of Facts

The Chairman finds that it is necessary to adopt the regulation to promote public safety.

Decision to Adopt the Regulation

For the foregoing reasons, the Chairman concludes that it is necessary to adopt the regulation. Therefore, pursuant to 11 Delaware Code §8404(a)(14), the regulation attached hereto as Exhibit C is hereby adopted.

Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit C, and said regulation shall be cited in the *Regulations of the Council on Police Training*.

Effective Date of Order

The action referred to above was taken on October 18, 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, this 18th day of October, 2005.
Richard Carmean, Chairman
Council on Police Training

REVISIONS

H-14 Minimum Standards Firearm Qualification

Course Of Fire

50 Rounds/Daylight/Low Light

Stage #1 3 Yard Line 2 Rounds Total: 2 Rounds

The officer is to stand at the designated line and on the command "Draw" his/her handgun with the strong hand. Bringing the weapon eye level. Two rounds are to be fired. This is done with the strong hand only - strong hand shooting exercise. The weapon is to be returned to the holster.

Stage #2 3 Yard Line 2 Rounds Total: 2 Rounds

The command "Back" will be given and the officer will step to the rear one step. Upon the command "Fire", he/she will fire two rounds into the target.

Stage #3 4 Yard Line 2 Rounds Total: 2 Rounds

Same as the previous stage.

Stage #4 5 Yard Line 2 Rounds Total: 8 Rounds

With this stage, the shooter begins with a holstered weapon. On the command of either "right" or "left" the shooter will move one step in the direction indicated, draw and bringing the weapon to eye level, fire two rounds. The weapon is to remain on target for the next three lateral commands.

Night Shoot - add four more rounds to this stage.

Stage #5 7 Yard Line 2 Rounds Total: 6 Rounds

Barricade, Kneeling, Strong Side, and Strong Hand Drill

The shooters will kneel approximately three feet behind a barricade. On the command "Draw" the weapon will be brought up to eye level. From the safety of the barricade, the sights will be aligned. On the command "Fire", the shooter will quickly observe the target, check the sight alignment, lean out, and fire two rounds. The shooter will then return to concealment/cover. This procedure will be repeated two more times for a total of six rounds fired. The barricade is not to be used as support.

Night Shoot - add two more rounds to this stage.

Stage #6 7 Yard Line 2 Rounds Total: 6 Rounds

Barricade, Kneeling, Off Side, and Strong Hand Drill

The previous stage will be repeated from the off-side of the barricade.

Night Shoot - add two more rounds to this stage.

Stage #7 15 Yard Line 3 Rounds Total: 9

Rounds

The shooter begins this course of fire standing on the 15 yard line with the weapon drawn. On the command "Move" the shooter begins to advance on the target. A slow, smooth step is suggested allowing the shooter to stay on target. On the command "Fire" he/she will stop and fire three rounds.

The shooter will not begin moving again until the command "Move" is given. This will be repeated two more times for a total of nine rounds fired. Any reloading or clearing of malfunctions can be performed behind cover by simply stepping to the left and kneeling down.

Stage #8 25 Yard Line 9 Rounds Total: 9 Rounds

Standing Strong Side 3 Rounds

Kneeling Strong Side 3 Rounds

Standing Off Side - Strong Hand 3 Rounds

The shooter will fire from the above positions. This is unsupported shooting. When the command "Fire" is given, the shooter will begin. Any and all reloading shall be done from behind the barricade as the weapon dictates.

Night Shoot - eliminate this stage.

Stage #9 4 Yard Line 6 Rounds Total: 6 Rounds

Off Hand, One Handed Shooting, and Reloading Drill

The weapon should be loaded with three rounds with three additional rounds in another reloading device. The officer will draw his/her weapon and transfer it to the offhand. The strong hand will be placed behind the back as if it were incapacitated. On the command "Fire" the shooter will fire three rounds. The weapon will then be emptied, reloaded, and fired three additional times. The weapon will then be unloaded. This is all done with use of only the off-hand. The weapon will then be transferred back to the strong hand and re-holstered.

Night Shoot - add one more round to this stage.

This completes the Minimum Handgun Qualification Course of Fire.

Total Rounds Expended: 50 Approximate Time: 25 minutes

II-14 Minimum Standards for Firearms Qualifications

A. Handguns (Day)

A minimum of three qualification shoots per year, scheduled on at least two separate dates, with ninety days between qualification dates.

Of the three dates, there will be one mandatory "low light" qualification. Simulation of "low light" is permitted and the "low light" qualification may be combined with a day shoot.

All training ammunition shall be comparable to issued ammunition in performance.

Service ammunition will be collected annually and replaced with new ammunition. The collected ammunition may be used for training and qualification.

A minimum of 150 rounds of ammunition will be fired annually for proficiency training. This ammunition will not include the ammunition required for qualification courses.

FINAL REGULATIONS

A minimum score of 80% must be obtained to be qualified with the approved handgun. The method of scoring and target selection will be determined by the instructor.

All qualifications are to be completed with authorized weapon and equipment (holster, speedloaders, pouches, etc.).

Shooting will be conducted annually using the flashlight for target illumination and identification.

<u>YARD LINE</u>	<u>COURSE OF FIRE</u>	<u>TOTAL ROUNDS</u>
25/Greater	Behind Cover Two Different Positions	9
15 to 7	Advancing Towards Target	9
7	Centered Behind Barricade	12
5/Less	Move Back	6
5/Less	Lateral Movement	8
5/Less	One Hand Reload Strong/Weak Hand Only	6
<u>TOTAL OF FIFTY ROUNDS</u>		

The instructor will determine at what distance, in what manner, and how many rounds will be fired on each command.

B. Low Light or Concealed Carry Standards Retiree Concealed Carry Standards for H.R. 218.

This regulation sets forth the minimum qualification standards for concealed weapon handguns for active duty police officers and for retired law enforcement officers who qualify under the Law Enforcement Officers Safety Act of 2004 (H.R. 218).

These are minimum standards and shall not prevent any police department from establishing more strict or additional rules or regulations to qualify to conceal carry a firearm on or off duty.

<u>YARD LINE</u>	<u>COURSE OF FIRE</u>	<u>TOTAL ROUNDS</u>
15 to 17	Advance Towards Target	9
7	Centered Kneeling Behind Barricade	16
5/Less	Lateral Movement	12

5/Less	Move Back	6
5/Less	One Hand Reload	7
	Strong/Weak Hand Only	

TOTAL OF FIFTY ROUNDS

The instructor will determine at what distance, in what manner, and how many rounds are fired on each command.

Active duty and retired law enforcement officers must qualify a minimum of once annually and obtain a minimum score of 80%.

If the weapon system or holster is different from duty use, the officer must qualify a minimum of once annually and obtain a minimum of 80% score.

C. Basic Patrol Long Gun

This basic patrol long gun course is not designed to replace training relevant to specific weapons such as sniping marksmanship and select fire weapons. It will be incumbent upon each police department to provide their respective officers with specific recognized training to have those officers certified.

Long guns include patrol level weapons designed to be fired from the shoulder (e.g., patrol rifle/carbines, shotguns).

Police departments using long guns will be required to qualify three times a year. A two-day course and one "low light" course simulation of "low light" is permitted. A minimum of ninety days is required between the two-day courses. The "low light" course may be combined as part of a one-day qualification course.

Service ammunition will be collected annually and replaced with new ammunition. The collected ammunition may be used for training and qualification.

All training ammunition shall be comparable to issued ammunition in performance.

Departments using long guns will fire a minimum of twenty rounds of ammunition for proficiency training per year. This ammunition will not include the ammunition required for qualification courses.

A minimum score of 80% must be obtained to be qualified. The method of scoring and what type of target used will be determined by the instructor.

All qualifications are to be completed with authorized weapons and ammunition.

Departments are required to qualify on each type of ammunition that is issued.

<u>YARD LINE</u>	<u>COURSE OF FIRE</u>	<u>TOTAL ROUNDS</u>
3/Greater	Two Different Positions	10

Three Different PlacesTOTAL OF TEN ROUNDS

The instructor will determine at what distance, in what manner, and how many rounds are fired on each command depending on the weapon and the capability of the ammunition.

~~H-15 FIREARMS INSTRUCTOR RETRAINING~~

~~Firearms instructors certified by the Council on Police Training shall receive approved updated instructors training no less than every three years.~~

~~The Chief of Police shall provide documentation of the required update training to the Administrator for inclusion in the instructor's training records.~~

~~No Firearms instructor shall be employed by any police agency for purposes of certifying personnel unless the instructor has been approved by the Council on Police Training.~~

II-15 Re-certification of Basic Firearms Instructors

An eight-hour firearms re-certification course will be held annually and will cover, but not be limited to: legal updates; use of force; and review of Council on Police Training standards.

To maintain certification, firearms instructors must attend a minimum of one re-certification course every three years and complete sixteen hours of additional training in firearms usage or complete sixteen hours of Academy-level instruction, or a combination of training and instruction in the same three-year period.

The head of the police department shall provide documentation of the required updated training to the COPT Administrator to include in the instructor's training records.

No firearms instructor shall be employed by any police department for purposes of certifying firearms instructors unless the certifying instructor has been approved by the Council on Police Training.

**DEPARTMENT OF FINANCE
DIVISION OF REVENUE**

Statutory Authority: 12 Delaware Code,
Section 1154 (12 Del.C. §1154)

ORDER**Abandoned or Unclaimed Property Voluntary Disclosure
Agreement and Audit Programs****Summary of the Evidence and Information Submitted**

The Department published Proposed Regulations for Abandoned or Unclaimed Property Voluntary Disclosure Agreement and Audit Programs in the May 1, 2005 edition of the *Delaware Register of Regulations*. Publication in the *Delaware Register of Regulations* also signified the start of a 30-day public comment period that began on the same date and ended on May 31, 2005.

As a result of the aforementioned public outreach, the following is a summary of the comments received related to the Regulations:

Comments

The Department received an email with comments from:

Walter Tuthill and Michael Houghton, attorneys with Morris Nichols Arsh & Tunnell, in Delaware, that consist of tightening up of the proposed language in certain places along with some new concepts, such as in the Initial Holder Contact section under the fifth bullet adding language to include an executed power of attorney signed by the Holder authorizing the representative to act on behalf of the Holder; in the Processing the VDA section language under the first bullet that 'acceptance shall be indicated by the State's signing and returning a copy of the Form to the Holder'; between the second and third bullet language that the audit report shall identify in detail the work performed, the property types reviewed, any estimation techniques employed, and a calculations showing the potential amount of property due under the VDA; in the Auditing of Holders section language at the end that 'at the request of a Holder the State's third party auditor will enter into a confidentiality agreement with the Holder before any of the Holder's confidential records are produced'; in the Examination section that the Holder be kept informed of the progress of the audit and may contact the State directly to address issues related to the audit and a review process occur subsequent to the issuance of the final report.

John Colson, an attorney with Alston & Bird in Georgia, suggested that in the first bullet point under "Processing the VDA," we substitute "subsequent" for "other" to make it clear that there is no obligation to report or pay for years prior to calendar year 1991, report year 1996.

Noel Hall, a principal with KPMG in California, suggested that the State consider addressing the issue of the amount of time allowed the Holder to assemble its' records for an examination. As when a holder is facing a 20 year examination period coupled with decentralized processes, there is no defined reasonable period of time for the Holder to assemble their records for the audit.

James O. Santivañez, the Unclaimed Property Services Leader with Ryan & Company in Georgia, that consisted of tightening up of the proposed language in certain places along with some new concepts such as in the Policy section changes to the second, third and fourth bullet points; in the Process section adding a sixth bullet point pertaining to 'Power of Attorney'; in the Processing the VDA section tightening up language in the first bullet and adding a new section between the third and fourth bullet pertaining to extensions of time to file reports; in the Notification of Audit section suggested language the official letter be sent Certified Mail via the United States Postal Service; in the Opening Conference section suggested interest be waived for any periods the audit is unduly delayed by the third-party auditors or the State; in the Examination section suggested adding that all books and records transferred be considered confidential and at the conclusion of the audit be returned to the Holder and electronically stored data be removed from the State's records; in the Third-Party Advocate section suggested language pertaining to the authority of a representative of a Holder; in the Final Report section suggested the State refund any overpayments within thirty days of the statement of findings; and add a final section, 'Dispute of Audit Findings' that the Holder may petition the Director of Revenue for a hearing on that determination and on the imposition of any interest or penalty resulting from that determination not later than the 30th day after the date the determination is made.

Findings of Fact

Based upon the comments received and summarized above, the following changes were made to the Regulations:

A number of the comments were adopted and are highlighted in the Final Regulation, whereas other comments were weighed and not deemed to warrant adoption in the Final Regulation.

Order and Effective Date

NOW THEREFORE, it is ordered that the proposed regulations , as set forth in the attached copy, are adopted and shall be final effective ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED the 10th day of November 2005.

DEPARTMENT OF Finance

Richard Cordrey, Secretary of Finance

Approved this 10th day of November 2005

Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program

Policy:

The State of Delaware Division of Revenue is committed to promoting Holder compliance. In an effort to accomplish this objective, a **Voluntary Disclosure Agreement (VDA)** process is available to Holders who are not presently in compliance but want to comply with the Abandoned or Unclaimed Property Law. The VDA program allows Holders to come forward to report their abandoned property liability for a limited reporting period. The agreement releases the Holder from all claims, demands, interest, penalties, actions or causes of action related to all property reported properly under the term of the VDA.

In our commitment to fairness in the administration of Delaware's Abandoned or Unclaimed Property Law, the Division of Revenue will adhere to the following general guidelines:

- Any Holder who wishes to comply with the Delaware Abandoned or Unclaimed Property Law may file a VDA.
- Holders, which includes any subsidiary and all related entities, who have received an audit letter or are currently under audit by the State of Delaware may **not** file a VDA.
- The Holder shall complete a review of its books and records and file reports beginning with calendar year 1991, report year 1996, as well as for all subsequent report years, and pay over all abandoned property due the State of Delaware for those years.
- The State of Delaware reserves the right for three years to audit a VDA. Interest and penalty may be assessed pursuant to §1159 of the Abandoned or Unclaimed Property Law on all abandoned property due for all reporting years, if it is determined that the property reported on a VDA is materially under-reported. In such a case, the

VDA shall be and of no force or effect. The State of Delaware reserves the right to fully audit the Holder in such a circumstance.

Process:**Initial Holder Contact**

The Holder or the Holder's representative initiates the process by sending a completed Form AP DE-1, **Disclosure and Notice of Intent to Voluntarily Comply with Abandoned or Unclaimed Property Law**, to the following address:

Delaware Division of Revenue
Attn: Abandoned Property Audit Manager
820 North French Street
Wilmington, DE 19801
Fax: 302-577-8982

The following information must be provided:

- Completed Form AP DE-1, signed by the Holder
- Holder's name and address
- List of all subsidiaries and all related entities participating in VDA
- Federal Employer Identification Number for each entity participating
- Holder representative's contact information, including an executed power of attorney signed by the Holder authorizing the representative to act on behalf of the Holder

Processing the VDA

- Upon acceptance of the Form AP DE-1 by the State of Delaware, the Holder shall complete a review of its books and records and file reports beginning with calendar year 1991, report year 1996, as well as for all subsequent report years and pay all abandoned property due the State for those years within six months from the date of the acceptance of Form AP DE-1. Acceptance shall be indicated by the State's signing and returning a copy of the Form to the Holder.
- After the review of its books and records, the Holder is required to file a Form AP DE-2, **Voluntary Self Disclosure Agreement**. The Form AP DE -2 must be signed and sent along with the audit report outlining the Holder's potential liability.
- The audit report shall identify in detail the work performed, the property types reviewed, any

estimation techniques employed, and a calculations showing the potential amount of property due under the VDA.

- The State reserves the right to assess interest on any liability being reported under the VDA, if the VDA has not been received or an extension has not been granted within the six-month period.
- The State of Delaware will review the report submitted by the Holder and either accept it and request payment of their liability, or contact the Holder for additional information

General Information:

- The State of Delaware reserves the right to deny or void the VDA if a Holder does not adhere to the Program policies and procedures.
- The State of Delaware reserves the right to audit a VDA for three years from the date that a Holder has paid over property under a VDA.
- The VDA forms may **not** be altered without written consent of the State.

For more information on abandoned property Voluntary Disclosure Agreements, please contact Mark Udinski, Abandoned Property Audit Manager at 302-577-8260 or mark.udinski@state.de.us or write to:

Delaware Division of Revenue
Attn: Mark Udinski, Abandoned Property Audit Manager
820 North French Street
Wilmington, DE 19801
Fax: 302-577-8982

Abandoned or Unclaimed Property Audit Guidelines**Authority to Conduct Abandoned Property Audits:**

Section 1155 of Title 12, Delaware Code provides the State Escheator with the authority to examine the records of any person or business association or organization to determine whether the person has complied with any provision of the Abandoned or Unclaimed Property Law of Delaware.

Section 123 of House Bill 400 from the 140th General Assembly of the State of Delaware originally granted the Director of Revenue the authority, approved annually, to enter into an agreement with organizations to identify abandoned property to be escheated to the State by means of audit or otherwise.

Auditing of Holders:

As allowed by law, the State of Delaware will examine selected Holders' books and records for compliance with the Abandoned Property Law. The audit will be assigned to an auditor in the Division of Revenue or to a third-party auditing firm that the State has retained for such purposes. At the request of a Holder the State's third party auditor will enter into a confidentiality agreement with the Holder in a form approved by the State Escheator before any of the Holder's confidential records are produced.

Notification of Audit:

An official letter from the Abandoned Property Audit Manager will be issued to Holders selected for audit. The letter will outline the State's intention to examine the books and records of the Holder (including subsidiary and related entities) and identify the assigned auditor or third-party auditing firm. Third-party auditors are not authorized to engage in any examination or audit without prior written consent from the State of Delaware Division of Revenue. The issuance of an intent to audit letter terminates the Holder's ability to enter into a Voluntary Disclosure Agreement (VDA).

Opening Conference:

Once an audit is assigned, an opening conference will be scheduled with the auditor and representatives of the Holder. During the opening conference, the auditor will:

- Advise the Holder of the reporting requirements of the Delaware Abandoned or Unclaimed Property Law,
- Identify the time period to be covered by the examination,
- Schedule a time period for field work to be commenced, and
- Request records and materials necessary to initiate the audit.

The State expects the Holder's cooperation and anticipates that with the Holder's cooperation the time to complete a typical audit should not exceed twelve (12) months. If an audit lasts longer than 12-months, the Abandoned Property Audit Manager will meet with the Holder to facilitate completion of the audit. Interest and penalty may be assessed pursuant to §1159 of the Abandoned or Unclaimed Property Law on all abandoned property due for all reporting years under audit.

Examination:

The auditor may conduct the examination on-site or remotely with the consent of the Holder if records are

available electronically or can be shipped. On-site work may last a few days to several weeks depending on the size and complexity of the Holder the availability of records, and the availability of holder personnel necessary to explain and discuss the records. During the examination, the auditor will review all necessary books and records, interview key personnel and review relevant policies and procedures related to abandoned property. During the examination, the auditor may make subsequent requests to the Holder for additional books and records as required to complete the audit.

The Holder will be kept informed of the progress of the audit and may contact the State directly to address issues or related to the audit. At the end of the examination, the auditor will present the preliminary findings to the Holder at an exit conference. These findings are not final. The auditor will allow the Holder reasonable time to complete required research and gather more records to address matters raised in the preliminary findings.

Third-Party Advocates:

Holders may retain third party advocates (Advocate) to assist them in the audit process. The retention of an Advocate is no basis to delay the commencement of the State's audit and the State will not delay the audit so that the Advocate may conduct a review or it's own audit of the Holder's books and records in advance of the State's audit. The State will cooperate with the Holder and its Advocate and keep both of them apprised of the records requests, interviews and the progress of the audit in general. It is understood that the State will not audit or be limited to a review of work papers, compilations or record summaries prepared by the Holder or the Advocate but shall have access to such of the Holder's original books and records that are necessary to ascertain the Holder's compliance with the law. The State shall direct all requests and communications directly to the Holder and, if requested by the Holder, will also direct copies to the Advocate.

Final Report:

At the close of the audit, the Holder will receive a statement of findings letter from the Delaware's Abandoned Property Audit Manager. This letter will outline the findings of the audit and make a formal demand for the property under question (if applicable). The Holder has thirty (30) days to directly remit to the State of Delaware any abandoned property identified during the examination as owed to the State of Delaware.

General Information:

For more information on abandoned property audits, please contact Mark Udinski, Audit Manager at 302-577-8260 or mark.udinski@state.de.us or write to:

Delaware Division of Revenue
Attn: Mark Udinski, Abandoned Property Audit
Manager
820 North French Street
Wilmington, DE 19801
Fax: 302-577-8982

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

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

ORDER**Nature of the Proceedings**

Delaware Health and Social Services (“Department”)/ Division of Medicaid & Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to implement the Medicare Part D Prescription Drug Program. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

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

Summary of Proposed Amendment**Statutory Authority**

- The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA)
- Section 1935(a) of the Social Security Act

- 42 CFR Parts 400, 403, 411, 417 and 423

New Pre-Print State Plan Pages

- Attachment 2.2-A, Page 27
- Attachment 3.1.A.1, Page 1
- Attachment 3.1.A.1, Page 2
- Attachment 3.1.A.1, Page[s] 2a [**and 2b**]

Background

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) established the Medicare Prescription Drug Program, also known as Medicare Part D, making prescription drug coverage available to individuals who are entitled to receive Medicare benefits under Part A or Part B, beginning on January 1, 2006.

The MMA also established the Low-Income Subsidy (LIS) to assist individuals who have low-income and resources with payment of the premiums, deductibles, and co-payments required under Part D, which began on July 1, 2005.

Effective January 1, 2006, Medicaid beneficiaries who are entitled to receive Medicare benefits under Part A or Part B will no longer receive their pharmacy benefits under the State Medicaid Program, except for excluded drugs. States are required to submit State Plan Amendments that ensure State Medicaid Program pharmacy benefits are consistent with the requirements under Part D.

Given that Medicare is the primary payor with respect to Part D drugs for full-benefit dual eligible individuals; states will continue to receive Federal Financial Participation (FFP) for the payment of the deductible and coinsurance for Medicare Part A and Part B drugs.

Summary of Proposed Changes**State Plan Amendment (SPA)**

States must amend their state plans to indicate compliance with the provisions of the MMA. CMS forwarded templates that may be used to amend the State’s Medicaid Plan to reflect the provisions pertaining to LIS and to the screen and enroll requirement and to Medicaid outpatient drug coverage.

Division of Social Services Manual (DSSM)

Note: [~~**Bold, Bracketed Strikethrough**~~] indicates changes that are not being adopted at this time. The Medicare Part D changes are being adopted.

- [~~**DSSM 14100.4, 14100.6, and 14800: revised**~~]

~~to state definitively that verifications must be returned as requested or eligibility will be denied or terminated.]~~

- DSSM 14970 (new): language added to reflect changes to Medicaid pharmacy benefits because of Medicare Part D.
- ~~[DSSM 16310: clarified section that describes terminations of eligibility specific to the poverty level groups.]~~
- ~~[DSSM 30405: language added to reflect changes related denial of application if requested verification documentation is not received by a due date.]~~
- DSSM Section 30000 (new - 30305, 30500.1, 30502.1, 30306): provides for changes to the Delaware Prescription Assistance Program (DPAP) because of Medicare Part D.
- DSSM Section 50000 (new – 50100.4): provides for changes to the Chronic Renal Disease Program (CRDP) because of Medicare Part D.

Summary of Comments Received With Agency Response and Explanation of Changes

The Delaware Developmental Disabilities Council (DDDC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendation DMMA has considered each comment and responds as follows:

DMMA recites that it relied on CMS-supplied templates to guide development of the standards. Although not mentioned, the standards also implement Senate Bill No. 18 signed by the Governor on April 26, 2005. Senate Bill No. 18 revamps the Delaware Prescription Drug Program (DPAP) to ensure integration with the Medicare Part D Program.

First, there is an obvious anomaly at pp. 320-321. DMMA affirmatively indicates that it provides coverage for drugs used for “anorexia” and “weight loss” and lists some examples. DMMA adopts final regulations the month of September 2005, which eschew coverage of drugs for “anorexia” and “weight loss”. Compare 9 DE Reg. at 425, Section 12.a.12.e. Second, DMMA may wish to reconsider the categorical exclusion for fluoride. Physician may prescribe fluoride for beneficiaries with well water. Children in homes with well water, in particular, are subject to significant tooth degradation if not provided with fluoride supplements.

Agency Response: Perhaps, you may have misinterpreted the documents. Even though the preprint pages suggest that states can exclude coverage of particular

therapies, DMMA has opted to cover both anorexia agents, appetite stimulants and vitamins and minerals including fluoride. The only two categories that there are no conditions of coverage is promotion of fertility and hair growth. As noted in DMMA Final Order Regulation #05-46, published in the September 2005 *Register*, DMMA does have criteria that need to be met to insure weight maintenance medications are being used for medical care and not for cosmetic purposes. Regarding fluoride, physicians may prescribe fluoride supplements for children with well water. That is the normal method of insuring the children get fluoride. Those products are covered.

Third, there are several provisions which direct denial of application if DMMA does not receive requested verification documentation by a due date. The current regulation generally “authorizes” denial but does not inexorably require it: Failure to provide requested documentation may result in denial or termination of eligibility. This discretionary provision is replaced with a rigid substitute: Failure to provide verifications by the due date given will result in a finding of ineligibility.

DMMA workers should be accorded some discretion in this context. A beneficiary may have “good cause” for missing a deadline (e.g. unexpected illness). Moreover, CMS regulations specifically authorize extensions based on “unusual circumstances” (e.g. “(w)hen the agency cannot reach a decision because the applicant or an examining physician delays or fails to take a required action”). See attached 42 CFR §435.911. A “rigid” State regulation which disallows such discretion would be contrary to the CMS regulation. We strongly recommend reconsideration of this change.

Fourth, DMMA proposes deletion of the following sentence in Section 16310: Medicaid eligibility may not be terminated until we determine that the individual is not eligible under any other eligibility group. This provision is a time-honored consumer protection in the Medicaid program and should be retained. It also implements CMS policy which requires an assessment of eligibility under all bases:

Q. How must the State proceed to consider all possible avenues of eligibility before terminating (or denying) eligibility?

A. The systems and processes used by the State must first consider whether the individual continues to be eligible under the current category of eligibility and, if not, explore eligibility under other possible categories. The extent to which and manner in which other possible categories must be explored will depend on the circumstances of the case and the information available to the State.

Exhausting All Possible Avenues of Eligibility

The Medicaid program has numerous and sometimes overlapping eligibility categories. For eligibility redeterminations, States must have systems and processes in place that explore and exhaust all possible avenues of eligibility. These systems and processes must first consider whether the individual continues to be eligible under the current category of eligibility and, in the case of a negative finding, explore eligibility under other possible eligibility categories.

See attached CMS, Dear State Medicaid Director Policy Letter (April 7, 2000), <http://cms.hhs.gov/states/letters/smd40700.asp>.

Agency Response: DMMA will not adopt, at this time, designated sections of the proposed regulation. DMMA plans to issue a final order regulation pending guidance from CMS to address the public concerns of the comments received and to conduct further analysis regarding DSSM Sections 14100.4, 14100.6, 14800, 16310 and 30405.

Fifth, “;or” should be added at the end of Section 30201(d).

Agency Response: Comment accepted, “; or” added.

Sixth, punctuation should be added to subparts of Sections 30307 and 30307.1.

Agency Response: Comment accepted, punctuation added to Sections 30307 and 30307.1.

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual regarding the Medicare Part D Prescription Drug Program is adopted and shall be final effective November 10, 2005.

Vincent P. Meconi, Secretary, DHSS, October 13, 2005

**DMMA FINAL ORDER REGULATION #05-63a
NEW STATE PLAN PAGES:**

Attachment 2.2-A
Page 27

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL
SECURITY ACT
STATE: DELAWARE****REQUIREMENTS RELATING TO DETERMINING
ELIGIBILITY FOR MEDICARE PRESCRIPTION DRUG
LOW-INCOME SUBSIDIES**

Agency	Citation (s)	Groups Covered
	1935(a) and 1902(a)(66)	The agency provides for making Medicare
	42 CFR 423.774 and 423.904	prescription drug Low Income Subsidy determinations under Section 1935(a) of the Social Security Act. 1. The agency makes determinations of eligibility for premium and cost sharing subsidies under and in accordance with section 1860D-14 of the Social Security Act; 2. The agency provides for informing the Secretary of such determinations in cases in which such eligibility is established or redetermined; 3. The agency provides for screening of individuals for Medicare cost-sharing described in Section 1905(p)(3) of the Act and offering enrollment to eligible individuals under the State plan or under a waiver of the State plan.

Attachment 3.1.A.1
Page 1

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL
SECURITY ACT
STATE: DELAWARE****MEDICAID PROGRAM: REQUIREMENTS RELATING
TO COVERED OUTPATIENT DRUGS FOR THE
CATEGORICALLY NEEDY**

Citation (s)	Provision (s)
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1935(d)(1)

Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.

Attachment 3.1.A.1
Page 2

and mineral products, except prenatal vitamins and fluoride (see specific drug categories below)
 (f) nonprescription drugs (see specific drug categories below)

Attachment 3.1.A.1
Page 2a

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE**

MEDICAID PROGRAM: REQUIREMENTS RELATING TO PAYMENT FOR COVERED OUTPATIENT DRUGS FOR THE CATEGORICALLY NEEDY

Citation (s)

Provision (s)

1927(d)(2) and 1935(d)(2)

1. The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit –Part D.
 The following excluded drugs are covered:
 (a) agents when used for anorexia, weight loss, weight gain (see specific drug categories below)
 (b) agents when used to promote fertility (see specific drug categories below)
 (c) agents when used for cosmetic purposes or hair growth (see specific drug categories below)
 (d) agents when used for the symptomatic relief cough and colds (see specific drug categories below)
 (e) prescription vitamins

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE**

MEDICAID PROGRAM: REQUIREMENTS RELATING TO PAYMENT FOR COVERED OUTPATIENT DRUGS FOR THE CATEGORICALLY NEEDY

Citation (s)

Provision (s)

1927(d)(2) and 1935(d)(2)

(g) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee (see specific drug categories below)
 (h) barbiturates (see specific drug categories below)
 (i) benzodiazepines (see specific drug categories below)
(The Medicaid agency lists specific category of drugs below)
(a) Agents when used for anorexia, weight loss, weight gain: Megestrol Acetate, Somatropin, Lipase Inhibitor. Products in these categories require prior authorization.
(d) Agents when used for the symptomatic relief cough and colds: Antihistamines, Antitussive,

Decongestants, and Expectorants.
(e) Prescription vitamins and mineral products, except prenatal vitamins and fluoride: Single entity vitamins, Multiple vitamins w/minerals, Nicotinic acid, Calcium salts, and Dialysis replacement products.
(f) Nonprescription drugs: Analgesic oral and rectal; Heartburn; Antiflatulents; Antidiarrheal; Antinauseants; Cough & Cold, oral; Cough & Cold, topical; Contraceptives; Diabetic supplies; Hemantinics; Laxatives & Stool Softeners; Lice Control Preparations; Magnesium Supplement, oral; Nasal Preparations; Nicotine Cessation Preparations; Ophthalmic Preparations; Topical Anesthetics; Topical Antibacterials; Topical/Vaginal Fungicidals; Vitamins & Minerals; Digestive Enzymes; and, Miscellaneous (Colloidal Oatmeal Baths).
(h) Barbiturates: the Division of Medicaid & Medical Assistance covers all medications in these therapeutic categories.
(i) Benzodiazepines: the Division of Medicaid & Medical Assistance covers all medications in these therapeutic categories.

___ No excluded drugs are covered.

DMMA FINAL ORDER REGULATION #05-63b REVISIONS:

Division of Social Services Manual (DSSM)

[14100.4 Disposition Of Applications

~~The agency must include in each applicant's case record facts to support the agency's decision on his application. The agency must dispose of each application by a finding of eligibility or ineligibility, unless:~~

~~a) there is an entry in the case record that the applicant voluntarily withdrew the application, and that the agency sent a notice confirming his decision;~~

~~b) there is a supporting entry in the case record that the applicant has died; or~~

~~c) there is a supporting entry in the case record that the applicant cannot be located.~~

~~d) Certain factors of eligibility must be verified according to specific eligibility groups. If all information requested is not received, DSS cannot determine or redetermine eligibility. This may result in denial of the application or the termination of eligibility. Verifications received and/or provided may reveal a new eligibility issue not previously realized and this may require additional verifications. Failure to provide additional requested verifications may result in denial or termination of eligibility. all verification requested is not received by the due date given to the applicant. If all verification requested is not received by the due date, an eligibility determination cannot be made. This will result in denial of the application. Verification that is received and/or provided may reveal a new eligibility issue not previously realized that requires additional verification. If the additional verification requested is not received by the due date given, this will result in denial of the application.~~

~~All applicants will receive a notice of acceptance or denial.]~~

(Break in Continuity of Sections)

[14100.6 Redetermination Of Eligibility

~~Eligibility for continued Medicaid coverage must be redetermined at least annually. A redetermination is a re-evaluation of a recipient's continued eligibility for medical assistance. In a redetermination, all eligibility factors that are subject to change are re-examined to ensure that the recipient continues to meet eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form renewal form and provide requested verifications by the due date given. Failure to complete and return a DSS application form renewal form and the requested verifications by the due date given will result in termination of eligibility. A redetermination is complete when all eligibility factors that are subject to~~

~~change are examined and a decision regarding continued eligibility is reached. Eligibility must be promptly redetermined when information is received about changes in a recipient's circumstances that may affect his eligibility. Some changes in circumstances can be anticipated. A redetermination of eligibility must be made at the appropriate time based on those changes. Examples are: Social Security changes, receipt of child support, return to work, etc.~~

~~Medicaid coverage should not terminate without a specific determination of ineligibility. The individual may be eligible under another category of Medicaid. For example, when an individual loses eligibility because of termination from cash assistance, such as SSI, we must make a separate determination of Medicaid eligibility. Medicaid must continue until the individual is found to be ineligible. The individual will be found ineligible when a renewal form and the requested verifications are not returned by the due date given.~~

~~Medical assistance will be terminated when DSS or DMMA is notified by the recipient that he or she no longer wants coverage.]~~

(Break in Continuity of Sections)

[14800 Verifications

~~Generally, Certain factors of eligibility must be verified according to specific eligibility groups. Verification may be verbal or written and must be obtained from an independent or collateral source. In order for verbal verification to be considered documentation, the DSS case worker must record the information obtained in the case record.~~

~~Documentation is the process of collecting written information to substantiate factors required for eligibility. Documentation becomes part of the DSS case record. Documents must be date stamped.~~

~~If all information requested is not received, DSS cannot determine or redetermine eligibility. This may result in denial of the application or the termination of eligibility.~~

~~Verifications received and/or provided may reveal a new eligibility issue not previously realized. That may require additional verifications.~~

~~Failure to provide requested documentation may result in denial or termination of eligibility.~~

~~The applicant, recipient, or his or her representative must provide verifications that are essential to the eligibility determination. Failure to provide verifications by the due date given will result in a finding of ineligibility.]~~

(Break in Continuity of Sections)

14970 Medicare Prescription Drug Program

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 established the Medicare Prescription Drug Program, also known as Medicare Part D, making prescription drug coverage available to individuals who are entitled to receive Medicare benefits under Part A or Part B, beginning on January 1, 2006. Coverage for the prescription drug benefit will be provided through private prescription drug plans (PDPs), which will offer only prescription drug coverage, or through Medicare Advantage prescription drug plans (MA-PDs), which will offer prescription drug coverage that is integrated with the health care coverage they provide to Medicare beneficiaries under Part C of Medicare.

Effective January 1, 2006, Medicaid beneficiaries who are entitled to receive Medicare benefits under Part A or Part B will no longer receive their pharmacy benefits under the Medicaid Program, except for drugs that are excluded from Part D. Any prescribed drug covered by Medicaid remains subject to the Medicaid co-payment requirement.

(Break in Continuity of Sections)

[16310 Termination of Eligibility

~~Medicaid eligibility may not be terminated until we determine that the individual is not eligible under any other eligibility group. This section discusses termination of eligibility under the poverty level related groups of pregnant women, children, and adults.]~~

(Break in Continuity of Sections)

30000 Delaware Prescription Assistance Program

The 140th General Assembly amended Title 16, Delaware Code, by adding Chapter 30B to enact the Delaware Prescription Drug Payment Assistance Program. The purpose of this act is to provide payment assistance for prescription drugs and certain Medicare Part D costs to low-income seniors and individuals with disabilities who are ineligible for, or do not have, prescription drug benefits or coverage through federal (excluding Medicare Part D coverage), state, or private sources.

The program is administered by the Fiscal Agent under contract with the Delaware Department of Health and Social Services.

The rules in this section set forth the eligibility requirements for coverage under the Delaware Prescription Assistance Program (DPAP). The DPAP is implemented January 1, 2000, with benefits beginning January 14, 2000.

30100 Definitions

Contractor: the agent who is under contract with the State to administer the DPAP.

Department: the Department of Health and Social Services or DHSS

Division: ~~the Division of Social Services or DSS~~ the Division of Medicaid & Medical Assistance or DMMA

Low Income Subsidy (LIS): Assistance provided by the Centers for Medicare and Medicaid Services to pay Medicare Part D costs for individuals with limited income and resources. The LIS will provide payment assistance with the monthly premium, the yearly deductible, and the coverage gap. The LIS will also provide payment assistance for co-payments after an individual with income below 135% of the Federal Poverty Level reaches a total of \$5100 in drug expenses.

Medicare Part D: The Medicare Prescription Drug Program established by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

Medicare Part D costs: monthly premiums, yearly deductible, and drug costs that fall into the Part D coverage gap.

30200 General Application Information

The application for DPAP must be made in writing on the prescribed ~~DSS~~ form. This request for assistance can be made by the applicant, guardian, or other individual acting for the applicant with his knowledge and consent. The application filing date is the date the application is received in either the Contractor's office or a DSS office.

DPAP will consider an application without regard to race, color, age, sex, disability, religion, national origin, or political belief as per Title VI of the Civil Rights Act of 1964.

Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

30201 Disposition of Applications

The Contractor must include in each applicant's case record facts to support the Contractor's decision on his application. The Contractor must dispose of each application by a finding of eligibility or ineligibility, unless:

- a) there is an entry in the case record that the applicant voluntarily withdrew the application, and that the Contractor sent a notice confirming his decision;
- b) there is a supporting entry in the case record that the applicant has died; or
- c) there is a supporting entry in the case record that the applicant cannot be located.

d) ~~Certain factors of eligibility must be verified. If all information requested is not received, the Contractor cannot determine or redetermine eligibility. This may result in denial of the application or the termination of eligibility. Verifications received and/or provided may reveal a new eligibility issue not previously realized and this may require additional verifications. Failure to provide additional requested verifications may result in denial or termination of eligibility. all verification requested is not received by the due date given to the applicant. If all verification requested is not received by the due date, an eligibility determination cannot be made. This will result in denial of the application. Verification that is received and/or provided may reveal a new eligibility issue not previously realized that requires additional verification. If the additional verification requested is not received by the due date given, this will result in denial of the application.~~

All applicants will receive a notice of acceptance or denial.

(Break in Continuity of Sections)

30305 Requirement to Enroll in Medicare Part D

An individual who is entitled to receive Medicare benefits under Part A or Part B must enroll in Part D in order to be eligible for DPAP. The individual must provide proof of Medicare Part D enrollment.

30306 Requirement to Apply for Low Income Subsidy (LIS)

An individual must apply for the LIS if potentially eligible. The individual must provide a copy of the LIS denial or approval notice.

~~30305~~ 30307 No Other Prescription Drug Coverage

The individual must not have or must be ineligible for, prescription drug benefits or coverage through federal (excluding Medicare Part D coverage), state, or private sources regardless of any annual limitations to the benefits.

The individual must not have or must be ineligible for:

- (a) Medicaid prescription benefits
- (b) ~~prescription drug benefits through a Medicare supplemental policy~~ prescription drug benefits through a third party payer
- (c) the Nemours Health Clinic Pharmaceutical benefit as defined on 1/1/99

~~30305.1~~ 30307.1 Exceptions to No Other Prescription Drug Coverage

Individuals who are eligible for the following drug benefits will not be excluded from eligibility for DPAP:

(a) individuals eligible for Medicaid as Family Planning Only

(b) individuals covered under a specific disease state insurance program, for example a policy that pays only for cancer drugs

(c) individuals who are members of a discount drug program in which the policy does not actually pay for the drugs, for example American Association of Retired Persons (AARP)

(d) individuals eligible for drug coverage through the Division of Vocational Rehabilitation

(e) individuals eligible for drug coverage through the Division of Substance Abuse, and Mental Health[.]

(f) individuals covered under Medicare Part D[.]

~~30306~~ 30308 Inmate of a Public Institution

An individual who is an inmate of a public institution is not eligible for DPAP.

An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. An individual awaiting trial in a detention center is considered an inmate of a public institution.

(Break in Continuity of Sections)

~~[30405~~ Redetermination of Eligibility

~~A redetermination of eligibility must be completed by June 30 December 31 of each year. If an individual's initial coverage begins in April, May, or June, October, November, or December, a redetermination will not be required until June December of the following year. A redetermination is a re-evaluation of a recipient's continued eligibility for DPAP coverage. In a redetermination, all eligibility factors that are subject to change are re-examined to ensure that the recipient continues to meet eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form renewal form and provide requested verifications by the due date given. Failure to complete and return a DSS application form renewal form and provide requested verifications by the due date given will result in termination of eligibility. A redetermination is complete when all eligibility factors that are subject to change are examined and a decision regarding continued eligibility is reached.~~

~~DPAP coverage will be terminated when the Contractor or DSS is notified by the recipient that he or she no longer wants coverage.]~~

30500.1 Benefits for Individuals with Medicare Part D Coverage

DPAP will provide payment assistance for Medicare Part D monthly premiums, yearly deductible, those drug costs that fall into the Part D coverage gap, and drugs that are excluded from Medicare Part D.

Medicare Part D coverage will be primary to payment assistance under DPAP.

30501 Limitations on Benefits

Payment assistance to each eligible individual shall not exceed \$2,500.00 per ~~State fiscal~~ benefit year. Individuals will receive a notice when 75% of the \$2,500.00 cap has been expended.

30502.1 Co-payment Requirement for Individuals with Medicare Part D Coverage

There is a co-payment of \$5.00 or 25% of the cost of the prescription (whichever is greater) during the Part D deductible and coverage gap and for drugs that are excluded from Part D. DPAP will not provide payment assistance for Medicare Part D co-payments. When the individual receives a prescription drug that is covered under Medicare Part D, the individual is responsible for the Medicare Part D co-payment.

(Break in Continuity of Sections)

50100 Services Provided by CRDP

Services provided by the CRDP can consist of payment for medications, nutritional supplements, and transportation. Services provided by the CRDP can consist of payment for medications, nutritional supplements, transportation, and payment of Medicare Part D costs. Electronic Data Systems (EDS) is the CRDP's fiscal [~~intermediary agent~~]. They are responsible for processing all eligible CRDP claims.

50100.1 Medications

The CRDP has the ability to fund prescription medications, over-the-counter medications (OTC's) or both. Services covered include generic and brand name prescription drugs that have been approved as safe and effective by the Federal Food and Drug Administration as well as cost effective over-the-counter drugs prescribed by a practitioner. Prescription drugs covered under CRDP are restricted to products manufactured by pharmaceutical companies that agree to provide manufacturer rebates.

Reimbursement for medications will be made only for clients authorized by the CRDP. A client's eligibility for the medication benefit is based upon the outcome of their medical and financial assessment.

Prescription medications potentially will be funded if prescribed by a physician for eligible clients. Refills may be authorized in compliance with appropriate pharmacy laws.

Reimbursements for OTC products for eligible clients are those, which the physician/practitioner has provided written or verbal authorization to the pharmacist. These products must be for the client's personal use only. There will be no reimbursement for OTC products that are not prescribed by a physician/practitioner. Supplies such as mouthwash, toothpaste, shampoo, etc. will not be reimbursed.

At point of sale, the pharmacist will determine electronically if CRDP will fund the requested product. In order for the pharmacy to receive CRDP payment, they must have a Delaware Medicaid provider number.

Note: All third party resources must be used before CRDP funds are utilized.

(Break in Continuity of Sections)

50100.4 Medicare Part D Costs

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) established the Medicare Prescription Drug Program, also known as Medicare Part D, making prescription drug coverage available to individuals who are entitled to receive Medicare benefits under Part A or Part B, beginning on January 1, 2006.

The MMA provides for a Low Income Subsidy (LIS) for individuals with limited income and resources. The LIS is assistance provided by the Centers for Medicare and Medicaid Services to pay Medicare Part D costs for eligible individuals. The LIS will provide payment assistance with the monthly premium, the yearly deductible, and the coverage gap. The LIS will also provide payment assistance for co-payments after an individual with income below 135% of the Federal Poverty Level reaches a total of \$5100 in drug expenses.

The CRDP will provide coverage for Medicare Part D costs including monthly premiums, yearly deductible, drug costs that fall into the Part D coverage gap, and co-payments. If an individual is eligible for the LIS, this assistance will be primary to CRDP assistance.

(Break in Continuity of Sections)

50200 Services Not Provided by CRDP

The CRDP will not pay health insurance premiums (except Medicare Part D premiums); nor will the program pay for medical, hospital, or ancillary services, medical supplies, or transportation not directly related to the care of End State Renal Disease (ESRD).

(Break in Continuity of Sections)

50500 Technical Eligibility

Only persons who are residents of the State of Delaware shall be eligible for services. Additionally, the individual must be an U.S. citizen or a lawfully admitted alien.

An individual who is entitled to receive Medicare benefits under Part A or Part B must enroll in Part D in order to be eligible for CRDP. The individual must provide proof of Medicare Part D enrollment. Exception: Medicare eligible individuals who have creditable coverage are not required to enroll in Part D as a condition of eligibility. Coverage is creditable if the actuarial value of the coverage equals or exceeds the actuarial value of the standard prescription drug coverage under Part D.

An individual must apply for the LIS if potentially eligible. The individual must provide a copy of the LIS denial or approval notice.

Individuals may be found eligible for CRDP pending their Medicare Part D enrollment and application for LIS for a period of no longer than 90 days from the date of application for CRDP. Current recipients will be notified about the Medicare Part D enrollment requirement and the LIS requirement. They will be given a deadline date by which they must meet this requirement.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XIX Medicaid State Plan Inpatient Hospital Services

Nature of the Proceedings

Delaware Health and Social Services ("Department")/ Division of Medicaid & Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding the payment methodology for inpatient hospital services. 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 September 2005 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 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

Title of Regulation

Methods and Standards for Establishing Payment Rates – Inpatient Hospital Care

Statutory Authority

42 CFR Part 447, Subpart C – Payment for Inpatient Hospital and Long-Term Care Facility Services

Amending the Following State Plan Pages

Attachment 4.19-A, Pages 1 and 3

Summary of Proposal

This regulatory action proposes to amend the reimbursement methodology for inpatient hospitals with two (2) changes regarding the: 1) reimbursement cycle and, 2) interim outlier payment methodology.

Reimbursement Cycle

Effective July 1, 2006, the proposed amendment would revise state plan language changing the reimbursement cycle for hospital payments from a twelve (12) month period to a fifteen (15) month period.

Interim Outlier Payment Methodology

Effective January 1, 2006, the proposed amendment revises the methodology for determining payment for high cost outliers. An interim payment will be made for that inpatient stay when the client's charges have reached twenty-five (25) times the general discharge rate of that facility, or when the client's stay is greater than sixty (60) days. Additional interim payments will be made when either of the outlier conditions for an interim payment is met again.

Summary of Comments Received With Agency Response

The Delaware Developmental Disabilities Council (DDDC) and the State Council for Persons with Disabilities (SCPD) offered the following summarized observations. DMMA has considered each comment and responds as follows:

First, DMMA includes the following “incomplete” standard on rates: The implementation year rates will be updated in FY96 using published TEFRA inflation indices. Rates will be rebased using fiscal year 1994 claims and cost report data for implementation in State FY97, ~~and every three years thereafter~~. Literally, this revised standard does not address post FY97 rates and is therefore ostensibly incomplete. Perhaps, DMMA inadvertently omitted a provision indicating that a rate adjustment would be made on July 1, 2006 and every 15-month period thereafter. Second, the interim reimbursement standards for “high-cost outliers” are apparently more favorable to hospitals authorizing interim payments for patients who either have a stay longer than 60 days or have charges 25 times the general discharge rate of the facility. We endorse the concept of the regulations subject to DMMA review of the “incomplete” provision.

Agency Response: In response to the written comments, the inflationary adjustment period would be effective July 1, 2006 for a 15-month period and every 15 months thereafter. This is the only change that is being proposed that is inconsistent with the current rate calculation process. Your comment is correct that the “high-cost outliers” will be able to be reimbursed during the hospital stay as long as the qualifying conditions are met. No change to the state plan amendment will be made because of this comment. DMMA appreciates their endorsement.

DHA

While the regulation proposes to amend the hospital reimbursement cycle and the interim outlier payment methodology, our concerns focuses on the proposal to change the “...reimbursement cycle from a twelve (12) month period to a fifteen (15) month period”...which would become effective on July 1, 2006.

One issue that requires clarification is which patient population is covered under this proposal. The language is unclear whether this change is intended to impact payments to hospitals for services provided to Medicaid recipients covered under the Medicaid fee-for-service program or those covered under the State's Medicaid managed care programs, or both. Although, this question was raised at the September 14th meeting of the Medical Care Advisory Committee, we have never received a clarification on this issue.

Our understanding of this provision is that the Medicaid program is proposing to amend the State Plan “to move to a fifteen (15) month reimbursement cycle...”. However, it appears this practice was actually implemented more than three years ago. This conclusion is based on our review of the hospital rate letters that have been sent to acute care hospitals for the past three years. When questions were raised by hospitals about the payment update delay, the response from personnel in the Medicaid Office was that the delay is “due to the State’s fiscal restraints”.

Based on this information, it appears that the State has passed on another portion of its financial shortfalls to all non-profit acute care hospitals for the past three fiscal years and is seeking to continue this practice in the years ahead.

Therefore, we strongly oppose this section of the proposed regulation, and suggest that the annual acute care hospital payment updates return to a twelve (12) month update cycle in order to comply with the current language in the State Plan. The twelve (12) month payment update cycle should be effective as of July 1, 2006, and should remain in place in the years ahead.

Agency Response: DMMA acknowledges and has considered the commenter’s concerns but declines the suggestion. The Department plans to proceed with the amendment, as these changes are necessary. No change to the state plan amendment will be made because of this comment.

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding the payment methodology for inpatient hospital services is adopted and shall be final effective November 10, 2005.

Vincent P. Meconi, Secretary, DHSS, October 13, 2005

DMMA FINAL ORDER REGULATION #05-62 REVISIONS:

Attachment 4.19-A
Page 1

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE OF DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – INPATIENT HOSPITAL CARE

Reimbursement Principle

Effective for discharges on or after July 1, 1994, the Delaware Medicaid Program will reimburse all acute care hospitals at prospective per discharge rates.

The prospective rates are set by accommodation type. Reimbursement rates have been set for two accommodation types: general services and nursery services. For each of these accommodation types, there are three components to the payment: operating payment per discharge, capital payment per discharge and medical education payment per discharge.

Rate Setting Method – Operating Payment

The base year is the Delaware hospitals’ 1992 fiscal year. The operating payment per discharge for the base year was calculated by applying a cost-to-charge ratio to allowed charges from the Medicaid claims data. This allowed cost value was then divided by the total charges to obtain the operating payment per discharge.

The cost-to-charge ratio was identified from FY92 hospital cost reports; the categories of cost included in the cost-to-charge ratio are those related to routine services (including hospital-based physicians’ costs and malpractice costs) and ancillary services.

The allowed charge data was taken from the FY92 Medicaid claims data for Delaware hospitals. Medicaid allowable hospital-specific charges associated with inpatient revenue codes appropriate to the accommodation type were identified. The hospital-specific cost-to-charge ratio was applied to the allowed charges to obtain hospital-specific allowed costs for the accommodation type.

Effective July 1, 2006, the fiscal year/period for the reimbursement of Medicaid hospital services will be based on a fifteen month period. A rate adjustment will be made on July 1, 2006 and for every fifteen month period thereafter.

The total hospital-specific allowed costs for the accommodation type were then divided by the total number of discharges on the claims date for the accommodation type to obtain the hospital-specific operating payment per discharge in the base year.

(Break In Continuity of Sections)

Attachment 4.19-A
Page 3

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – INPATIENT HOSPITAL CARE (Continued)

Rate Setting Methods - Development of Implementation Year Operating Rates, Updates and Rebasing (Continued)

The implementation year rates will be updated in FY96 using published TEFRA inflation indices. Rates will be rebased using fiscal year 1994 claims and cost report data for implementation in State FY97, ~~and every three years thereafter.~~

Other Related Inpatient Reimbursement Policies

Outliers - High cost outliers will be identified when the cost of the discharge exceeds the threshold of three times the hospital operating rate per discharge. Outlier cases will be reimbursed at the discharge rate plus 79 percent of the difference between the outlier threshold and the total cost of the case. Costs of the case will be determined by applying the hospital-specific cost to charge ratio to the allowed charges reported on the claim for discharge.

~~For certain high cost cases, providers may request an interim payment, that is, a payment prior to the discharge of the patient when the discharge is not likely to occur in the near future. Cases that are approved by the State for reimbursement on an interim payment basis must meet all of the following conditions: (1) length of stay over one year, and (2) over one million dollars in costs as determined in the paragraph above, and (3) attempts to find non-acute care placements have proven unsuccessful and are documented to the State's satisfaction. Interim payment cases will be subject to the same outlier payment calculations as described in the paragraph above and reimbursed at the outlier amount less a 5% discount. Interim payments that are renewed must meet all of the following conditions: (1) an additional length of stay over one year (2) an additional one million dollars in costs as determined in the paragraph above and (3) continued attempts to find non-acute care placements have proven unsuccessful and are documented to the State's satisfaction. Any interim payment cases that are renewed will also be subject to the same outlier payment calculations as described in the paragraph above and reimbursed at the outlier amount less a 5% discount.~~

Effective January 1, 2006, any provider with a high cost client case (outlier) will receive an interim payment; that is, a payment prior to the discharge of that patient when the charge amount reaches the designated level. An interim

payment will be made for that inpatient stay when the client's charges have reached twenty-five (25) times the general discharge rate of that facility, or when the client's stay is greater than sixty (60) days. Additional interim payments will be made when either of the outlier conditions for an interim payment is met again. The interim payment amount is based on the current reimbursement methodology used to pay outliers. Upon the discharge of the client, the facility will receive the balance of the payment that would have been paid if the case were paid in full at the time of discharge.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 122(3)c & 7906
(16 Del.C. §122)(3)c, §7906)
16 DE Admin. Code 4469

ORDER

Adoption of the State of Delaware Regulations Governing a Detailed Plumbing Code

Nature of the Proceedings

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt *State of Delaware Regulations Governing a Detailed Plumbing Code*. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Sections 122(3)c and 7906.

On September 1, 2005 (Volume 9, Issue 3), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by September 30, 2005, or be presented at a public hearing on September 21, 2005, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal comments were received during the public hearing and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings of Fact

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include minor modifications from those published in the September 1, 2005, *Register of Regulations*, based on comments received during the public comment period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware *Regulations Governing a Detailed Plumbing Code* are adopted and shall become effective November 10, 2005, after publication of the final regulation in the *Delaware Register of Regulations*.

Vincent P. Meconi, Secretary, October 13, 2005

Summary of Evidence

A public hearing was held on September 21, 2005, at 10:00 a.m. in the Third Floor Conference Room of the Jesse Cooper Building located on Federal and Water Streets, Dover, Delaware before David P. Walton, Hearing Officer. The purpose of the hearing was to discuss the proposed Department of Health and Social Services (DHSS) *Regulations Governing a Detailed Plumbing Code*. Announcements regarding the public hearing were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations* in accordance with Delaware Law. Raymond Davidson, Unit Manager for Environmental Health Field Services, Health Systems Protection Section, Division of Public Health (DPH) made the agency's presentation. Comments were offered at the public hearing, however no written comments were received on proposed Regulations during the public comment period. The public comment period was September 1 through September 30, 2005. Entities represented at the hearing included:

- Office of Food Protection, Division of Public Health
- Environmental Health Field Unit, Division of Public Health
- Sussex Tech Adult Education (Instructor/Master Plumber)

Public comments and the DHSS (Agency) responses are as follows:

Deleting the requirement for a 3" main vent stack (Section 111.17 old regulation) goes against County Code requirement of a 3" main vent stack for sewer hookup.

The new regulation (Section 2.19) specifies that the stack shall be not less than 2" in diameter.

Agency Response: After careful review of the appropriate sections of the *Regulations Governing a Detailed Plumbing Code*, the Agency has determined that this requirement is not in conflict with Sussex County Code. Section 2.19 specifies the minimum diameter (2") of the main vent stack and does allow for a larger diameter main vent stack (3"). Additionally, the 2003 International Plumbing Code (IPC), allows for a larger diameter main vent stack as stated in Section 903.1, which calls for "at least one stack the size of which is not less than one-half of the required size of the building drain."

Section 2.18 states that the top of standpipes used in a clothes washer application shall be at least 42" (1066mm) above the finished floor. This puts the standpipe and washer box above the new low profile front load washers. Consumers also run countertops above these low profile washers and prefer to have the standpipe and washer box below that counter. Please consider deleting this Delaware specific requirement.

Agency Response: After careful review of the appropriate sections of the *Regulations Governing a Detailed Plumbing Code*, the Agency has decided to delete Section 2.18, thus deleting the Delaware requirement that clothes washer standpipes be a minimum of 42" in height. Section 802.4 of the 2003 IPC will be adopted as is, calls for standpipes to be a minimum of 18" and a maximum of 42" in height. The Agency has determined that this clothes washer standpipe height range (18-42") is acceptable and will accommodate those desiring to install low profile clothes washers.

In addition to amendments noted above, minor format corrections were made to the regulation.

The public comment period was open from September 1, 2005 to September 30, 2005.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

**STATE OF DELAWARE
REGULATIONS GOVERNING A DETAILED
PLUMBING CODE
~~2000 International Plumbing Code~~**

~~These regulations were adopted April 17, 1978, effective August 1, 1978; amended December 19, 1983, effective February 1, 1984; amended April 26, 1991; amended February 19, 1992; amended May 11, 1995;~~

amended January 11, 1998; amended May 11, 2001 by the Secretary, Delaware Health and Social Services, in conformance within Chapter 79, Section 7906 and Chapter 1, Section 122(3)(c), Title 16, Delaware Code, and supersedes regulations previously adopted by the Delaware State Board of Health and the Secretary, Delaware Health and Social Services. These Regulations shall be effective May 11, 2001.

SECTION 110.0 ADOPTION:

That certain document entitled, "The International Plumbing Code/2000" is made a part hereof and the supplements therein include, identified as "Section 111.0., Additions, Deletions, Amendments and Clarifications," are hereby adopted as the "State of Delaware Regulations Governing A Detailed Plumbing Code." NOTE: The Amendments have been numbered to identify specific changes in the International Plumbing Code/2000.

SECTION 111.0 ADDITIONS, DELETIONS, AMENDMENTS, and CLARIFICATIONS:

SECTION 111.1 TITLE SECTION 101.1: is amended to read as follows:

These Regulations shall be known as the "State of Delaware Regulations Governing A Detailed Plumbing Code hereinafter referred to as "this Code".

SECTION 111.2 SCOPE SECTION 101.2: is amended to delete the last sentence.

SECTION 111.3 EXISTING INSTALLATIONS SECTION 102.2: is amended to read as follows:

The legal use and occupancy of any structure existing on July 1, 2000, or for which it had been heretofore approved, may be continued without change except as may be specifically covered in this Code or deemed necessary by the Deputy Code Official(s) for the general safety and welfare of the occupants and the public.

Exception:

Except that upon change of permit holder in facilities and operations regulated by the Delaware Division of Public Health such systems shall comply with the requirements of this Code and applicable regulations promulgated and standards established by the Delaware Division of Public Health.

SECTION 111.4 DUTIES AND POWERS OF THE CODE OFFICIAL AND PLUMBING INSPECTORS SECTION 104.1: is amended to add the following sentence:

For the purpose of this document "Code Official" refers to the Secretary, Delaware Health and Social Services, or their designee. "Plumbing Inspectors" shall have such duties and powers as are enumerated in Title 16, Delaware Code, Section 7907 and shall have the authority of a Deputy Code Official as referenced in Section 103.3 of this Code.

SECTION 111.5 UNLAWFUL ACTS SECTION 108.1: is amended to read:

It shall be unlawful for any person to work as a licensed plumber in the State of Delaware unless such person has received a license from the Delaware Department of Administrative Services, Division of Professional Regulation, showing that said person has been duly licensed as a plumber, except as provided by 24 Delaware Code 1813, and has a permit issued by the Division of Public Health.

Exception

The homeowner of a single-family residence occupied, or to be occupied by him/her, and not for sale, rent or lease, may perform plumbing work only on such residence itself, and/or auxiliary structures, and in compliance with a permit issued by the Division of Public Health, or applicable authority, and in compliance with all provisions of these regulations.

SECTION 111.6 VIOLATION AND PENALTIES SECTION 108.4: is amended to read:

Any person who shall violate any provisions of this Code, or shall fail to comply with the requirements thereof, or who shall install plumbing work in violation of an approved plan or directive of the Code Official or the Deputy Code Official(s), or of a permit or certificate issued under the provisions of this Code, shall be subject to penalties as provided by Chapter 79, Title 16, Delaware Code.

SECTION 111.7 STOP WORK ORDERS SECTION 108.5: is amended by deleting the language "shall be liable to a fine of not less than [AMOUNT] dollars or more than [AMOUNT]" and by adding:

shall be subject to penalties as provided by Chapter 79, Title 16, Delaware Code.

SECTION 111.8 GENERAL DEFINITIONS SECTION 202: is amended by adding the following definitions:

"Licensed Plumber: The term "Licensed Plumber" shall mean a person who has complied with the provisions of the Division of Professional Regulation and the Board of Plumbing Examiners, and has further met the certification, testing, bonding, and licensing requirements of the jurisdiction in which he/she plans to engage in the business of plumbing. The Licensed Plumber shall be recognized as

being responsible for all work performed under a plumbing permit issued by the Division of Public Health.

~~“Supervision of Work: For the purposes of these regulations, supervision of work shall be defined as work completed under the permit of a licensed plumber while employed by the licensed plumber, or the same firm, partnership, corporation, or owners of the company as the licensed plumber.”~~

~~SECTION 111.9 SEWER DEPTH — SECTION 305.6.1: is deleted in its entirety.~~

~~SECTION 111.10 REQUIRED TESTS — SECTION 312.1: is amended by adding the following sentence at the end thereof:~~

~~In lieu of the presence of the deputy code official witnessing the test, the Licensed Plumber may certify in writing upon a prescribed form, that the plumbing system piping is in accordance with Section 312 of the regulations.—~~

~~SECTION 111.11 — ACCESSIBLE PLUMBING FACILITIES — SECTION 404.1: is amended by the following:~~

~~All regulations pertaining to handicapped facilities in the International Plumbing Code will be governed by the most recent edition of the “American National Standards Institute (ANSI).—~~

~~SECTION 111.12 — INSTALLATION — SECTION 502.1: is amended by adding the following sentence at the end thereof:~~

~~The first 12 inches of both hot and cold water lines shall be thermally rated for the maximum water temperature produced by the hot water heater.~~

~~SECTION 111.13 — SAFETY DEVICES — SECTION 504.6.2: is amended by deleting the existing language and adding the following:~~

~~The discharge valve shall be equipped with an approved heat transfer fitting or metallic pipe.~~

~~SECTION 111.14 — TABLE 605.4 & 605.5: are amended by deleting the letters “M” and “WM” from copper tubing.~~

~~SECTION 111.15 — MATERIALS, JOINTS AND CONNECTIONS — SECTION 605.16.2: is amended by the adding the following sentence at the end thereof:~~

~~The use of all purpose glue is prohibited.—~~

~~SECTION 111.16 — STANDPIPES — SECTION 802.4: is amended by adding the following sentence at the end thereof:~~

~~The top of standpipes shall be 42 inches (1066mm) above the finished floor.~~

~~SECTION 111.17 — MAIN VENT REQUIRED — SECTION 903.1: is deleted in its entirety and following is inserted in lieu of:~~

~~Every sanitary drainage system receiving the discharge of a sanitary fixture shall have a main vent three (3) inches in diameter.~~

~~SECTION 111.18 — PROCEDURES FOR LICENSE:~~

~~Every person desiring to register as a plumber engaged in the business of plumbing in the State of Delaware shall file an application with the Division of Professional Regulation, 861 Silver Lake Blvd., Dover, DE 19904.—~~

~~SECTION 111.19 — VARIANCES: is amended by adding the following to read as follows:~~

~~Upon receipt of written application for a variance, the Deputy Code Official may:~~

~~(a) From time to time recommend granting written permission to vary from particular provisions set forth in this Regulation, when the extent of the variation is clearly specified and it is documented to the Secretary, Health and Social Services, or his/her appointed designee’s satisfaction that:~~

~~(1) Such variation is necessary to obtain a beneficial use of an existing facility, and:~~

~~(2) The variation is necessary to prevent a practical difficulty or unnecessary hardship; and~~

~~(3) Appropriate alternative measures have been taken to protect the health and safety of the public and assure that the purpose of the provisions from which the variation is sought will be observed.~~

~~(b) Within thirty (30) business days of the receipt of a written application for a variance, the Deputy Code Official shall recommend either granting the variance, or denying the variance or will request further information from the applicant.~~

~~(c) If the applicant has been denied a variance upon the recommendation of the Deputy Code Official, the applicant may appeal the decision by filing a written Notice of Appeal to the Secretary, Health and Social Services, or his/her designee, Division of Public Health, P.O. Box 637, Dover, Delaware 19903.~~

~~SECTION 111.20 — AIR ADMITTANCE VALVES — SECTION 917.1: is amended by adding the following sentence at the end of paragraph 917.1:~~

~~Air admittance valves must be approved by the Deputy Code Official prior to use or installation.~~

~~SECTION 111.21 — COMPUTERIZED VENT DESIGN — SECTION 919: is deleted in its entirety.~~

~~SECTION 111.22 — INTERCEPTORS AND SEPARATORS — SECTION 1003.3.4: is amended by adding the following to the end:~~

~~,or, be otherwise approved by the Code Official.~~

~~SECTION 111.23 — FUEL PIPING — SECTION 1201: is deleted in its entirety.~~

~~SECTION 111.24 — SPECIAL PIPING AND STORAGE SYSTEMS — SECTIONS 1202 — 1203: is deleted in its entirety and replaced with the following:~~

PLUMBING REQUIREMENTS IN FOOD ESTABLISHMENT KITCHENS

I. HANDSINK

~~A. This fixture, when located in food preparation, food dispensing, beverage dispensing (including bar service area), food storage and warewashing areas, must be certified or classified under an approved industry standard for food equipment, such as the National Sanitation Foundation (NSF) International, Environmental Testing Lab (ETL), Underwriter's Laboratory (UL) for Sanitation, Baking Industry Sanitation Standards Committee (BISSC), or equivalent.~~

~~B. A separate, single-compartment handwashing sink is REQUIRED in food preparation, food dispensing, and warewashing areas; and in, or immediately adjacent to, toilet rooms. Handsinks shall be installed within 25 travel feet within a direct line access of each primary work location.~~

~~C. A minimum hot water temperature of 110° F, delivered through a mixing valve or combination faucet, is REQUIRED.~~

~~D. If installed, self-closing, slow-closing, or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.~~

~~E. A handwashing sink may not be used for any other purpose.~~

~~F. An indirect drainline connection is not required.~~

~~G. Connection to a grease trap is not required.~~

II. FOOD PREPARATION SINK

~~A. Any sink in which food is washed or thawed under running water must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL, UL for Sanitation, BISSC, or equivalent.~~

~~B. A food preparation sink may not be used for disposal of mop water or similar liquid wastes.~~

~~C. An indirect drainline connection through an air gap is REQUIRED.~~

~~D. Connection to properly sized grease trap is REQUIRED.~~

III. SERVICE SINK (for use as janitorial sink, utility sink or mop sink)

~~A. Wherever practical, install this fixture outside of the food preparation, food dispensing, food storage and warewashing areas.~~

~~B. This fixture, when located in food preparation, food dispensing, food storage and warewashing areas, must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL, UL for Sanitation, BISSC, or equivalent.~~

~~C. A minimum of one service sink or receptor is REQUIRED on each floor level of food operations. This fixture may be a sink or a curbed receptor.~~

~~D. An indirect drainline connection is not required.~~

~~E. Connection to a grease trap not required.~~

IV. WAREWASHING SINK

~~A. This fixture must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL, UL for Sanitation or equivalent.~~

~~B. A sink of at least three separate compartments shall be provided for manually washing, rinsing and sanitizing equipment and utensils. Each sink compartment shall be large enough to accommodate the immersion of the largest equipment item or utensil.~~

~~C. A warewashing sink may not be used for handwashing or disposal of liquid wastes.~~

~~D. An indirect drainline connection is not required, unless this fixture is used for food preparation. (See paragraph IV.F. below for alternative use provision.)~~

~~E. Connection to a properly sized grease trap is REQUIRED.~~

~~F. Provision for alternative use of warewashing sink:~~

~~**If the warewashing sink will be used for washing or thawing food, a separate drainline connection from each sink compartment through an air gap into a floor sink is REQUIRED. The installation of a properly sized grease trap downstream of the floor sink is REQUIRED. The~~

alternative use of a warewashing sink for food preparation requires prior approval from the Division of Public Health.

V. PRE-WASH SINK

A. This fixture must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL, UL for Sanitation or equivalent.

B. An indirect drainline connection is not required.

C. Connection to a properly sized grease trap is **REQUIRED**.

D. If a food waste grinder is installed on this fixture, the grease trap must be designed and rated for such application, or a solids interceptor is required upstream of the grease trap.

VI. MECHANICAL WAREWASHER

A. This equipment must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL, UL for Sanitation or equivalent.

B. An indirect drainline connection through an air-gap is **REQUIRED**.

(See paragraph VI.D below for alternative installation provision.)

C. Connection to a grease trap is **NOT APPROVED**, as elevated water temperatures, higher pressures and detergents have the capability of holding grease in suspension, which may then pass through and reduce the efficiency of the grease trap.

D. Provision for alternative installation of mechanical warewasher:

If approved by the Division of Public Health, a direct drainline connection may be installed if the machine wastewater outlet is located within five feet (5 ft) of a properly trapped vented floor drain and the machine outlet is connected to the inlet side of the same properly vented floor drain trap.

VII. GREASE TRAP

A. Grease trap must be sized in accordance with PDI standard G101.

B. Grease trap connection to all fixtures that discharge grease-laden waste, including warewashing sinks, food prep sinks, pre-wash sinks for warewashing equipment, woks and other cooking equipment is **REQUIRED**.

In kitchens where trench drains or trough drains receive liquid waste from cooking equipment such as kettles or skillets, an indirect drainline connection from the equipment to a properly sized grease trap is **REQUIRED**.

C. Provision for alternative use of warewashing sink:

*** If the warewashing sink will be used for washing or thawing food, a separate drainline connection from each

sink compartment through an air-gap into a floor sink is **REQUIRED**. The installation of a properly sized grease trap downstream of the floor sink is **REQUIRED**. The alternative use of a warewashing sink for food preparation requires prior approval from the Division of Public Health.

PROCEDURE FOR SIZING A GREASE TRAP TO A SPECIFIC FIXTURE

1. Determine the liquid volume of the fixture in cubic inches draining to the grease trap.

2. Determine the liquid capacity of the fixture in gallons.

3. Determine the actual drainage load (75% of fixture capacity).

4. Determine the unit flow rate minimum for drainage period of 2 minutes.

Determine the unit liquid holding capacity minimum (40% of fixture capacity).

5. Select a unit corresponding to minimum unit flow rate and liquid holding capacity.

EXAMPLE OF SIZING FOR GREASE TRAP SELECTION

Select a grease trap to receive drainage from a three compartment warewashing sink with bowl dimensions of 18" W x 24" L x 12" D

1. Volume = 18in x 24in x 12in = 5184 cubic inches

2. Capacity = Volume (cu in) / 231 (cu in/gal) = 5184 / 231 = 22.4 gal

3. Drainage load = 22.4 gal x 0.75 = 16.8 x 3 compartments = 50.4, or approx. 50 gal

4. Unit flow rate minimum = 50 gal / 2 min = 25 gpm
 Unit liquid holding capacity minimum = 67.3 x 0.40 = 26.9 gals

5. Select a grease trap with a minimum flow rate equal to or greater than **25 gpm**

The selected trap also must have a minimum liquid holding capacity of 26.9 gal.

VIII. WATER HEATER - Hot Water Supply Requirements

A. The water heater shall be sized to provide hot water as required to supply both the daily requirements and the hourly peak demands of the facility. The daily and hourly demand is based on the type of equipment and number of fixtures consuming hot water as required for food operations.

B. The total hot water availability in gallons per hour (gph) from a water heater is the sum of the unit storage capacity plus the recovery rate at a 100°F rise.

IX. UTILITY SERVICE INSTALLATION

A. Utility service lines including gas, plumbing and electrical shall be installed inside walls, above ceilings and below floors whenever structurally practical and in accordance with applicable code requirements.

B. If lines are run in front of walls, lines shall be installed with stand-off brackets or other secure mounting method, such that a minimum clearance of one inch (1") exists between line and wall.

C. Exposed horizontal utility service lines may not be installed on the floor.

X. BACKFLOW PREVENTION

A. The air gap between the water supply inlet and the flood rim level of the plumbing fixture, food or non-food equipment shall be at least twice the diameter of the water supply inlet and not less than one inch (1").

B. A backflow or back siphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (ASSE) series 1000 standards.

C. An air gap or a backflow or back siphonage prevention device is required at water service connections on warewashing machines, steamers, and other food equipment.

D. Hose Connections, Silleocks, hose bibbs, wall hydrants and other openings with a hose connection shall be protected by an atmospheric type or pressure type vacuum breaker, or a permanently attached hose connection vacuum breaker.

E. Beverage Dispensers A double check valve with intermediate atmospheric vent conforming to ASSE 1012 is required on the water supply connection. A dual check valve conforming to ASSE 1032 is required on the beverage dispensing equipment.

F. No direct connection may exist between the sewage system and any drain originating from equipment in which food is placed.

G. Equipment and fixtures utilized for the storage, preparation and handling of food shall discharge through an indirect waste pipe by means of an air gap.

XI. JOINT SEALING

A. Joints formed where fixtures come in contact with walls or floors shall be sealed with an approved sealant to form a watertight joint against the mounting surface.

B. Where installation does not allow access for cleaning, fixtures shall be sealed to walls or adjoining equipment. Where not structurally practical, a minimum gap of one inch (1") shall exist between the fixture and walls or adjoining equipment.

SECTION 111.25 – APPENDIX F: is deleted in its entirety.

Section 111.26 – APPENDIX G: is deleted in its entirety.

4469 Regulations Governing a Detailed Plumbing Code**1.0 Adoption and Effective Date**

That certain document entitled, "The International Plumbing Code 2003 " is made a part hereof and the supplements therein include, identified as "Section 2.0. Additions, Deletions, Amendments and Clarifications," are hereby adopted as the "State of Delaware Regulations Governing A Detailed Plumbing Code. These regulations shall be effective [November 10, 2005].

2.0 Additions, Deletions, Amendments and Clarifications

2.1 Section 101.1 Title is deleted and replaced with the following: These Regulations shall be known as the "State of Delaware Regulations Governing A Detailed Plumbing Code hereinafter referred to as 'this Code'".

2.2 Section 101.2 Scope is deleted and replaced by the following: The provisions of this code shall apply to the erection, installation, alteration, repair, relocation, replacement, addition to, use or maintenance of plumbing systems within this jurisdiction.

2.3 Section 102.2 Existing installations is deleted and replaced by the following: The legal use and occupancy of any structure existing on the effective date of this Code, or for which it had been heretofore approved, may be continued without change except as may be specifically covered in this Code or deemed necessary by the Deputy Code Official(s) for the general safety and welfare of the occupants and the public.

Exception: Except that upon change of permit holder in facilities and operations regulated by the Delaware Division of Public Health such systems shall comply with the requirements of this Code and applicable regulations promulgated and standards established by the Delaware Division of Public Health.

2.4 Section 104.1 General is deleted and replaced by the following: For the purpose of this document "Code Official" refers to the Secretary, Delaware Health and Social Services, or their designee. "Plumbing Inspectors" shall have such duties and powers as are enumerated in Title 16, **Delaware Code**. Section 7907 and shall have the authority of a Deputy Code Official as referenced in Section 103.3 of this Code.

2.5 Section 108.1 Unlawful acts is deleted and replaced by the following: It shall be unlawful for any person to work as a licensed plumber in the State of Delaware unless such person has received a license from the Delaware Department of Administrative Services, Division of Professional

Regulation, showing that said person has been duly licensed as a plumber, except as provided by 24 Delaware Code 1813, and has a permit issued by the Division of Public Health.

Exception: The homeowner of a single-family residence occupied, or to be occupied by him/her and not for sale, rent or lease, may perform plumbing work only on such residence itself, and/or auxiliary structures, and in compliance with a permit issued by the Division of Public Health, or applicable authority, and in compliance with all provisions of these regulations.

2.6 Section 108.4 Violation penalties is deleted and replaced by the following: Any person who shall violate any provisions of this Code, or shall fail to comply with the requirements thereof, or who shall install plumbing work in violation of an approved plan or directive of the Code Official or the Deputy Code Official(s), or of a permit or certificate issued under the provisions of this Code, shall be subject to penalties as provided by Chapter 79, Title 16, Delaware Code.

2.7 Section 108.5 Stop work orders is amended by deleting the language "shall be liable to a fine not less than [AMOUNT] dollars or more than [AMOUNT] dollars and replacing it with: shall be subject to penalties as provided by Chapters 1 and 79, Title 16, Delaware Code.

2.8 Section 109 Means of Appeal is deleted in its entirety

2.9 Section 202 General Definitions is amended by adding the following definitions:

Licensed Plumber. The term "Licensed Plumber" shall mean a person who has complied with the provisions of the Division of Professional Regulation and the Board of Plumbing Examiners, and has further met the certification, testing, bonding, and licensing requirements of the jurisdiction in which he/she plans to engage in the business of plumbing. The Licensed Plumber shall be recognized as being responsible for all work performed under a plumbing permit issued by the Division of Public Health.

Supervision of Work. For the purposes of these regulations, supervision of work shall be defined as work completed under the permit of a licensed plumber while employed by the licensed plumber, or the same firm, partnership, corporation, or owners of the company as the licensed plumber.

2.10 Section 305.6.1 Sewer depth is deleted in its entirety

2.11 Section 312.1 Required tests is amended by adding the following sentence at the end thereof: In lieu of the presence of the deputy code official witnessing the test, the Licensed Plumber may certify in writing upon a prescribed form, that the plumbing system piping is in

accordance with Section 312 of the regulations. This shall be applicable between November 1 and April 1.

2.12 Section 404 Accessible Plumbing Fixtures, Where required is deleted and replaced by the following: All regulations pertaining to handicapped facilities in the International Plumbing Code will be governed by the most recent edition of the "American National Standards Institute (ANSI).

2.13 Section 502.1 Installation, General is amended by adding the following sentence at the end thereof: The first 12 inches of both hot and cold water lines shall be thermally rated for maximum water temperature produced by the hot water heater.

2.14 Section 504.6.2 Safety Devices, Materials is deleted and replaced by the following: The discharge valve shall be equipped with an approved heat transfer fitting or metallic pipe.

2.15 Section 504.7 Required Pan is amended by adding the following:

Exception: Tankless Hot Water Heaters shall not require a drain pan.

2.16 Tables 605.4 and 605.5 are amended by deleting the letters "M" and "WM" from copper tubing.

2.17 Section 605.16.2 Solvent cementing is amended by adding the following sentence at the end thereof: The use of all purpose glue is prohibited.

~~2.18 Section 802.4 Standpipes is amended by adding the following sentence at the end thereof: The top of the standpipes shall be 42 inches (1066mm) above the finished floor.~~

~~2.[1918] Section 903.1 Stack required is amended by adding the following sentence at the end thereof: The stack shall be no less than 2" in diameter.~~

~~2.[2019] Section 912.1 Type of fixtures is amended by deleting the last sentence.~~

~~2.[2120] Section 917.1 Air Admittance Valves, General is amended by adding the following sentence at the end thereof: Air admittance valves shall be approved by the Deputy Code Official prior to use or installation.~~

~~2.[2221] Section 919 Computerized Vent Design is deleted in its entirety.~~

~~2.[2322] Section 1003.3.4 Grease trap and grease interceptors is amended by deleting the "." as it appears at the end and it with the following: , or be otherwise approved by the Code Official.~~

~~2.[2423] Chapter 12 Special Piping and Storage Systems is deleted in its entirety.~~

~~2.24 Plan Review and Approval Plumbing Requirements for Food Establishment Premises~~

~~2.24.1 General All plumbing shall be installed by a licensed plumber under a valid, current plumbing permit in~~

accordance with the "State of Delaware Regulations Governing a Detailed Plumbing Code."

2.24.2 Water Supply and Sewage Disposal Facilities served by a public water supply and sewage systems do not require further evaluation. Private wells must comply with chemical and bacteriological standards; a satisfactory analysis is required before an operating permit may be issued. Individual sewage disposal systems require the approval of the Department of Natural Resources and Environmental Control prior to operating the food establishment.

2.24.3 Backflow Prevention

2.24.3.1 Air gap, supply: An air gap between the water supply and the flood rim level of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 1 inch (DE Food Code, §5.202.13).

2.24.3.2 Air gap, drainage: No direct connection may exist between the sewage system and any drain originating from equipment in which food is placed (DE Food Code, §5-402.11). Equipment and fixtures utilized for the storage, preparation and handling of food shall discharge through an indirect waste pipe by means of an air gap (IPC2003, §802.1.1).

2.24.3.3 Floor drains: Floor drains located within walk-in refrigerators or freezers in food establishments shall be indirectly connected to the sanitary drainage system by means of an air gap (IPC2003, §802.1.2).

2.24.3.4 Backflow prevention device: A backflow or backsiphonage prevention device shall meet American Society of Sanitary Engineering (ASSE) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device (DE Food Code, §5-202.14).

2.24.3.5 Plumbing fixtures: The supply lines or fittings for every plumbing fixture shall be installed so as to prevent backflow (IPC2003, §608.2).

2.24.3.6 Devices, appliances: All devices that connect to the water supply shall be provided with protection against backflow (IPC2003, §608.3). This includes devices used for food preparation and processing, steamers, the storage of ice or food, warewashing machines, and other food service equipment.

2.24.3.7 Hose Connections: Sillcocks, hose bibbs, wall hydrants and other openings with a hose connection shall be protected by an atmospheric-type or pressure-type vacuum breaker or a permanently attached hose connection vacuum breaker. Exceptions: water heater drain valve, clothes washing machine (IPC2003, §608.15.4.2).

2.24.3.8 Beverage Dispensers: The water supply connection to carbonated beverage dispensers shall be protected against backflow by a backflow preventer conforming to ASSE 1022 or by an air gap. The backflow preventer device and the piping downstream therefrom shall not be affected by carbon dioxide gas (IPC2003, §608.16.1).

2.24.4 Utility Service Installation

2.24.4.1 Utility lines including gas, plumbing and electrical shall be installed inside walls, above ceilings or below floors whenever structurally practical, and in accordance with applicable code requirements.

2.24.4.2 If lines are run in front of walls, lines shall be installed with stand-off brackets or other secure mounting method, such that a minimum clearance of one inch (1") exists between line and wall.

2.24.4.3 Exposed horizontal utility service, including water supply and drain lines, may not be installed on the floor.

2.24.5 Joint Sealing Joints formed by fixtures in contact with walls or floors shall be sealed with an approved sealant. Where installation does not allow access for cleaning, fixtures shall be sealed to walls or adjoining equipment. Where not structurally practical, a minimum gap of one inch (1") shall exist between the fixture and walls or adjoining equipment.

2.24.6 Toilet Facilities

2.24.6.1 At least 1 toilet and not fewer than the toilets required by law shall be provided. If authorized by law and urinals are substituted for toilets, the substitution shall be done as specified in law (DE Food Code, §5-203.12).

2.24.6.2 A handwashing facility shall be located in, or immediately adjacent to, toilet rooms (DE Food Code, §5-204.11).

2.24.6.3 A toilet room shall be completely enclosed and provided with a tight-fitting and self-closing door (DE Food Code, §6-202.14).

2.24.6.4 Toilet rooms shall be conveniently located and accessible to employees during all hours of operation (DE Food Code, §6-402-11).

Note: State of Delaware Regulations Governing a Detailed Plumbing Code adopts International Plumbing Code 2003 (IPC2003). Applicable excerpts are listed below.

2.24.6.5 IPC2003 Table 403.1 Minimum Number of Plumbing Facilities The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by the building code.

Occupancy: Assembly, Restaurants

Water Closets:	Male:	1 per 75
	Female:	1 per 75
Lavatories:		1 per 200
Drinking Fountains:		1 per 500
Others:		1 service sink

2.24.6.6 IPC2003, Section 403.5 Location of Employee Toilet Facilities In Mercantile And Assembly Occupancies. Employees shall be provided with toilet facilities in building and tenant spaces utilized as restaurants. The employees' facilities shall be either separate facilities or combined employee and public customer facilities. The required toilet facilities shall be located not more than one story above or below the employee's regular work area and the path of travel to such facilities, in other than covered malls, shall not exceed a distance of 500 feet. The path of travel to required facilities in covered malls shall not exceed a distance of 300 feet.

Exception: Employee toilet facilities shall not be required in tenant spaces where the travel distance from the main entrance of the tenant space to a central toilet area does not exceed 300 feet and such central toilet facilities are located not more than one story above or below the tenant space.

2.24.6.7 IPC2003, Section 403.6 Public Facilities. Customers, patrons, and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization. Public toilet facilities shall be located not more than one story above or below the space required to be provided with public toilet facilities and the path of travel to such facilities shall not exceed a distance of 500 feet.

2.24.6.8 IPC2003, Section 403.2 Separate Facilities. Where plumbing fixtures are required, separate facilities shall be provided for each sex.

Exceptions: ...Separate employee facilities (for each sex) shall not be required in occupancies in which 15 or less people are employed. Separate facilities (for each sex) shall not be required in structures or tenant spaces with a total occupant load, including both employees and customers, of 15 or less.

2.24.7 Sinks All sinks shall be supplied with hot and cold running water under pressure.

2.24.7.1 Splashguard Dividers: Where less than 18 inches lateral separation exists between sinks and adjacent fixtures, food contact surfaces or open storage shelving, a splashguard divider constructed of a material which is durable, easily cleanable, non-toxic and impervious to moisture shall be installed; such divider may be wall-attached or fixture-attached, and shall extend outward to the leading edge of the sink and extend vertically a minimum of 18 inches above the level plane of the sink bowl.

2.24.7.2 Handwashing sinks: These fixtures, when located in food preparation, food dispensing, beverage dispensing (including bar service area), food storage and warewashing areas, must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, BISSC, or equivalent.

2.24.7.2.1 A separate, single-compartment handwashing sink is REQUIRED in food preparation, food dispensing, and warewashing areas; and in, or immediately adjacent to, toilet rooms. Handsinks shall be installed within 25 travel feet within a direct line access of each primary work location. Hand soap, paper towels and a trash receptacle must be kept at these sinks.

2.24.7.2.2 A minimum hot water temperature of 100 F, delivered through a mixing valve or combination faucet, is REQUIRED.

2.24.7.2.3 If installed, self-closing, slow-closing, or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

2.24.7.2.4 A handwashing sink may not be used for any other purpose.

2.24.7.2.5 An indirect drainline connection is not required. Connection to a grease trap is not required.

2.24.7.3 Food preparation sink(s): Any sink in which food is washed or thawed under running water as part of the food preparation process must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, BISSC, or equivalent.

2.24.7.3.1 A food preparation sink may not be used for disposal of mop water or liquid wastes.

2.24.7.3.2 An indirect drainline connection through an air-gap is REQUIRED.

2.24.7.3.3 Connection to properly sized grease trap is REQUIRED.

2.24.7.3.4 If a food preparation sink has two or more compartments, a separate wasteline connection from each sink compartment through an air gap into a floor sink is REQUIRED.

2.24.7.4 Warewashing sink: This fixture must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, BISSC, or equivalent.

2.24.7.4.1 A sink of at least three separate compartments with coved corners and integral drainboards at each end shall be provided for manually washing, rinsing and sanitizing equipment and utensils. Each sink compartment shall be large enough to accommodate the

immersion of the largest equipment item or utensil. A chemical test kit that matches the type of sanitizing agent in use is required in the warewashing area.

2.24.7.4.2 A warewashing sink may not be used for handwashing or disposal of liquid wastes.

2.24.7.4.3 Connection to a properly sized grease trap is REQUIRED.

2.24.7.4.4 An indirect drainline connection is not required, unless this fixture is used for food preparation. (See paragraph (3)(e) below for alternative use provision.)

2.24.7.4.5 Alternative use provision for warewashing sink: If the warewashing sink will be used for washing or thawing food, a separate wasteline connection from each sink compartment through an air-gap into a floor sink is REQUIRED. The installation of a properly sized grease trap downstream of the floor sink is REQUIRED. Alternative use of a warewashing sink for food preparation requires prior approval from the Division of Public Health.

2.24.7.5 Service sink: (for use as janitorial sink, utility sink or mop sink)

2.24.7.5.1 Wherever practical, install this fixture outside of the food preparation, food dispensing, food storage and warewashing areas.

2.24.7.5.2 This fixture, when located in food preparation, food dispensing, food storage and warewashing areas, must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, BISSC, or equivalent.

2.24.7.5.3 A minimum of one service sink or receptor is REQUIRED on each floor level of food operations. This fixture may be a sink or a curbed receptor.

2.24.7.5.4 The dual use of a utility sink as a handwashing sink is not approved in new construction, conversion of a structure to a food establishment, nor remodeling of an existing facility.

2.24.7.5.5 An indirect drainline connection is not required.

2.24.7.5.6 Connection to a grease trap not required.

2.24.7.6 Prewash sink: This fixture must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, BISSC, or equivalent.

2.24.7.6.1 An indirect drainline connection is not required.

2.24.7.6.2 Connection to a properly sized grease trap is REQUIRED.

2.24.7.6.3 If a food waste grinder is installed on this fixture, the grease trap must be designed and

rated for such application, or a solids interceptor is required upstream of the grease trap.

2.24.8 Mechanical Warewasher: This equipment item must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL Sanitation, UL for Sanitation, or equivalent.

2.24.8.1 A warewashing machine, using hot water or a chemical rinse to sanitize, may be installed. Large cookware which does not fit into the machine must be sanitized in a three compartment sink. Facilities without a three compartment sink whose warewashers are found functioning improperly may be directed to temporarily close until the machine is repaired. If a chemical sanitizing agent is used, a test kit that matches the chemical sanitizing agent is required.

2.24.8.2 Connection to a grease trap is NOT APPROVED due to high temperature, pressure and detergents.

2.24.8.3 An indirect drainline connection through an air-gap is REQUIRED. (See paragraph 2.24.8.4 below for alternative installation provision.)

2.24.8.4 Alternative installation provision for mechanical warewasher: If approved by the Division of Public Health, a direct drainline connection may be installed if the machine wastewater outlet is located within five feet of a properly trapped vented floor drain and the machine outlet is connected to the inlet side of the same properly vented floor drain trap.

2.24.9 Grease trap: The grease trap must be sized in accordance with PDI standard G101.

2.24.9.1 Connection to a properly sized grease trap is REQUIRED for all fixtures that discharge grease-laden waste, e.g. warewashing sinks, food prep sinks, pre-wash sinks for warewashers, woks, and other cooking equipment.

2.24.9.2 Alternative use provision for warewashing sink: If the warewashing sink will be used for washing or thawing food, a separate wasteline connection from each sink compartment through an air-gap into a floor sink is REQUIRED. The installation of a properly sized grease trap downstream of the floor sink is REQUIRED. Alternative use of a warewashing sink for food preparation requires prior approval from the Division of Public Health.

PROCEDURE FOR SIZING A GREASE TRAP TO A SPECIFIC FIXTURE

1. Determine the liquid volume of the fixture in cubic inches (cu in) draining to the grease trap.

2. Determine the liquid capacity of the fixture in gallons (gal).

FINAL REGULATIONS

3. Determine the actual drainage load (75% of fixture capacity).

4. Determine the unit flow rate minimum for drainage period of 2 minutes.

Determine the unit liquid holding capacity minimum (40% of fixture capacity).

5. Select a unit corresponding to minimum unit flow rate and liquid holding capacity.

Select a grease trap for a three compartment warewashing sink with bowl dimensions of 18" W x 24" L x 12" D

1. $Volume = (18in \times 24in \times 2in) \times 3 \text{ cmpts} = (5,184 \text{ cu in}) \times 3 = 15,552 \text{ cubic inches}$

2. $Capacity = Volume \text{ (cu in)} / 231 \text{ (cu in/gal)} = 15,552 / 231 = 67.3 \text{ gallons}$

3. $Drainage \text{ load} = 67.3 \text{ gal} \times 0.75 = 50.4, \text{ or approx. } 50 \text{ gallons}$

4. $Unit \text{ flow rate minimum} = 50 \text{ gallons} / 2 \text{ minutes} = 25 \text{ gallons per minute (gpm)}$

EXAMPLE OF SIZING FOR GREASE TRAP SELECTION

Bold column at far right applies PDI G101 formula to calculate minimum required grease trap flow rate in gallons per minute (gpm).

<u>Width (in)</u>	<u>Length (in)</u>	<u>Depth (in)</u>	<u>Volume (cuin)</u>	<u>Volume (gal)</u>	<u>No of cmpts</u>	<u>Total vol (gal)</u>	<u>Working vol (75%)</u>	<u>Min Flow Rate (gpm)</u>
<u>W</u>	<u>L</u>	<u>D</u>	<u>W x L x D = Vc</u>	<u>Vc / 231 = Vg</u>	<u>#C</u>	<u>Vg x #C = Vtg</u>	<u>Vtg x 0.75 = Vw</u>	<u>Vw / 2min = MFR</u>
16.0	19.0	10.5	3192	13.8	1	13.8	10	5
					2	27.6	21	10
					3	41.5	31	16
16.0	19.0	13.5	4104	17.8	1	17.8	13	7
					2	35.5	27	13
					3	53.3	40	20
16.0	20.0	14.0	4480	19.4	1	19.4	15	7
					2	38.8	29	15
					3	58.2	44	22
18.0	20.0	14.0	5040	21.8	1	21.8	16	8
					2	43.6	33	16
					3	65.5	49	25
18.0	24.0	12.0	5184	22.4	1	22.4	17	8
					2	44.9	34	17
					3	67.3	50	25
20.0	20.0	16.0	6400	27.7	1	27.7	21	10
					2	55.4	42	21
					3	83.1	62	31
22.0	24.0	16.0	8448	36.6	1	36.6	27	14
					2	73.1	55	27
					3	109.7	82	41
24.0	24.0	16.0	9216	39.9	1	39.9	30	15
					2	79.8	60	30
					3	119.7	90	45

Unit liquid holding capacity minimum = $67.3 \times 0.40 = 26.9$ gallons

5. Select a grease trap with a minimum flow rate equal to or greater than 25 gpm

The selected trap also must have a minimum liquid holding capacity of 26.9 gal.

GREASE TRAP SIZING FOR TYPICAL SINK INSTALLATIONS

2.24.10 Water heater: - Hot Water Supply

2.24.10.1 The water heater shall be sized to provide hot water as required to supply both the continuous requirements and the hourly peak demands of the facility. The continuous and hourly demands are based on the type of equipment and number of fixtures consuming hot water as required for food operations.

2.24.10.2 The total hot water availability in gallons per hour (gph) from a water heater is the sum of the unit storage capacity plus the recovery rate at a 100 F rise.

2.24.10.3 A fuel-fired (gas or oil) water heater in a food establishment shall have a minimum storage capacity of thirty (30) gallons; an electric water heater shall have a minimum storage capacity of forty (40) gallons. Storage capacities larger than the minimum shall be required, based on the type of equipment and number of fixtures consuming hot water.

2.25 Appendix F Structural Safety is deleted in its entirety

2.26 Appendix G Vacuum Drainage System is deleted in its entirety

2.27 Procedures for License

Every person desiring to register as a plumber engaged in the business of plumbing in the State of Delaware shall file an application with the Division of Professional Regulation, 861 Silver Lake Blvd. Dover, DE 19904.

2.28 Variances

Upon receipt of written application for a variance, the Deputy Code Official may:

2.28.1 From time to time recommend granting written permission to vary from particular provisions set forth in this Regulation, when the extent of the variation is clearly specified and it is documented to the Secretary, Health and Social Services, or his/her appointed designee's satisfaction that:

2.28.1.1 Such variation is necessary to obtain a beneficial use of an existing facility, and:

2.28.1.2 The variation is necessary to prevent a practical difficulty or unnecessary hardship; and

2.28.1.3 Appropriate alternative measures have been taken to protect the health and safety of the public

and assure that the purpose of the provisions from which the variation is sought will be observed.

2.28.2 Within thirty (30) business days of the receipt of a written application for a variance, the Deputy Code Official shall recommend either granting the variance, or denying the variance or will request further information from the applicant.

2.28.3 If the applicant has been denied a variance upon the recommendation of the Deputy Code Official, the applicant may appeal the decision by filing a written Notice of Appeal to the Secretary, Health and Social Services, or his/her designee, Division of Public Health, 417 Federal Street, Dover, Delaware 19901.

DIVISION OF SOCIAL SERVICES

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

ORDER

Delaware's Temporary Assistance for Needy Families Employment and Training

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 changes to Delaware's Temporary Assistance for Needy Families (TANF) Employment and Training policies. 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 September 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 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

Senate Bill 101, effective July 2, 1999, allows participants in Delaware's Temporary Assistance for Needy

Families (TANF) program to engage in secondary education, post-secondary education, and vocational training as part of the work activity requirement. The participants in this program must be enrolled as full-time students, must be students in good standing, and will be required to have a combination of credit hours and work hours equaling at least 20 hours per week while they are in school. Participants must attend accredited or approved programs and will receive the same support services while in school, such as child care and transportation, as do other TANF participants. By enabling TANF participants to pursue secondary education, post-secondary education, and vocational training, Delaware will create a workforce that is more financially stable and less likely to need public assistance again, while at the same time increasing its tax revenue as these same people earn higher wages. This is a correction to the previously published policy, which increased the minimum combination of credit hours and work to 25 hours.

Summary of Comments Received With Agency Response

The State Council for Persons with Disabilities (SCPD) offered the following observation summarized below. DSS has considered the comment and responds as follows:

The legislation S.B. 101, required participants to have a combination of credit hours and work hours aggregating at least 20 hours per week. However, the current regulation erroneously contains a 25-hour standard. DSS corrects that reference, and a reference to S.B. 101, through this proposed regulation. SCPD endorses the proposed regulation since it conforms to the legislation and favors TANF participants.

Agency Response: Thank you for the endorsement.

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding changes to Delaware’s Temporary Assistance for Needy Families (TANF) Employment and Training policies required by Senate Bill 101, effective July 2, 1999 are adopted and shall be final effective November 10, 2005.

Vincent P. Meconi, Secretary, DHSS, October 13, 2005

DSS FINAL ORDER REGULATION #05-61 REVISIONS:

3006.6 Senate Bill 101- ~~1997~~ 1999 and Employment & Training Activities

Under Senate Bill 101- ~~1997~~ 1999, persons who must participate in Delaware's Temporary Assistance for Needy Families Program, can qualify for participation purposes if they are engaged in secondary education, post-secondary education up to the baccalaureate level, adult basic education or vocational training. Participants must meet the following Senate Bill 101-~~1997~~ 1999 requirements in order to meet participation rates.

(a) Persons who qualify for assistance under Delaware’s Temporary Assistance for Needy Families program shall be eligible to participate in adult basic education, secondary education, post-secondary education up to the baccalaureate level, adult basic education or vocational training as an approved work activity provided each of the following requirements are met:

1. The person does not hold a baccalaureate degree.
2. The secondary, post-secondary education up to the baccalaureate level or vocational training is pursued through an accredited or approved school program.
3. The person is enrolled with enough credit hours to have full-time student status and is in good standing as it relates to attendance and achievement as defined by the program the person is attending.
4. If the person attending school would otherwise be subject to a work requirement in order to receive assistance under TANF, the combination of credit hours and work hours shall equal at least ~~25~~ 20 hours per week while the program is in session. This work requirement may be met through work-study, internships, externships, or through work as a research assistant. If possible, during scheduled breaks, the work requirement will be the same as for other program participants, with work experience related to the field of study. However, if the student is enrolled full-time for the next semester and work activity placement cannot be arranged for the duration of the break in classes, it may be excused.

For every 1 credit hour, count 1.5 hours of study as part of the fulfillment of the required work participation hours. Therefore, if a persons full-time status is 12 credit hours count the 12 hours plus an additional 18 hours (12 x 1.5=18) for a total of 30 hours of weekly participation.

(b) Loans, scholarships, grants and work-study received by the recipient to pay for tuition and materials are

excluded in determination of eligibility for assistance under TANF or the amount of assistance received by the recipient.

(c) The Department of Health and Social Services shall advise all persons of this section at application interviews and, at a minimum, at each recertification appointment.

(d) Persons attending education and training programs under this section shall receive support services, such as assistance with transportation and child care, while they attend the educational or vocational training program on the same basis as support services are provided other persons who are receiving assistance under TANF.

(e) If program completion will occur within one semester or quarter after the time limit expires, an extension may be granted for that semester or quarter.

(f) Persons sanctioned while attending educational or vocational programs shall be afforded the same due process as provided other persons under TANF.

clarifying the DSSM to reflect current practices. The several housekeeping changes for clarification and process purposes include removing language, correcting grammatical and typographical errors.

For example:

- Under DSSM 9016.2, *Obtaining Food Stamps Benefits* clarifies that Food Stamp identification cards are not required for EBT.
- Under DSSM 9039.1, *Thirty-Day Processing* clarifies the process that ensures the client has the opportunity to participate by the 30th day after the application date.
- Under DSSM 9041.1, *Processing Standards* revises the issuance procedures due to EBT.
- Under DSSM 9063.1, *Anticipating Income* revises the language to correct grammatical and typographical errors.
- Under DSSM 9078.1, *Residents of Drug/Alcoholic Treatment and Rehabilitation Programs* removes the reference to DSSM 9016 and inserts policy reference language that the authorized representative must be employed by the treatment facility.
- Under DSSM 9079.1, *Replacing Food Benefits Issued by Electronic Benefit Transfer* removes the word “below” and inserts the policy reference number.

DIVISION OF SOCIAL SERVICES

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

ORDER

Food Stamp Policy

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 Food Stamp Program. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10113 and its authority as prescribed by 31 **Delaware Code** Section 512.

Nature of the Exempt Regulation

Citation

- 2 Del.C. §10113

Summary of Proposed Changes

The purpose of this amendment is to update Food Stamp policy so that it is consistent with the policies regarding the implementation of Electronic Benefit Transfer (EBT). DSS is not changing existing policies or procedures, but

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed revision regarding housekeeping changes to the policies of the Food Stamp Program be adopted informally as an exempt regulation and shall become effective November 10, 2005.

Vincent P. Meconi, Secretary, DHSS, October 13, 2005

DSS EXEMPT REGULATION #05-59 REVISIONS:

9016.2 Obtaining Food Stamps Benefits

An authorized representative may be designated to obtain benefits. Encourage households to name an authorized representative for obtaining benefits in case of illness or other circumstances, which might prevent the household from obtaining their benefits. The name of the

authorized representative must be recorded in the household's case record and ~~and on the food stamp identification (ID) card in DCIS.~~

(Break in Continuity of Sections)

9039.1 Thirty-Day Processing

~~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 application was filed except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to release from the institution per DSSM 9015. 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 application was filed. The following exception applies for residents of public institutions who apply jointly for SSI and food stamp benefits prior to release from the institution per DSSM 9015. For residents of public institutions who apply for food stamps prior to their release from the institution, provide an opportunity to participate as soon as possible, but not later than 30 calendar days from the date of release of the applicant from the institution.~~

The 30 day period begins on the day following the date of the application (do not include the date of application in the thirty (30) days).

Action (computer input) must take place on or before the ~~30th~~ 26th day for mailed EBT cards. Do not delay due to weekends or holidays. If work cannot be completed by the ~~30th~~ 26th day, the worker issues a pending notice (Form 340) on the ~~30th~~ 26th day. If the ~~30th~~ 26th day falls on a weekend or holiday, action must take place on the last preceding day. Action must take place on the 27th, 28th, or 29th day for those clients picking up their EBT cards at a card issuance site. This ensures the client can have access to their benefits by the 30th day.

Instances of computer error, such as computer down time, will still be considered errors by FNS, but worker will document the reason in the case record.

(Break in Continuity of Sections)

9041.1 Processing Standards

For households entitled to expedited service, benefits must be available to the recipient not later than the seventh calendar day following the date an application was filed. For a resident of a public institution who applies for benefits prior to his/her release from the institution in accordance with DSSM 9015 and who is entitled to expedited service,

the filing date is the date of release of the applicant from the institution. There are no exceptions to these requirements for weekends or holidays.

The table below shows filing days, the respective days by which the data must be system- entered; and the day the benefits are mailed, ~~and the day the benefits are received by made available to~~ the household.

Day Applied	Client Last Day to Enter into DCIS	Day to Mailed	Day Benefits Must Receive
Monday	Thursday	Friday	Monday
Tuesday	Friday	Monday	Tuesday
Wednesday	Monday	Tuesday	Wednesday
Thursday	Tuesday	Wednesday	Thursday
Friday	Wednesday	Thursday	Friday

<u>Day of Application</u>	<u>Last Day to Confirm in DCIS</u>	<u>Day Benefits Made Available</u>
<u>Monday</u>	<u>Thursday</u>	<u>Friday</u>
<u>Tuesday</u>	<u>Friday</u>	<u>Monday</u>
<u>Wednesday</u>	<u>Monday</u>	<u>Tuesday</u>
<u>Thursday</u>	<u>Tuesday</u>	<u>Wednesday</u>
<u>Friday</u>	<u>Wednesday</u>	<u>Thursday</u>

When an applicant comes in and is found eligible for expedited services, but they do not want the benefits because of anticipated changes (a move or new household members), we are required to issue the household expedited benefits. The only way we cannot expedite is when identity has not been verified or the household fails to file a completed application.

(Break in Continuity of Sections)

9063.1 Anticipating Income

Take into account the income already received by the household during the certification period and any anticipated income, which the household and the Division are reasonably certain will be received during the remainder of the certification period. Income is not to be counted at all if it is uncertain what amount is to be received or when it is to be received.

As an example of uncertain income, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits may be uncertain as to the timing and amount of the initial payment. Do not anticipate this income unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be

anticipated with reasonable certainty will be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the ~~household may elect to income average~~ income may be averaged. Households are to be advised to report all changes in gross monthly income as required in DSSM 9085. Impending receipt of ~~an~~ a TANF, RCA or GA grant will be considered reasonably certain only when all technical and financial eligibility factors have been satisfied and a decision of eligibility has been reached.

(Break in Continuity of Sections)

9078.1 Residents of Drug/Alcoholic Treatment and Rehabilitation Programs

Narcotics addicts or alcoholics who regularly participate in publicly operated or private non-profit drug or alcoholic treatment and rehabilitation programs on a resident basis may voluntarily apply for the Food Stamp Program.

Resident addicts and alcoholics and their children, will have their eligibility determined as one household. Certify residents of addict/alcoholic treatment centers by using the same provisions that apply to all other applicant households except that certification must be accomplished through an authorized representative ~~per DSSM 9016~~ who is employed by the program.

(Break in Continuity of Sections)

9079.1 Replacing Food Benefits Issued by Electronic Benefits Transfer (EBT)

Food stamp benefits issued by EBT can only be replaced under two conditions:

- Unauthorized use of the account based on the conditions listed ~~below~~ under DSSM 9079.2; and
- Food purchased with food stamp benefits that was destroyed in a household misfortune or disaster.

The primary payee (cardholder) is responsible for the security and safeguarding of the EBT card and Personal Identification Number (PIN), including the careful selection of authorized representatives.

9079.2 Unauthorized Use of the Account

The reason DSS issues food stamp benefits by EBT is to minimize the loss and theft of client benefits.

DSS will replace benefits issued by EBT due to the unauthorized use of the account only if the loss occurred:

- after a report of a lost or stolen EBT card is made to the e-Funds Customer Support number at 1-800-526-9099;

- because of DSS local office card/PIN issuance error; or
- because of an unlawful or other erroneous action on the part of DSS or the EBT contractor.

DSS will not replace food stamp benefits withdrawn from an EBT account before a report of a lost or stolen EBT card is made to the e-Funds Customer Support Unit.

DSS will replace food stamp benefits withdrawn from an EBT account after a report of a lost or stolen EBT card is made to the e-Funds Customer Support Unit. Before a replacement is issued, DSS will verify the time/date of the report to e-Funds and the time/date of the loss of benefits. DSS will not replace EBT issued benefits that were misused by an authorized representative.

A household member, or authorized representative, must sign and return to the food stamp office an Affidavit for Replacement of EBT Food Benefits. The affidavit will attest to the loss and must be made within ten days of the report of the loss. If the household does not sign and return the affidavit within ten days of the report of the loss DSS will deny the request for replacement of benefits.

DIVISION OF SOCIAL SERVICES

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

ORDER

Organizational Structure and Description of the Division of Medicaid and Medical Assistance (DMMA)

Nature of the Proceedings

Delaware Health and Social Services (“Department”)/ Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding the organizational structure and description of the Division of Medicaid and Medical Assistance (DMMA). The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10113 and its authority as prescribed by 31 **Delaware Code** Section 512.

Nature of the Exempt Regulation

Citations:

- 42 CFR §431.11, *Organization for Administration*

- 29 Del.C. §10111, *Organization regulations; rules of procedure*
- 29 Del.C. §10113, *Adoption of Regulations; exemptions*

Amending the Following Title XIX Medicaid State Plan Pages:

- Pages 2 and 7;
- Attachment 1.2-A and Attachment 1.2-A, Page 1;
- Attachment 1.2-B and Attachment 1.2-B, Page 1;
- Attachment 1.2-C; and,
- Attachment 1.2-D (new page).

Background

Historically, Medicaid has not had stand-alone divisional status; it had been part of the Division of Social Services. The Delaware Legislature approved the Delaware Health and Social Services' reorganization plan as part of the State Fiscal Year 2006 Budget (House Bill No. 300). Effective July 1, 2005, this reorganization involved separating Medicaid and other medical assistance programs from the Division of Social Services (DSS) and created a new Division of Medicaid and Medical Assistance (DMMA). The DMMA is responsible for managing Medicaid as well as the other medical assistance programs that had been administered by DSS. Program and policy development for Medicaid, the Delaware Healthy Children Program (DHCP), the Delaware Prescription Assistance Program (DPAP), the Non-Citizen Healthcare Program, and the Chronic Renal Disease Program resides in DMMA. Responsibility for medical and financial eligibility for Medicaid Long Term Care programs reside in DMMA. The Nursing Facility Reimbursement unit and the nurses who approve Private Duty Nursing and PPEC services for children reside in DMMA. It is important to note that the Medicaid Long Term Care financial eligibility staff continue to determine eligibility for Food Stamps for their recipients.

Other units that support the medical assistance programs, such as SURs, TPL/ER, Quality Management, Managed Care and Diamond State Partners staff, resides in DMMA. Responsibility for Medicaid eligibility associated with Temporary Assistance for Needy Families (TANF) and other poverty-related groups remains in DSS. DSS continues to administer Food Stamps, Temporary Assistance for Needy Families (TANF), General Assistance and Child Care.

Summary of Proposed Amendment

The agency submitted an amendment to the Centers for Medicare and Medicaid Services (CMS) on September 19, 2005 to update the organizational charts in the Title XIX Medicaid State Plan.

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed revision regarding the organizational structure and description of the Division of Medicaid and Medical Assistance (DMMA) be adopted informally as an exempt regulation and shall become effective November 10, 2005.

Vincent P. Meconi, Secretary, DHSS, October 13, 2005

DMMA EXEMPT REGULATION #05-58a REVISION:

Page 2

STATE: DELAWARE

Citation

42 CFR 431.10
AT-79-29

1.1 Designation and Authority

- (a) ~~Department of Delaware~~ Health and Social Services is the single State agency designated to administer or supervise the administration of the Medicaid program under title XIX of the Social Security Act. (All references in this plan to "the Medicaid agency" mean the agency named in this paragraph.)

ATTACHMENT 1.1-A is a certification signed by the State Attorney General identifying the single State agency and citing the legal authority under which it administers or supervises administration of the program.

DMMA EXEMPT REGULATION #05-58b

Revision: HCFA-AT-80-38 (BPP)
May 22, 1980

Page 7

STATE: DELAWARE

Citation
42 CFR 431.11
AT-79-29

- 1.2 Organization for Administration
- (a) ATTACHMENT 1.2-A contains a description of the organization and functions of the Medicaid Agency and an organization chart of the agency.
- (b) Within the State agency, the MEDICAL ASSISTANCE PROGRAM DIVISION OF MEDICAID & MEDICAL ASSISTANCE has been designated as the medical assistance unit. ATTACHMENT 1.2-B contains a description of the organization and functions of the medical assistance unit and an organization chart of the unit.
- (c) ATTACHMENT 1.2-C contains a description of the kinds and numbers of professional medical personnel and supporting staff used in the administration of the plan and their responsibilities.
- (d) Eligibility determinations are made by State or local staff of an agency other than the agency named in paragraph 1.1(a). ATTACHMENT 1.2-D contains a description of the staff designated to make such determinations and the functions they will perform.
- Not applicable. Only staff of the agency named in paragraph 1.1(a) make such determinations.

DMMA EXEMPT REGULATION #05-58c

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE OF DELAWARE

Attachment 1.2-A

Organization and Function of the State Agency

~~The Department Of Delaware~~ Health and Social Services (DHSS) is the single State agency for the administration of Medicaid. ~~The Medical Assistance Unit Division of Medicaid & Medical Assistance (DMMA) within the Division of Social Services (DSS)~~ DHSS has direct responsibility for administering the Medicaid program.

The Director of ~~DSS~~ DMMA reports to the Secretary of DHSS. ~~The Director of the Medical Assistance Program, who is also the Deputy Director of DSS, reports to the Director of DSS.~~

DMMA EXEMPT REGULATION #05-58d

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE OF DELAWARE

Attachment 1.2-B

Organization and Function of the Medical Assistance Unit

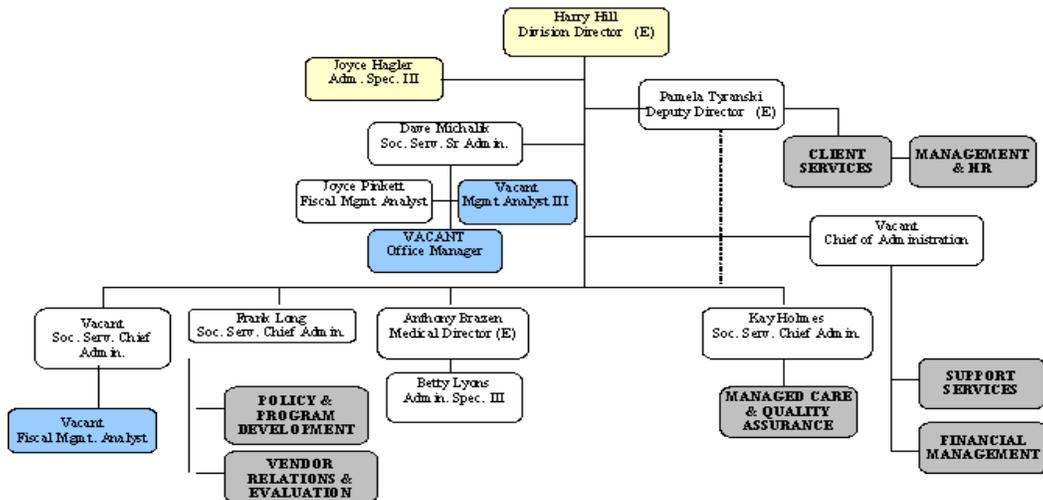
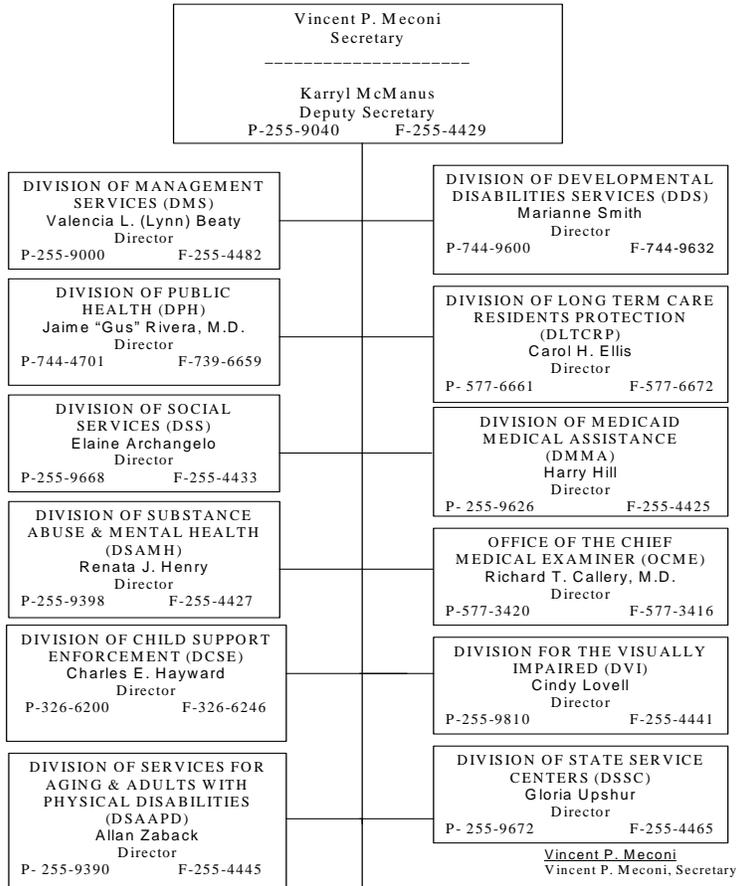
~~The Medical Assistance Unit~~ Division of Medicaid & Medical Assistance (DMMA) is a separate ~~unit~~ Division under the ~~Director of the Division of Social Services~~ Secretary of Department of Delaware Health and Social Services.

~~The unit~~ DMMA consists of management, professional, technical, clerical and medical personnel, and includes a Medicaid Director, program administrators, and support personnel. ~~The Unit~~ DMMA has responsibility for all Medicaid services in the State.

Medicaid claims processing is contracted out to a Fiscal Agent. There are Medicaid Eligibility Determination Units in each of the counties of the State, which carry out functions related to long-term care and non-grant medical assistance.

FINAL REGULATIONS

Delaware Health & Social Services



DMMA EXEMPT REGULATION #05-58e
STATE PLAN UNDER TITLE XIX OF THE SOCIAL
SECURITY ACT

STATE OF DELAWARE

Attachment 1.2-D

Description of Staff Designated to Make Eligibility
Determinations

The Division of Medicaid & Medical Assistance (DMMA) is responsible for managing Medicaid as well as the other medical assistance programs. Program and policy development for Medicaid, the Delaware Healthy Children Program (DHCP), the Delaware Prescription Assistance Program (DPAP), the Non-Citizen Health care Program, and the Chronic Renal Disease Program (CRDP) resides in DMMA. Responsibility for medical and financial eligibility for Medicaid Long Term Care (LTC) programs resides in DMMA.

Responsibility for Medicaid eligibility associated with Temporary Assistance for Needy Families (TANF) and other poverty-related groups remains in DSS.

The Social Security Administration (SSA) is responsible for making eligibility determinations for Supplemental Security Income (SSI) for Aged, Blind or Disabled recipients. DMMA is responsible for issuing a Medicaid Identification Card to the SSI recipient. Medicaid eligibility information for SSI recipients is transmitted through the State Data Exchange (SDX) System.

DEPARTMENT OF LABOR
DIVISION OF EMPLOYMENT AND TRAINING
 Council on Apprenticeship and Training
 Statutory Authority: 19 Delaware Code,
 Section 202(a) (19 **Del.C.** §202(a))

ORDER

A public hearing was held on September 27, 2005 to receive public comments relating to proposed changes to Regulation 4.0 – Eligibility and Procedure for State Registration; Regulation 6.0 – Standards of Apprenticeship; and Regulation 13.0 – Program Registration Denial. The members of Council present recommended that the Secretary of Labor adopt the proposal as it was published in the *Register of Regulations*, Vol. 9, Issue 2 (August 1, 2005).

Summary of the Evidence and Information Submitted
 No written or verbal comment was received.

Recommended Findings of Fact With Respect to the Evidence and Information

The Council is persuaded that these changes are consistent with the current administration of the program. Furthermore, the change to Regulation 13.0 provides more information regarding grounds for Program Registration Denial and the procedure for reapplication following denial.

Recommendation

The proposed changes are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 27th day of September, 2005.

COUNCIL ON APPRENTICESHIP AND TRAINING

Robert Buccini, Chairman	Patricia Creedon
Dale Derrickson	Andrew S. Nowell
R. Joseph Johnson	David G. Kitto

Decision and Effective Date

Having reviewed and considered the record and recommendations of members of the Council on Apprenticeship and Training, the proposed changes to Regulations 4.0, 6.0, and 13.0 are hereby adopted and made effective 10 days following publication of the final regulation in the *Register of Regulations*.

Text and Citation

The text appears in the Register of Regulations, Vol. 9, Issue 2 (August 1, 2005).

DEPARTMENT OF LABOR
 Thomas B. Sharp, Secretary of Labor

Rules and Regulations
Division of Employment and Training Apprenticeship Programs

106 Apprenticeship and Training Regulations

1.0 Purpose and Scope

(Formerly 106.1)

1.1 Section 204, Chapter 2, Title 19, **Delaware Code** authorizes and directs the Department of Labor to formulate

regulations to promote the furtherance of labor standards necessary to safeguard the welfare of Apprentices and to extend the applications of such standards by requiring their inclusion in apprenticeship contracts.

1.2 The purpose of this chapter is to set forth labor standards to safeguard the welfare of Apprentices and to extend the application of such standards by prescribing policies and procedures concerning the registration of acceptable Apprenticeship Programs with the Delaware Department of Labor.

1.3 These labor standards and procedures cover the Registration and Cancellation of Apprenticeship Agreements and of Apprenticeship Programs; and matters relating thereto. Any questions [and/or] to request a copy of Delaware's Prevailing Wage Regulations regarding the employment of apprentices on state-funded construction projects must be referred to:

Delaware Department of Labor
Office of Labor Law Enforcement
4425 North Market Street
Wilmington, DE 19802
(302) 761-8200

2.0 Declaration of Policy

(Formerly 106.1)

2.1 It is declared to be the policy of this State to:

2.1.1 encourage the development of an apprenticeship and training system through the voluntary cooperation of management and workers and interested State agencies and in cooperation with other states and the federal government;

2.1.2 provide for the establishment and furtherance of Standards of Apprenticeship and Training to safeguard the welfare of Apprentices and trainees;

2.1.3 aid in providing maximum opportunities for unemployed and employed persons to improve and modernize their work skills; and

2.14 contribute to a healthy economy by aiding in the development and maintenance of a skilled labor force sufficient in numbers and quality to meet the expanding needs of industry and to attract new industry.

3 DE Reg. 641 (11/1/99)

3.0 Definitions

(Formerly 106.2)

3.1 As used in this part:

"**Administrator**" refers to the Administrator of the Office of Apprenticeship and Training for the State Department of Labor.

"**Agreement**" refers to a written agreement between an Apprentice and either his/her employer or an

Apprenticeship Committee acting as agent for the Employer which contains the terms and conditions of the employment and training of the Apprentice.

"**Apprentice**" refers to a person at least sixteen years of age who is engaged in learning a recognized skilled trade through actual work experience under the supervision of a Journey person. This person must enter into a written Apprenticeship Indenture Agreement with a registered apprenticeship sponsor. The training must be supplemented with properly coordinated studies of related technical instruction. All hours worked by a registered apprentice, while in the employ of the apprentice's sponsor, shall be considered apprenticeship hours to be counted toward wage progression increments and completion of his/ her on-the-job training hours as set forth in the Apprenticeship Indenture Agreement.

"**Apprenticeship Standards**" refers to the document which embodies the procedure for the selection and the training of apprentices, setting forth the terms of the training, including wages, hours, conditions of employment, training on the job, and related instruction. The duties and responsibilities of the Sponsor, including administrative procedures, are set forth in their company's policies.

"**BAT**" refers to the U.S. Department of Labor, Bureau of Apprenticeship and Training.

"**Cancellation**" refers to the deregistration of a Program or the Termination of an Agreement.

"**Committee**" refers to those persons designated by the Sponsor to act on its behalf in the administration of the Apprenticeship Program. A Committee may be "joint" i.e., it is composed of an equal number of representatives of the employer(s) and of the employee(s) represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate or administer a Program and enter into Agreements with Apprentices. A Committee may be "unilateral" or "non-joint" and shall mean a Program Sponsor in which a bona fide collective bargaining agent is not a participant.

"**Council**" refers to the Governor's Advisory Council On Apprenticeship and Training.

"**Delaware Resident Contractor**" includes any general contractor, prime contractor, construction manager, subcontractor or other type of construction contractor who regularly maintains a place of business in Delaware. Regularly maintaining a place of business in Delaware does not include site trailers, temporary structures associated with one contract or set of related contracts, nor the holding, nor the maintaining of a post office box within this State. The specific intention of this definition is to maintain consistency with Title 30, **Delaware Code**, section 2501(3) "Resident Contractor".

"**Director**" refers to the Director of the Division of Employment and Training.

"**Division**" refers to the Division of Employment and Training, Department of Labor, state of Delaware.

"**Employer**" refers to any person or organization employing an Apprentice, whether or not such person or organization is a party to an Apprenticeship Agreement.

"**Journey person**" refers to a worker who is fully qualified as a skilled worker in a given craft or trade.

"**On-site Visit**" refers to a visit from a representative of the State of Delaware, Department of Labor, Division of Employment and Training to the office and/or the actual field job-site of the Sponsor, for the purposes of inspecting and/or monitoring the progress and training of the Registered Apprentice. This monitoring may include but is not limited to interviewing the Apprentice and the auditing of pertinent documents relative to the maintenance and enforcement of the terms of the Apprenticeship Agreement.

"**Program**" refers to an executed apprenticeship plan which contains all terms and conditions for the qualifications, recruitment, selection, employment and training of Apprentices, including such matters as the requirements for a written Apprenticeship Agreement.

"**Registrant or Sponsor**" refers to any person, association, committee or organization in whose name or title the Program is (or is to be) registered or approved regardless of whether or not such entity is an Employer. To be eligible, the Registrant or Sponsor must be a "Delaware Resident Contractor" or hold and maintain a "Delaware Resident Business License". The Registrant or Sponsor must hold and maintain a permanent place of business, not to include site trailers or other facilities serving only one contract or related set of contracts. To be eligible to be a Registrant or Sponsor, Employer/Business, association, committee or organization must have the training program and an adequate number of Journey persons to meet the ratio requirements as stated for that particular apprenticeable occupation.

"**Registration**" refers to the acceptance and recording of an Apprenticeship Program by the Delaware Department of Labor, Office of Apprenticeship and Training, as meeting the basic standards and requirements of the Division for approval of such Program. Approval is evidenced by a Certificate or other written indicia documentation. Registration also refers to the acceptance and recording of Apprenticeship Agreements thereof, by the Delaware Department of Labor, Office of Apprenticeship and Training, as evidence of the participation of the Apprentice in a particular Registered apprenticeship Program.

"**Related Instruction**" refers to a formal and systematic form of instruction designed to provide the Apprentice with knowledge of the theoretical and technical subjects related to his/her trade.

"**Secretary**" refers to the Secretary of Labor.

"**State**" refers to the State of Delaware.

"**Supervisory Inspection**" shall mean the same as "ON SITE VISIT".

3 DE Reg. 641 (11/1/99)

4.0 Eligibility and Procedure for State Registration

(Formerly 106.3)

4.1 No Program or Agreement shall be eligible for State Registration unless it is in conformity with the requirements of this chapter, and the training is in an apprenticeable occupation having the characteristics set forth in section 5.0 herein.

4.2 Apprentices must be individually registered under a Registered Program with the State of Delaware, Department of Labor, Division of Employment and Training. Such registration shall be ~~effected by filing copies of each Agreement with the State effective when the completed agreement is submitted to and signed by the Administrator.~~ Sponsors registered with states other than the State of Delaware shall not be construed as being registered for State of Delaware Apprenticeship Program Registration purposes.

4.3 The State must be properly notified through the Department of Labor, Division of Employment & Training, Office of Apprenticeship & Training of cancellation, suspension or termination of any Agreements, (with cause for same) and of apprenticeship completions. The State will attempt, where applicable, to verify the cause of apprenticeship termination.

4.4 Approved Programs shall be accorded Registration, evidenced by a Certificate of Registration. The Certificate of Registration for an approved Program will be made in the name of the Program Sponsor and must be renewed every four (4) years.

4.5 Any modification(s) or change(s) to registered standards shall be promptly submitted to the State through the appropriate office no later than thirty (30) days and, if approved, shall be recorded and acknowledged as an amendment to such standards.

~~4.6 The request for registration and all documents and data required by this chapter shall be submitted in triplicate. Individual Agreements shall be submitted to the State Apprenticeship and Training Office for Registration no later than thirty (30) calendar days after the trainee has started work in the registered Program. Agreements submitted after said time shall be considered a violation of the rules and regulations and will not be honored.~~

~~4.7~~ 4.6 Under a Program proposed for Registration by an Employer or Employer's Association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any way in the operation of the Program, and such participation is exercised, written acknowledgment of a union agreement or "no objection" to the Registration is required. Where no such participation is evidenced and practiced, the Employer shall simultaneously furnish to the union a copy of its Program application. In addition, upon receipt of the application for the Program, the State shall promptly send by certified mail to such local union another copy of the Program application and together with a notice that union comments will be accepted for thirty (30) days after the date of the agency transmittal.

~~4.8~~ 4.7 Where the employees to be trained have no collective bargaining agent, a program plan may be proposed for Registration by an Employer or groups of Employers.

~~4.9~~ 4.8 A Sponsor may register Programs in one or more occupations simultaneously or individually with the provision that the Program Sponsor shall, within sixty (60) days of Registration, be actively training Apprentices on-the-job and related study must begin within twelve (12) months for each occupation for which Registration is granted. At no time shall an individual Apprentice be employed in more than one (1) occupation, nor signed to more than one (1) Apprenticeship Agreement at any given time.

~~4.10~~ 4.9 Each occupation for which a Program Sponsor holds Registration shall be subject to Cancellation if no active training of Apprentices on the job has occurred within a consecutive one hundred eighty (180) day period or if no Related Instruction has begun within a twelve (12) month period from the date of Registration or in any twelve (12) month period during the duration of that Agreement.

~~4.11~~ 4.10 Each Sponsor of a Program shall submit to an on-site inspection or supervisory visit and shall make all documents pertaining to the Registered Program available to appropriate representatives of the Apprenticeship and Training Office or designated service personnel upon request.

~~4.12~~ 4.11 Each Sponsor shall be so routinely examined, by the Office of Apprenticeship and Training, at least annually, but not more than every six (6) months, unless a specific violation is suspected or a specific document is being investigated.

~~4.13~~ 4.12 The Sponsor shall notify the State Registration Agency of termination or lay-off from employment of a Registered Apprentice or of the completion of the terms of the Apprenticeship Agreement within thirty (30) calendar days of such occurrence.

~~4.14~~ 4.13 The Sponsor shall notify the State of failure to obtain and register the Apprentice in an approved course of Related Instruction as stated and detailed on the Apprenticeship Agreement within (30) calendar days of such occurrence.

~~4.15~~ 4.14 It shall be the responsibility of the Sponsor to monitor the progress and attendance of the Apprentice in all phases of training such as, but not limited to, on-the-job and/or Related Training.

3 DE Reg. 641 (11/1/99)

5.0 Criteria for Apprenticeable Occupations

(Formerly 106.4)

5.1 An Apprenticeable occupation is a skilled trade which possesses all of the following characteristics:

5.1.1 It is customarily learned in a practical way through training and work on the job.

5.1.2 It is clearly identified and commonly recognized throughout the industry, or recognized with a positive view towards changing technology or approved by the Delaware Department of Labor, Office of Apprenticeship & Training.

5.1.3 It involves manual, technical or mechanical skills and knowledge which require a minimum of two thousand (2,000) hours of on-the-job training, not including the time spent in Related Instruction.

5.1.4 It customarily requires Related Instruction to supplement the on-the-job training.

5.1.5 It involves the development of skills sufficiently broad enough to be applicable in similar occupations throughout the industry, rather than a restricted application to the products or services of any one company.

6.0 Standards of Apprenticeship

(Formerly 106.5)

6.1 The following standards are prescribed for a Program.

6.1.1 The Program must include an organized, written plan delineating the terms and conditions of employment. The training and supervision of one or more Apprentices in an apprenticeable occupation must become the responsibility of the Sponsor who has undertaken to carry out the Apprentice's training program.

6.2 The standards must contain provisions concerning the following:

6.2.1 The employment and training of the Apprentice in a skilled occupation;

6.2.2 an equal opportunity pledge stating the recruitment, selection, employment and training of Apprentices during their apprenticeships shall be without discrimination based on: race, color, religion, national origin

or sex. When applicable, an affirmative action plan in accordance with the State's requirements for federal purposes must be instituted;

6.2.3 the existence of a term of apprenticeship, not less than one year or two thousand (2,000) hours consistent with training requirements as established by industry practice;

6.2.4 an outline of the work processes in which the Apprentice will receive supervised work experience and on-the-job training, and the allocation of the approximate time to be spent in each major process;

6.2.5 provision for organized related and supplemental instruction in technical subjects related to the trade. A minimum of one hundred forty-four (144) hours for each year of apprenticeship is required. Such instruction may be given in a classroom, through trade, industrial or approved correspondence courses of equivalent value or in other forms approved by the State Department of Labor, Office of Apprenticeship and Training;

6.2.6 a progressively increasing schedule of wage rates to be paid the Apprentice, consistent with the skill acquired which shall be expressed in percentages of the established Journey person's hourly wage;

6.2.7 Minimum Wage Progression for 1 through 7 year Apprentice Program as follows:

6.2.7.1 1 to 7 year programs

6.2.7.2 starting pay must be at least minimum wage

6.2.7.3 final period must be at least 85%

1 YEAR [OR] 2,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 85%

2 YEAR [OR] 4,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 51%
- 3rd 1,000 hours: 63%
- 4th 1,000 hours: 85%

3 YEAR [OR] 6,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 48%
- 3rd 1,000 hours: 57%
- 4th 1,000 hours: 65%
- 5th 1,000 hours: 74%
- 6th 1,000 hours: 85%

4 YEAR [OR] 8,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 46%

- 3rd 1,000 hours: 53%
- 4th 1,000 hours: 59%
- 5th 1,000 hours: 65%
- 6th 1,000 hours: 71%
- 7th 1,000 hours: 78%
- 8th 1,000 hours: 85%

5 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 45%
- 3rd 1,000 hours: 50%
- 4th 1,000 hours: 55%
- 5th 1,000 hours: 60%
- 6th 1,000 hours: 65%
- 7th 1,000 hours: 70%
- 8th 1,000 hours: 74%
- 9th 1,000 hours: 79%
- 10th 1,000 hours: 85%

6 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 44%
- 3rd 1,000 hours: 48%
- 4th 1,000 hours: 52%
- 5th 1,000 hours: 56%
- 6th 1,000 hours: 60%
- 7th 1,000 hours: 64%
- 8th 1,000 hours: 68%
- 9th 1,000 hours: 72%
- 10th 1,000 hours: 76%
- 11th 1,000 hours: 81%
- 12th 1,000 hours: 85%

7 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

- 1st 1,000 hours: 40%
- 2nd 1,000 hours: 43%
- 3rd 1,000 hours: 47%
- 4th 1,000 hours: 50%
- 5th 1,000 hours: 54%
- 6th 1,000 hours: 57%
- 7th 1,000 hours: 61%
- 8th 1,000 hours: 64%
- 9th 1,000 hours: 68%
- 10th 1,000 hours: 71%
- 11th 1,000 hours: 74%
- 12th 1,000 hours: 78%
- 13th 1,000 hours: 81%
- 14th 1,000 hours: 85%

6.2.8 that the entry Apprentice wage rate shall not be less than the minimum prescribed by State statute or by the Fair Labor Standards Act, where applicable;

6.2.9.1 In no case other than sickness or injury on the part of the Apprentice, shall a Sponsor hold back an Apprentice's progression more than one period or wage increment without the written consent of the Administrator;

6.2.9 That the established Journeyman's hourly rate applicable among all participating Employers be stated in dollars and cents. No Apprentice shall receive an hourly rate less than the percentage for the period in which he/she is serving applied to the established Journeyman's rate unless the Sponsor has documented the reason for same in the individual Apprentice's progress report and has explained the reason for said action to the Apprentice and Registration Agency.

6.2.10 That the established Journeyman's rate provided for by the Standards be reviewed and/or adjusted annually. Sponsors of Programs shall be required to give proof that all employees used in determining ratios of Apprentices to Journeymen shall be receiving wages at least in the amount set for Journeymen in their individual program standards, or are qualified to perform as Journey persons and must be paid at least the minimum journeyman rate;

6.2.11 That the minimum hourly Apprentice wage rate paid during the last period of apprenticeship not be less than eighty-five (85) percent of the established Journeyman wage rate. Wages covered by a collective bargaining agreement takes precedent over this section. However, wages may not be below the State's required minimum progression.

6.3 The Program must include a periodic review and evaluation of the Apprentice's progress in job performance and related instruction, and the maintenance of appropriate progress records.

6.4 The ratio of Apprentices to Journeymen should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements.

6.4.1 The ratio of Apprentices to Journeymen shall be one Apprentice up to each five (5) Journeymen employed by the prospective Sponsor unless a different ratio based on an industry standard is contained in the signed Standards of Apprenticeship Agreement.

6.4.2 The following have been recognized to be the industry standard for the listed trades:

- Ratio of Apprentice Journeymen*
- 1 up to 4 Sheet Metal Worker
- 1 up to 4 Insulation Worker

- 1 up to 4 Asbestos Worker
- 1 up to 3 Industrial Maintenance Mechanic
- 1 up to 3 Plumbers/Pipefitters
- 1 up to 3 Electrician
- 1 up to 3 Precision Instrument Repairers
- 1 up to 3 Glaziers
- 1 up to 2 Roofers
- 1 up to 1 Sprinkler Fitters

* The ratio has no effect until the second apprentice is registered. Only one Journeyman is necessary in any trade for the first Apprentice.

6.4.3 Exceptions.

6.4.3.1 If a collective bargaining agreement stipulates a ratio of Apprentices to Journeyman, it shall prevail provided the Bargaining Ratio is not lower than the State standard.

6.4.3.2 A deviation from the established standard may be granted by the Administrator upon written request after considering the needs of the plant and/or trade with consideration for growth, the availability of relevant training, and the opportunity for employment of skilled workers following the completion of their training. Such exception shall last no more than one year but may be renewed upon written request.

5 DE Reg. 204 (7/1/2001)

~~6.5 At least forty (40) percent of all Apprentices registered must complete training. Apprentices who voluntarily terminate their apprenticeships or employment shall not be counted in reference to this section. Programs with fewer than five (5) Apprentices shall not be required to comply with this part.~~

~~6.6~~ 6.5 A probationary period shall be in relation to the full apprenticeship term with full credit toward completion of apprenticeship.

~~6.7~~ 6.6 Adequate and safe equipment facilities for training and supervision and safety training for Apprentices on the job and in Related Instruction are required.

~~6.8~~ 6.7 The required minimum qualifications for persons entering an Apprentice Program ~~as defined in Section 3.1~~ must be met.

~~6.9~~ 6.8 Apprentices must sign an Agreement. The Agreement shall directly, or by reference, incorporate the standards of the Program as part of the Agreement.

~~6.10~~ 6.9 Advance standing or credit up to 25% OJT hours of the particular trade term in question for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any accorded progression step may be granted. The granting of a greater amount of credit shall be set at the discretion of the Administrator based on supportive documentation submitted

by the Sponsor. In no case shall more than one half of the particular trade term in question be granted unless the time in question has been spent in any state or federally registered program.

6.10 When a registered apprentice is no longer employed by a Sponsor, the Sponsor shall determine the time and training earned during his or her employment and send notice of such progress to the Apprenticeship and Training Section of the Delaware Department of Labor and to the apprentice in writing.

6.11 Transfer of Employer's training obligation through the sponsoring Committee if one exists and as warranted, to another Employer with consent of the Apprentice and the Committee or Program Sponsors, with full credit to the Apprentice for satisfactory time and training earned, may be afforded with written notice to, and approval of, the Registration Agency.

6.12 These Standards shall contain a statement of assurance of qualified training personnel.

6.13 There will be recognition for successful completion of apprenticeship evidenced by an appropriate certificate.

6.14 These Standards shall contain proper identification of the Registration Agency, being the Department of Labor, Division of Employment & Training, Office of Apprenticeship & Training.

6.15 There will be a provision for the Registration, Cancellation and Deregistration of the Program, and a requirement for the prompt submission of any modification or amendment thereto.

6.16 There will be provisions for Registration of Agreements, modifications and amendments, notice to the Division of persons who have successfully completed Programs, and notice of Cancellations, suspensions and terminations of Agreements as causes therefore.

6.17 There will be a provision giving authority for the termination of an Agreement during the probationary period by either party without stated cause.

6.18 There will be provisions for not less than five (5) days notice to Apprentices of any proposed adverse action and cause therefore with stated opportunity to Apprentices during such period for corrective action.

6.19 There will be provisions for a grievance procedure, and the name and address of the appropriate authority under the program to receive, process and make disposition of complaints.

6.20 There will be provisions for recording and maintaining all records concerning apprenticeships as may be required by the State or Federal law.

6.21 There will be provisions for a participating Employer's Agreement.

6.22 There will be funding formula providing for the equitable participation of each participating Employer in funding of a group Program where applicable.

6.23 All Apprenticeship Standards must contain articles necessary to comply with federal laws, regulations and rules pertaining to apprenticeship.

6.24 Programs and Standards of Employers and unions in other than the building and construction industry which jointly form a sponsoring entity on a multi-state basis and are registered pursuant to all requirements of this part by any recognized State apprenticeship agency shall be accorded Registration of approval reciprocity by the Delaware Department of Labor if such reciprocity is requested by the sponsoring entity. However, reciprocity will not be granted in the Building and Construction industry based on Title 29 CFR 29 Section 12(b) unless a "memorandum of understanding" has been signed by an individual state and the state of Delaware.

3 DE Reg. 641 (11/1/99)

7.0 Apprenticeship Agreement

(Formerly 106.6)

7.1 The Apprenticeship Agreement shall contain:

7.1.1 the names and signatures of the contracting parties (Apprentice and the program Sponsor or Employer), and the signature of a parent or guardian if the Apprentice is a minor;

7.1.2 the date of birth of the Apprentice;

7.1.3 the name and address of the program Sponsor and the Registrant;

7.1.4 the Apprentice's social security number;

7.1.5 a statement of the trade or craft which the Apprentice is to be taught, and the beginning date and term (duration) of apprenticeship;

7.1.6 the number of hours to be spent by the Apprentice in work on the job;

7.1.7 the number of hours to be spent in Related and Supplemental Instruction is recommended to be not less than one hundred forty-four (144) hours per year;

7.1.8 provisions relating to a specific period of probation during which the Apprenticeship Agreement may be terminated by either party to the Agreement upon written notice to the Registrant;

7.1.9 provisions that, after the probationary period, the Agreement may be suspended, canceled or terminated for cause, with due notice to the Apprentice and a reasonable opportunity for corrective action, and with written notice to the Apprentice and the Registrant of the final action taken;

7.1.10 a reference incorporating, as part of the Agreement, the standards of the Apprenticeship Program as

it exists on the date of the Agreement or as it may be amended during the period of the Agreement;

7.1.11 a statement that the Apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training without discrimination based on race, color, religion, national origin, marital status, or sex, or disability;

7.1.12 a statement that, if an Employer is unable to fulfill his obligation under his Agreement, the Agreement may, with consent of the Apprentice and Committee, if one exists, be transferred to another Employer under a Registered Program with written notice of the transfer to the Registrant, and with full credit to the Apprentice for satisfactory time and training earned;

7.1.13 the name and address of the appropriate authority, if any, designated under the program to receive, process and make disposition of controversies or differences which cannot be adjusted locally or resolved in accordance with the established trade procedure or applicable collective bargaining provisions;

7.1.14 a statement setting forth a schedule of work processes in the trade or industry in which the Apprentice is to be trained and the approximate time to be spent at each process;

7.1.15 a statement of the graduated scale of wages to be paid the Apprentice and whether or not the required school time shall be compensated;

7.1.16 a statement that in the event the Registration of the Program has been Canceled or revoked, the Apprentice will be notified within fifteen (15) days of the event.

3 DE Reg. 641 (11/1/99)

8.0 Complaints

(Formerly 106.7)

8.1 Any controversy or difference arising under an Agreement which cannot be resolved locally, or which is not covered by a collective bargaining agreement, may be submitted by an Apprentice or his/her authorized representative to the State Registration Agency for review. Matters covered by a collective bargaining agreement, however, shall be submitted and processed in accordance with the procedures therein provided.

8.2 The complaint shall be in writing, signed by the complainant, and submitted by the Apprentice or his/her authorized representative within sixty (60) days of receipt of local decision. The complaint shall set forth the specific problem, including all relevant facts and circumstances. Copies of all pertinent documents and correspondence shall accompany the complaint.

3 DE Reg. 641 (11/1/99)

9.0 Related Instruction Requirement

(Formerly 106.8)

9.1 Regulations concerning Apprentices "attendance and tardiness" policy for related instruction.

9.1.1 A registered Apprentice who misses seven (7) classes while enrolled in a related studies program at any of the vocational schools in the three (3) counties of the State of Delaware will be dropped from school. This will result in their Apprenticeship Agreement being terminated by their Sponsor and/or State Registration Agency.

9.1.2 An absence will result when an Apprentice either arrives late or leaves early three (3) times. However, School District Officials may bring to the Administrator's attention, individual cases that may have experienced extenuating circumstances. With the Administrator's approval, such individuals may be granted exemption from this attendance policy.

9.1.3 Courses of fewer sessions will be prorated. Instructors will inform Apprentices of allowable absences.

9.1.4 If you are a Registered Apprentice who is enrolled through a trade union, trade society or any other organization that stipulates attendance rules more stringent than the above, then you are required to follow those regulations.

9.1.5 Related Instruction that is delivered through a state approved "in-house program", correspondence courses or other systems of equivalent value will require the Apprentice to produce a document detailing satisfactory participation and completion.

3 DE Reg. 641 (11/1/99)

10.0 Deregistration by State Registered Program

(Formerly 106.9)

10.1 It is the policy of this State to discourage violations of the law or these rules and regulations by limiting or revoking the privilege to operate programs when Sponsors demonstrate an indifference to these requirements.

10.2 Where it appears to the Administrator that a program is not being operated in accordance with federal or state law or these rules and regulations, the Administrator shall so notify the Sponsor in writing stating the deficiency and providing a period for corrective action not to exceed 10 days. Such notice shall be sent by certified mail, return receipt requested. The Sponsor shall respond in writing to the letter within 10 days of receipt.

10.3 If the Sponsor fails to correct a deficiency after notice by the Administrator under 10.2, deregistration proceedings will be undertaken.

10.3.1 Voluntary deregistration is available to a Sponsor upon written request to the Administrator. Within fifteen (15) working days of the effective date of

deregistration demonstrated by the acknowledgment of the Administrator, the Sponsor must notify all Apprentices of such deregistration, the effective date, and that the deregistration automatically deprives the apprentice of his/her individual registration.

10.3.2 Involuntary deregistration is initiated by the Administrator as follows:

10.3.2.1 If the Sponsor fails to respond to the notice of deficiency, the Administrator shall advise the Sponsor by certified mail, return receipt requested, that the program will be recommended for deregistration unless within 10 days the Sponsor requests a hearing.

10.3.2.2 If the response by the Sponsor to the notice is insufficient to correct the deficiency, the Administrator shall so advise the sponsor by certified mail, return receipt requested. Said letter shall advise the Sponsor that the program will be recommended for deregistration unless within 10 days the Sponsor requests a hearing.

10.3.2.3 If no hearing is timely requested, the Administrator will recommend deregistration to the Secretary. The decision of the Secretary is final and no further appeal is provided. The sponsor will be notified of the effective date of deregistration. In addition, a decision of deregistration and its effective date will be mailed to all Apprentices registered in the program.

10.3.2.4 All recommendations for involuntary deregistration as a result of violations of the Rules and Regulations will include a recommended period of deregistration of up to three (3) years.

3 DE Reg. 641 (11/1/99)

4 DE Reg. 1852 (5/1/01)

11.0 Hearings on Deregistration

(Formerly 106.10)

11.1 A deregistration hearing will be scheduled before the Council on Apprenticeship and Training within 45 days of receipt of a timely request by the Sponsor.

11.2 Notice shall be in accord with the provisions of the Administrative Procedures Act.

11.3 Each party shall have the right to present evidence, to be represented by counsel, and to cross-examine witnesses.

11.4 A record from which a verbatim transcript can be prepared shall be made of the hearing. A party may request a transcript at his or her expense.

11.5 At the conclusion of the hearing, the Council will determine, by a majority of the quorum, its recommendation to the Secretary.

11.6 The Council shall submit its recommended findings of fact, conclusions of law, and decision to the

Secretary. Said recommendations may be authenticated by the chairperson.

11.7 The decision of the Secretary is final and no further appeal is provided. The decision will be sent by certified mail to the Sponsor. In addition, a decision of deregistration and its effective date will be mailed to all Apprentices registered in the program.

3 DE Reg. 641 (11/1/99)

4 DE Reg. 1852 (5/1/01)

12.0 Reinstatement of Program Registration

(Formerly 106.11)

12.1 Program deregistered pursuant to this chapter may be reinstated upon presentation of adequate evidence that the Program is operating in accordance with this chapter. Such evidence shall be presented to the Apprenticeship and Training Council, which shall make a recommendation based on said evidence, past records and any other data deemed appropriate. After such presentation, the Council shall make a recommendation to the Secretary as to whether the Program should be reinstated. The Secretary's decision shall be final and binding.

3 DE Reg. 641 (11/1/99)

13.0 Program Registration Denial

(Formerly 106.12)

13.1 Grounds for denial of program registration include, but are not limited to, violations of apprenticeship standards or of federal or state labor laws in any state by the applicant.

~~13.1~~ 13.2 Any proposed Sponsor may, within fifteen (15) working days, request a hearing before the Apprenticeship and Training Council. If the proposed Sponsor requests a hearing, the Administrator shall advise the chairman of the Council, who shall convene the Council, for a hearing for the purpose of making a determination on the basis of the record and proposed findings of the Office of Apprenticeship & Training. This determination shall be subject to review and approval by the Secretary, whose decision shall be final and binding.

13.3 An applicant who has been denied registration of a program may reapply by demonstrating to the Council at a hearing that the deficiencies that led to the denial of registration have been remedied and the program will operate in accordance with all applicable laws and rules in a manner that safeguards the welfare of the apprentices. The Council will make a recommendation to the Secretary, whose decision shall be final and binding.

14.0 Amendment to the Regulations in this Part

(Formerly 106.13)

14.1 The Secretary may, at any time upon his/her own motion or upon written request of any interested person setting forth reasonable grounds therefore, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of the regulations contained in this part.

3 DE Reg. 641 (11/1/99)

**DEPARTMENT OF STATE
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

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 12, 2005 at a scheduled meeting of the Delaware Board of Nursing to receive comments regarding proposed amendments to Regulations 9.2.2.1.1 and 9.2.2.2.2. The proposal provides that nurses will be able to attest to the completion of the required number of contact hours by approved providers, rather than documenting the date, program name, provider and number of contact hours. The proposed regulation was published in the *Register of Regulations*, Vol. 9, Issue 2, on August 1, 2005.

Summary of the Evidence and Information Submitted

No written comments were received. No members of the public attended the hearing.

Findings of Fact With Respect to the Evidence and Information Submitted

There was no public comment received at the public hearing concerning the proposed amendments to the regulations. The Board finds that the amendments to the regulations are necessary to clarify that nurses may attest rather than document completion of continuing education contact hours in connection with renewal and reinstatement of their licenses. The rule does not change the requirement for the licensee to maintain documentation of their continuing education in the event of audit.

The Law

The Board's rulemaking authority is provided by 24 Del.C. §1906 (1).

Decision and Effective Date

The Board hereby adopts the changes to Regulations 9.2.2.1.1 and 9.2.2.2.2 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text And Citation

The text of the revised rules remains as published in *Register of Regulations*, Vol. 9, Issue 2, August 1, 2005, without any changes.

SO ORDERED this 12th day of October, 2005.

STATE BOARD OF NURSING

Lucille Gambardella, RN, Ph.D, President,
Dr. Pamela Zickafoose, RN, Ed.D, Vice-President
Wanda Cohee, LPN, LPN Member
Robert Draine, Public Member
Joyce Edwards, Public Member
Carolyn E. Hill, RN, RN Member
Martha Hopkins, Public Member
Margaret Ingram, LPN, LPN Member
Robert Lawson, Public Member
David Mangler, RN, MS, RN Member
Diana Padula, LPN, LPN Member
Cheryl Richter, CRNA, MSN, RN Member
Dr. James Vanderwall, Public Member
Rebecca D. Walker, RN, RN Member
Irene Washabau, LPN, LPN Member

EXHIBIT A**9.0 Rules and Regulations Pertaining to Mandatory Continuing Education**

9.1 Definitions

9.1.1 The following words and terms, when used in this regulation, should have the following meaning unless the context clearly indicates otherwise.

"**Approved Method**" means a planned educational experience, as described in 9.3.

"**Approved Provider**" means an entity that is one of the following:

A nationally accredited provider of nursing related continuing education; or

An organization or agency that is approved as a provider or has programs that are approved by a nationally accredited approver of nursing related continuing education; or

A Board of Nursing approved school of nursing; or

A staff development department within a licensed health care agency; or an accredited educational institution; or

An entity approved by the Delaware Board of Nursing, pursuant to 9.4 and 9.5, if not meeting any other criteria.

"Audit" means

The verification of completion of continuing education requirements for a minimum of 1% of the total number of licenses issued during a specified time period. (Refer to 9.6) or

The verification of adherence to continuing education approved provider requirements during a specified time period. Providers may be audited as the Board determines. (Refer to 9.7)

"Biennium" means the two year period of licensure beginning in an odd numbered year and ending in the next odd numbered year for the Registered Nurse and the two year period of licensure beginning in an even-numbered year and ending in the next even numbered year for the Licensed Practical Nurse.

"Contact Hour" means one contact hour equals a minimum of 50 minutes. One half contact hour equals a minimum of 25 minutes.

"Continuing Education" means those professional experiences designed to enrich the nurse's contribution to health care and for the purpose of protecting the public health, safety, and welfare.

"Orientation" means the means by which nurses are introduced to the philosophy, goals, policies, procedures, role expectations, physical facilities and special services in a specific work setting. Orientation programs do not meet the continuing education requirements of these rules.

9.2 Continuing Education Licensure Renewal Requirements

9.2.1 Board Authority

9.2.1.1 The Board derives its authority under 24 **Del.C.** §1906(19), to create continuing education requirements as a prerequisite to obtaining a current license and to establish an audit system to assure compliance. This requirement is in addition to the practice requirement as stated in 6.5.

9.2.1.1.1 During each biennium, each Registered Nurse must earn 30 contact hours and each

Licensed Practical Nurse must earn 24 hours, to be credited to that biennium.

9.2.1.1.1.1 Units of measurement for continuing education shall be: no less than .5 contact hours and be as follows:

Contact Hour	9.2.1.1.1.1	50 Minutes = 1
Contact Hour	9.2.1.1.1.2	25 Minutes = .5
Semester Hour (Credit) = 5 Contact Hours	9.2.1.1.1.3	1 Academic
Contact Hours	9.2.1.1.1.4	1 C.M.E. = 1.2
Contact Hours	9.2.1.1.1.5	Certification/recertification (excluding preacquired skills and knowledge) = 20 Contact Hours (Only During the Biennium Awarded)

9.2.2 Requirements

9.2.2.1 Renewal

9.2.2.1.1 To obtain a Registered Nurse or Licensed Practical Nurse license for the next biennium period, the licensee shall submit, along with the renewal application and fee, a completed report on a form furnished by the Board office, ~~documenting~~ attesting to the completion of all continuing education requirements for that biennium.

9.2.2.2 Reinstatement

9.2.2.2.2 To obtain a Registered Nurse or Licensed Practical Nurse license through reinstatement, the applicant shall submit, along with the reinstatement application and fee, a completed report on a form provided by the Board office, ~~documenting~~ attesting to the completion of all continuing education requirements for the past two years.

9.2.2.3 Reinstatement/Endorsement

9.2.2.3.1 A Registered Nurse who has endorsed into Delaware during a biennium or whose license was reactivated or reinstated during a biennium must earn 15 contact hours if more than a full calendar year remains in the biennium to obtain a Registered Nurse license for the next biennium period. A Licensed Practical Nurse must earn 12 contact hours if more than a full calendar year remains in the biennium to obtain a Licensed Practical Nurse license for the next biennium period.

9.2.3 The required hours shall be completed in the period for which the license was issued. Contact hours from a previous licensure period will not count nor may credits be accumulated for use in a future licensing period.

9.2.4 To be approved for continuing education credit, offerings shall meet the qualifications of appropriate subject matter as specified in these Rules and Regulations.

9.2.5 The licensee shall retain all original certificates or transcripts to verify completion of each continuing education offering and award of contact hours.

9.2.6 Exceptions

9.2.6.1 Those persons licensed by examination within a biennial renewal period are exempt from continuing education requirements for that biennium.

9.2.6.2 A licensee who has had a physical or mental illness during the license period can apply to the Board of Nursing for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one renewal period. Should the illness extend beyond one renewal period, a new request must be submitted.

9.2.6.3 A request for a waiver will be reviewed and acted upon within 90 days of receipt.

9.3 Approved Methods to Earn Contact Hours

9.3.1 Academic Studies

9.3.1.1 A course offered by an accredited school, university or college for which college credit has been awarded and/or for which class attendance is necessary. May include successful completion of challenge examinations.

9.3.2 Authoring an Article, Book Chapter, or Independent Study

9.3.2.1 The article, book chapter, or independent study (See 9.3.6) must be related to nursing. Proof of acceptance from the editor or the published work will document achievement of this type of continuing education. A maximum of five contact hours of continuing education may be earned per biennium by this method. Letters to the editor or opinion statements will not be recognized.

9.3.3 Certification/Recertification

9.3.3.1 A process by which a nongovernmental agency or association certifies that an individual licensed to practice as an Advanced Practice Nurse, a Registered Nurse, or a Licensed Practical Nurse has met certain predetermined standards specified for specialty practice. National certification or recertification equals 20 contact hours awarded during the biennium. A certification/recertification document indicating the date of recognition must be available. When recertification requirements include more than 20 contact hours, the additional contact hours can be applied toward the total of 30 contact hours for R.N. or 24 contact hours for L.P.N. licensure.

9.3.4 Conference

9.3.4.1 A meeting that brings together participants for one or more days to discuss the latest developments and activities from individuals with special expertise in the subject matter of the conference.

9.3.5 Extension Studies

9.3.5.1 A course given through an accredited school, college or university for which academic credit may or may not be awarded and for which class attendance is not necessary.

9.3.6 Independent Study

9.3.6.1 An educational activity designed for completion by learners, independently, at the learner's own pace and at a time of the learner's choice.

9.3.6.1.1 Examples: Articles in journals, videocassette programs, computer programs for which there is a test of knowledge and a certificate awarded upon completion.

9.3.7 Inservice Education

9.3.7.1 Activities intended to help nurses acquire, maintain, and/or increase the level of competence in fulfilling his or her assigned responsibilities, specific to the expectations of the employer. Planned inservices must be a minimum of 25 minutes. Mandatory education, such as CPR, infection control, fire, safety, and facility specific policies and practices, is not recognized as continuing education.

9.3.8 Presentation

9.3.8.1 Educational presentations, excluding preparation time, made to other health professionals that are not required by an individual's job description. The presenter must submit program brochures, course syllabi or letter from the provider identifying the participation of the presenter. Contact hours shall be equal to the actual presentation time. A maximum of five contact hours of continuing education may be earned per biennium by this method.

9.3.9 Research Project

9.3.9.1 The research project must have been done during the biennium. The licensee must submit an abstract as evidence of being one of the recognized researchers. A maximum of five contact hours of continuing education may be earned per biennium by this method.

9.3.10 Symposium or Seminar

9.3.10.1 A meeting of groups of participants to explore, in depth, a pre-selected, thoroughly researched topic. The emphasis is on discussion and a free exchange of ideas and experiences.

9.3.11 Workshop

9.3.11.1 A meeting that offers opportunities for persons with common interest or problems to meet with specialists to consider new knowledge and practices and to experience working on specific relevant tasks.

9.3.12 Any method not on this approved list will require that a written petition justifying the request be submitted to the Board of Nursing.

9.3.12.1 The Board may consider the request at its next regularly scheduled Board meeting if received at least two weeks before the meeting. If less than two weeks, the request will be processed at the following meeting.

9.4 Continuing Education - Provider

9.4.1 Board Authority

9.4.1.1 The Board derives its authority under 24 **Del.C.** Ch. 19, to create requirements for becoming an approved provider and maintaining that status. The Board also has the authority to develop an auditing mechanism to verify compliance with criteria for approved providers.

9.4.2 Criteria for approved providers

9.4.2.1 The approved providers shall produce evidence of their capability to adhere to criteria indicative of quality continuing education for nurses. Each provider approved under 9.1, will be assigned a provider number by the Board and shall provide an annual statement of compliance with these criteria.

9.4.3 Subject matter criteria. The provider will ensure that:

9.4.3.1 The subject matter is specifically designed to meet the objectives, the stated level and learning needs of the participants.

9.4.3.2 The content is planned, logically sequenced and reflects input from experts in the subject matter.

9.4.3.3 The subject matter reflects the professional educational needs of the learner in order to meet the health care needs of the consumer.

9.4.4 Criteria related to the operation of an approved continuing education providership. The provider shall:

9.4.4.1 Have a consistent, identifiable authority who has overall responsibility for the operation of the providership and execution of its offerings.

9.4.4.2 Have an organizational structure and training objectives.

9.4.4.3 Develop course descriptions, objectives, and learning outcomes.

9.4.4.4 Assign contact hours according to a uniform measure of credit and not award contact hours for less than 25 minutes.

9.4.4.5 Establish dates and times for programs.

9.4.4.6 Plan and structure programs with teaching and learning methodologies that include a statement of purpose and measurable educational objectives.

9.4.4.7 Use faculty who have academic preparation and/or experience in the subject matter.

9.4.4.8 Use evaluation processes or tools that provide participants an opportunity to evaluate in writing the

learning experience, the instructional methods, facilities, and resources.

9.4.4.9 Award the contact hours and be responsible for assurance that all criteria in this chapter are met, when co-providing.

9.4.4.10 Notify the Board within 30 days of changes in the administrative authority, the address of the provider, and its ability to meet the criteria.

9.4.5 Criteria related to record maintenance and continuing education programs. The provider shall:

9.4.5.1 Maintain records on persons awarded contact hours for a minimum of six years from their date of program completion. The records shall include the name of licensee, contact hours awarded, social security number, title, and dates of offerings.

9.4.5.2 Provide for secure storage and retrieval of individual attendance and information regarding each offering.

9.4.5.3 Furnish each participant with an individual record of completion that displays the following on the front of the certificate: participant's name, provider name and number, contact hours awarded, starting and ending dates of the offering, subject matter and a reminder to the participant to retain the certificate for the period of licensure.

9.5 Board Approval Process for Providers from 9.1.

9.5.1 An application will be sent to a potential provider upon request. Upon submission of a non-refundable fee, the required materials and a determination of the Delaware Board of Nursing that the materials fulfill the criteria for providers as specified in these Rules and Regulations, initial approval will be granted for up to three years.

9.5.2 The following materials and information must accompany an application:

9.5.2.1 A description of the administrative authority of the potential provider;

9.5.2.2 The job description of the person who is administratively responsible for provider activities;

9.5.2.3 The continuing education philosophy purpose and goals;

9.5.2.4 Organizational charts defining lines of authority and communication in relation to continuing education;

9.5.2.5 Plan for faculty selection;

9.5.2.6 Evidence of nursing participation in program planning and/or administration;

9.5.2.7 A record system and a procedure to ensure confidentiality and safe storage;

9.5.2.8 The criteria used to plan and implement continuing education activities;

9.5.2.9 The criteria used to verify attendance;

9.5.2.10 A procedure that ensures the participant who successfully completes an educational activity will receive a document displaying an attendance record, number of contact hours awarded, provider name and number, title of presentation, and the date and location for each offering;

9.5.2.11 Registration procedure(s);

9.5.2.12 A plan for evaluation, including:

9.5.2.12.1 A procedure for participant evaluation that includes assessment of the instruction, resources and facilities, and

9.5.2.12.2 A system for the follow up of suggestions for improvement;

9.5.2.13 Documents from two typical sample course offerings including:

9.5.2.13.1 A narrative of the planning of the offerings including evidence of nursing participation;

9.5.2.13.2 A sample brochure or other form of advertising;

9.5.2.13.3 Course content, i.e., topical course outline, objectives;

9.5.2.13.4 Teaching-learning methodologies and supportive materials;

9.5.2.13.5 Bibliography; and

9.5.2.13.6 A sample participant evaluation form.

9.5.3 The Executive Director will review the completed application upon receipt.

9.5.3.1 The review is based on the criteria as specified in these Rules and Regulations.

9.5.3.2 If the Executive Director finds the application incomplete, the applicant will be notified and have two opportunities to submit revised applications.

9.5.3.3 If the application does not meet established criteria within three reviews, the Executive Director may recommend that the Board deny it.

9.5.3.4 When the application meets all requirements as set forth for providers in these Rules and Regulations, the Executive Director shall recommend approval to the Board.

9.5.3.5 The Board may approve for up to three years, or elect not to approve.

9.5.3.6 The provider will be notified of the Board of Nursing's decision in writing within two weeks.

9.5.3.7 A provider number will be assigned at the time of approval and issued within three weeks. This number must be used in all correspondence with the Board. This number will be published on a list of approved providers.

9.5.3.8 An application that has been denied provider status by the Board may be re-submitted one year after the denial date.

9.5.4 Complaints against providers.

9.5.4.1 Provider approval may be rescinded at any time during the approved period for noncompliance with approved provider requirements or for complaints that the Board determines indicate the program does not meet criteria.

9.5.4.2 Providers may appeal a decision by requesting a hearing before the Board.

9.6 Audit of Licensees

9.6.1 The Board will randomly and on an individual basis select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that their records are to be audited for compliance with the continuing education requirements.

9.6.1.1 Upon receipt of such notice, the licensee must submit verification of compliance for the period of licensure being audited. Verification materials which may be requested include proof of attendance, academic transcripts, certificates showing number of contact hours awarded, and documentation of compliance with exceptions.

9.6.1.2 The licensee must submit documentation within three weeks of receipt of notice.

9.6.1.3 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

9.6.1.4 An unsatisfactory audit shall result in Board action.

9.6.1.5 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

9.6.1.6 Fulfillment of the audit requirements must be completed prior to license renewal.

9.7 Audit of Providers

9.7.1 The Board may select approved providers for audit. Upon selection, the Board shall:

9.7.1.1 Notify the approved providers that their records are to be audited for compliance with continuing education requirements;

9.7.1.2 Be provided with records that document compliance with the Rules and Regulations for providers; and

9.7.1.3 Conduct a site visit as necessary.

9.8 Disciplinary Proceedings; Appeal

9.8.1 Failure to comply with continuing education requirements will result in action under Section 1922 of the Nurse Practice Act and the license will be considered lapsed.

9.8.2 Application for reinstatement of a lapsed license must be filed with a completed continuing education document form and the fee paid before practice can continue.

***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>

GOVERNOR'S EXECUTIVE ORDERS

821

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER SEVENTY-TWO

RE: Declaring a State of Emergency Due to Hurricane Katrina and its Aftermath

WHEREAS, Hurricane Katrina has caused considerable human suffering and extensive damage in the states of Alabama, Florida, Louisiana, and Mississippi; and

WHEREAS, pursuant to authority granted by Chapter 31, Title 20 of the Delaware Code, Delaware has entered into reciprocal aid agreements with each of the affected states, including the Emergency Management Assistance Compact, codified in Chapter 34, Title 20 of the Delaware Code; and

WHEREAS, a significant number of citizens living in Alabama, Florida, Louisiana and Mississippi have been displaced and require short and long-term recovery assistance; and

WHEREAS, the State of Delaware has offered to coordinate housing, health and other services to aid persons displaced by Hurricane Katrina; and

WHEREAS, at the direction of the Federal Emergency Management Agency, individuals and families displaced by Hurricane Katrina may be relocated to Delaware in order to meet their recovery needs; and

WHEREAS, in addition to displaced persons who may be relocated to the State of Delaware through a government-organized process, a number of individuals and families displaced by Hurricane Katrina have relocated, or will relocate, to Delaware and surrounding areas, and such persons may need critical recovery assistance; and

WHEREAS, many State and local agencies, as well as private non-profit organizations in Delaware are working together to address the needs of these displaced citizens; and

WHEREAS, in order to coordinate responses with the federal authorities and to ensure that federal resources will be available to assist displaced persons to the maximum extent possible, the Federal Emergency Management Agency has recommended that states involved with recovery efforts for displaced persons implement emergency management practices to arrange response and recovery efforts in aid of such displaced persons; and

WHEREAS, as a result of this crisis and pursuant to the authority vested in the Governor by virtue of Chapter 31, Title 20 of the Delaware Code, as amended, it is necessary to promulgate reasonable orders to protect the public health, safety and welfare,

NOW THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware do hereby declare and proclaim a State of Emergency for the entire State of Delaware, effective August 29, 2005. By virtue of this State of Emergency, I direct and authorize that:

1. All resources of the State of Delaware shall be made available to assist in the reception and care of evacuees from the affected states.

2. The Delaware Emergency Management Agency shall work in cooperation with the President of the United States, the Federal Emergency Management Agency, State and local agencies, and private non-profit organizations to coordinate activities to provide for the needs of evacuated citizens from the affected states.

APPROVED: September 20, 2005

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER SEVENTY-THREE

RE: Establishing a Delaware Healthy Mother and Infant Consortium

WHEREAS, the infant mortality rate is generally accepted as an indicator of the health of a community; and

WHEREAS, the Perinatal Board has worked in partnership with the Delaware Department of Health and Social Services, other state agencies and the private sector over the years to reduce the infant mortality rate; and

WHEREAS, in recent years, the infant mortality rate in Delaware has risen to among the worst in the nation; and

WHEREAS, the infant mortality rate among black citizens of the State has been consistently 2 to 3 times as high as the rate among white citizens; and

WHEREAS, the Infant Mortality Task Force recommended the establishment of the Delaware Healthy Mother and Infant Consortium to succeed the Perinatal Board and further recommended that the Consortium be given sufficient resources to effectively carry out its charge; and

WHEREAS, based on the Infant Mortality Task Force recommendations, resources have been allocated and are available to effectuate improvements in infant mortality in the Fiscal Year 2006 Budget Act,

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. The Delaware Healthy Mother and Infant Consortium ("Consortium") is hereby established and shall coordinate efforts to prevent infant mortality and improve the health of women of childbearing age and infants in the State of Delaware.

2. The Consortium's initial priorities and agenda shall be the recommendations contained in the report entitled Reducing Infant Mortality in Delaware Recommendations of the Infant Mortality Task Force, released in May 2005, or its successor.

3. The Consortium will:

a. Provide advice and support to state agencies, hospitals and health care practitioners regarding their roles in reducing infant mortality and improving the health of women of childbearing age and infants.

b. Facilitate collaborative partnerships among public health agencies, hospitals, health care practitioners and all other interested agencies and organizations to carry out recommended infant mortality improvement strategies.

c. Recommend standards of care to ensure healthy women of childbearing age and infants.

d. Coordinate efforts to address health disparities related to the health of women of childbearing age and infants.

e. Oversee development and implementation of research activities to better understand causes of infant mortality.

f. Coordinate efforts to prevent conditions and behaviors that lead to unhealthy women of childbearing age and infants.

g. Meet semi-annually with the Secretary of Health and Social Services to review progress, priorities, and barriers related to the Consortium's purpose.

h. Recommend legislation and regulations that will enhance the health of women of childbearing age and infants.

i. On an annual basis issue a report to the Governor on the status of the health of women of childbearing age and infants and progress in implementing recommendations of the Infant Mortality Task Force.

4. The Consortium's permanent membership shall be as follows:

a. Two (2) representatives of the Delaware House of Representatives and two (2) representatives of the Delaware State Senate (one selected by each caucus);

b. One (1) representative of the Governor's office;

c. The Secretary of the Department of Health and Social Services or the Secretary's designee; and

d. The Secretary of the Department of Children, Youth and Their Families or the Secretary's designee; and

e. Fifteen (15) additional members approved by the Governor who shall represent the medical, social service and professional communities as well as the general public.

5. The Consortium's permanent members may enact procedures to appoint additional persons to the Consortium. The Consortium, by rule and regulation, shall establish categories of membership, specify voting rights for each category, designate the number needed for a quorum to transact business, provide for election of officers, and adopt such procedures as are necessary to carry out the business of the Consortium.

6. Appointees to the Consortium shall serve at the pleasure of the individual or entity that appointed them.

7. The Consortium shall have a chair and a vice chair, to be designated from among permanent members by the Governor and who shall serve as president and vice-president at the pleasure of the Governor. Staff support for the Consortium shall be provided by the Delaware Division of Public Health.

8. Executive Order Number 27, issued by Governor Carper on November 1, 1995, is hereby rescinded.

APPROVED: September 20, 2005

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

GOVERNOR'S EXECUTIVE ORDERS

823

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

immunity or liability exemption otherwise available to such volunteers as provided for by any applicable law.

APPROVED: September 29, 2005

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

**EXECUTIVE ORDER
NUMBER SEVENTY-FOUR**

RE: Directing the Delaware Emergency Management Agency to Organize Volunteers for Response Efforts Involving Hurricane Rita and Its Aftermath

WHEREAS, in 1996, Delaware became a party to the Emergency Management Assistance Compact ("EMAC"), codified at Title 20 of the Delaware Code, Chapter 34, an interstate compact that provides for mutual assistance between requesting states in managing gubernatorial-declared emergencies or disasters; and

WHEREAS, as a result of Hurricane Rita and its aftermath, emergency assistance has been requested of the State of Delaware through the EMAC; and

WHEREAS, in order to facilitate the deployment of professional volunteers and certain State employees who will provide services in affected states that request assistance in accordance with EMAC and other applicable provisions of Delaware law, and to invoke the emergency powers of the Governor, an executive order is appropriate,

NOW THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, including without limitation such powers as are available under Title 20 of the Delaware Code, do hereby declare and order as follows:

1. I authorize and direct the Delaware Emergency Management Agency during this emergency period, to engage, deploy and coordinate available professional volunteers and certain State employees to states affected by Hurricane Rita that request assistance under the EMAC, and/or other applicable provisions of Delaware law.

2. I further authorize and direct that volunteers coordinated and deployed by the Delaware Emergency Management Agency pursuant to this Order shall be deemed officers of the State of Delaware under the EMAC or other applicable provisions of Delaware law, and shall enjoy all privileges and immunities available to officials and employees of this State while deployed by the Delaware Emergency Management Agency. Nothing in this Order is intended to or will prevent the application of any other

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER SEVENTY-FIVE**

RE: Establishing the Governor's Mentoring Initiative

WHEREAS, Delaware's youth can benefit from positive adult relationships in their lives to enhance their academic and personal growth; and

WHEREAS, mentoring is a proven and effective means of supporting the positive development of youth; and

WHEREAS, young people who are mentored perform better academically, show increased self-esteem and positive decision making, report better relationships with friends, parents, teachers, and their communities; and

WHEREAS, in a recent survey of mentoring relationships, youth with mentors were shown to be: 46 percent less likely to begin using illegal drugs, 27 percent less likely to begin using alcohol, 52 percent less likely to skip school, 37 percent less likely to skip a class, more confident of their performance in schoolwork, one-third less likely to hit someone, and better able to get along with their families; and

WHEREAS, a recent survey of Delaware schools demonstrated that 17,000 youth could benefit from a mentoring relationship; and

WHEREAS, Delaware's employees can positively impact the State of Delaware by mentoring a child each week; and

WHEREAS, on January 10, 2002, I recognized the Delaware Mentoring Council (the "Council") and formally

established the Council as the group to coordinate statewide mentoring efforts for Delaware's youth; and

WHEREAS, the Council has recommended that the State of Delaware adopt an initiative to encourage State employees to mentor school aged youth,

NOW THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, hereby declare and order as follows:

1. The Governor's Mentoring Initiative is established. The purpose of this initiative is to encourage State employees to volunteer as mentors to school-aged youth in their communities, and to facilitate such service through use of flexible employee schedules.

2. All State agencies are encouraged to permit their employees, wherever operationally feasible, to use flexible schedules to participate in such mentoring programs as are registered with the Council, including without limitation Big Brothers/Big Sisters, HOSTS and Creative Mentoring.

3. All agencies shall ensure that flexible schedules do not increase the State's obligations to make overtime pay. To the extent practicable, agencies shall ensure that flexed leave time can be combined with an employee's lunch hour, or can be used at the beginning or end of an employee's work day, in order to maximize the employee's time spent mentoring. Any volunteer time in excess of the flexed schedule must be performed during the employee's personal time.

4. In all cases, the eligibility for an employee to utilize flexible schedules for mentoring shall be subject to written approval by the employee's supervisor or agency head. Employees whose work requirements or work history, in the discretion of the agency head, make them unsuitable for flexible scheduling shall not be eligible to participate.

5. Any cost associated with mentoring, including transportation, fingerprinting or background checks, shall be paid by the individual volunteer or by the organization for which the individual is volunteering.

6. The Delaware Mentoring Council shall be responsible for overseeing and implementing the Governor's Mentoring Initiative. The Human Resources Management Section of the Office of Management and Budget shall cooperate with the Council in developing and implementing procedures to fairly enable as many employees as possible to participate in the initiative. With the assistance of the Office of Management and Budget, the Council shall develop forms for interested employees to participate in the initiative, and develop outreach efforts to encourage youth mentoring by State employees. The Council shall also develop a list of registered mentoring organizations eligible for participation in the Initiative. Information on the Governor's Mentoring Initiative, as developed and approved by the Council, shall be included on the State's web-site.

APPROVED: September 30, 2005

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

**DELAWARE RIVER BASIN
COMMISSION
NOTICE OF PUBLIC HEARING**

The Delaware River Basin Commission ("Commission" or "DRBC") will hold a public hearing to receive comments on proposed amendments to the Commission's *Basin Regulations - Water Supply Charges and Comprehensive Plan* concerning certificates of entitlement. No changes in the substance or administration of the rule are proposed. The purpose of the proposed amendments is to clarify the language of the rule to conform to the Commission's past decisions and current practices in order to provide better notice to users as to how the Commission is implementing its entitlements program and to avoid future controversy.

The public hearing on the proposed rule change will be held on Wednesday, December 7, 2005 at approximately 2:30 P.M. as part of the Commission's regularly scheduled business meeting. The time is approximate because the Commission will conduct hearings on several dockets (project approvals) beforehand, beginning at approximately 1:30 P.M. The hearing will continue until all those who wish to testify are afforded an opportunity to do so. In the event that all those who wish to testify cannot be heard on December 7, the hearing will be continued at a date, time and location to be announced by the Commission Chair that day. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609-883-9500, extension 224. Written comments will be accepted through Tuesday, January 10, 2006.

The public hearing will be held in the Goddard Room at the Commission's office building, located at 25 State Police Drive in West Trenton, New Jersey. Directions to the Commission's office building are posted on the Commission's website, <http://www.drbc.net>. Written comments should be addressed to the Commission Secretary as follows: by email to paula.schmitt@drbc.state.nj.us; by fax to the Commission Secretary - 609-883-9522; by U.S. Mail to the Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to the Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

The full text of the proposed amendment and the text of the current regulation are posted on the Commission's website, <http://www.drbc.net>. Please contact Commission Secretary Pamela Bush at 609-883-9500 ext. 203 with questions about the proposed rule or the rulemaking process.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, November 17, 2005 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL
ASSISTANCE
NOTICE OF PUBLIC COMMENT PERIOD**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) related to the Estate Recovery Program. Additionally, this action is technical in nature to allow for updated state plan pre print pages. This technical amendment to clarify the plan has no budget impact.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by November 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.

**DIVISION OF SOCIAL SERVICES
NOTICE OF PUBLIC COMMENT PERIOD**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to changes in Federal rules.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by November 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 NOVEMBER 29, 2005 at 2:00 p.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2005-153**, proposed **Regulation 1214** relating to **Senior Protection In Annuity Transactions**. The purpose for proposing Regulation 1214 is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.

The text of the proposed amendments is reproduced in the November 2005 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The 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 2:00 p.m., Friday, December 2, 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. If you are disabled and might need assistance in this matter, please contact Julia Blevins at 302.739.4251 ext.111 or Julia.Blevins@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 is proposing to amend the Accidental Release Prevention Regulation to include 1999, 2000 and 2004 amendments made by the Environmental Protection Agency (EPA) to the Accidental Release Prevention Requirements contained in federal rule 40 CFR Part 68. The Department believes these amendments are already in effect for regulated Delaware facilities and that this amendment will have no impact on them. In addition, several minor changes and corrections are proposed for the 'Additional Delaware Accidental Release Prevention Provisions' contained in Section 6.0 of the Regulation. Specifically this includes minor changes to the Delaware only lists and simplifying Delaware risk management plan submission requirements. Again, the Department believes these corrections and changes will have no impact on Delaware only regulated facilities. In summary, the purpose of this proposed amendment is a correction to the Delaware regulation; bringing it into agreement with the most recent federal rule changes.

Notice of Public Comment

Interested parties may submit comments in writing to: Jay Brabson, Emergency Prevention and Response Branch, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Monday, December 5, 2005 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE. The public comment period for this proposed amendment will extend through December 15, 2005.

Prepared By

Jay Brabson (302) 323-4542 October 14, 2005

DIVISION OF SOIL AND WATER CONSERVATION NOTICE OF PUBLIC HEARING

Brief Synopsis of the Subject, Substance and Issues

These Proposed Regulations are revisions to existing regulations that have been in effect since 1983. The proposed revisions will increase the effectiveness of the Coastal Construction Program and improve its protection of the beach and dune system. They will also reduce ambiguity

within the regulations and limit the amount and type of construction permitted seaward of the Building Line. Redrawing of the Building Line, incorporation of changes to the Beach Preservation Act and the addition of new construction standards for waterfront buildings will all result in less damages to structures and improvements to the natural dune and beach resource.

While this regulatory action is intended to modify currently existing regulations, it was not possible, or preferable, to show additions as underlines, or deletions as strikeouts – as is normally required. This is because the redraft of the regulations was so extensive and the new numbering so drastically different than the previous regulations, that to be comprehensible to the reader, we opted to abandon the normal strike out and underline protocol and instead provide the reader with an index of new provisions with old section numbers and a compilation of major changes to the overall regulation.

Notice of Public Comment

A Public Hearing has been scheduled for December 14th at 6:00 p.m., in the DNREC Auditorium

Prepared By:

Maria Sadler 302-739-9921 9/26/05

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION BOARD OF EXAMINERS OF PSYCHOLOGISTS

NOTICE OF RESCHEDULED PUBLIC HEARING

The Delaware Board of Examiners of Psychologists in accordance with 24 **Del.C.** §3506(a)(1) has proposed changes to Regulation 6.0 of the Board's rules and regulations regarding *Evaluation of Credentials*. Specifically, the proposal amends regulation 6.1 and the subsections therein to conform to the American Psychological Association requirements for accreditation. The full text of the proposed regulation was published in the *Register of Regulations*, Vol. 9, Issue 3, on September 1, 2005.

The public hearing originally scheduled for October 3, 2005 at 9:30 a.m. has been rescheduled to November 14, 2005 at 9:30 a.m. The public hearing will be held in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Examiners of Psychologists, 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 MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS NOTICE OF PUBLIC HEARING

The Delaware Board of Mental Health and Chemical Dependency Professionals in accordance with 24 **Del.C.** §3006(a)(1) has proposed changes to Regulation 5.0 in order to make the regulation consistent with the mandate of Senate 229 enacted by the 142nd General Assembly. The proposal strikes regulation 5.2.4 as currently written with references to felony convictions and replaces it with language that requires an applicant to submit an affidavit stating that the applicant has not been convicted of and has no pending criminal charge(s) relating to any crime that is substantially related to the provision of mental health counseling and chemical dependency counseling. The proposal also amends the rule where applicable to include references to chemical dependency professionals. The proposed regulation also changes the name of the Board in applicable sections to conform to the Board's new title resulting from House Bill 215 as amended by House Amendment No. 1 and Senate Amendment No.1 enacted by the 143rd General Assembly adding licensed marriage and family therapists to those professionals regulated by the Board. The full text of the proposed regulation was published in the *Register of Regulations*, Vol. 9, Issue 2, on August 1, 2005.

The public hearing originally scheduled for September 27, 2005 at 2:00 p.m. has been rescheduled to November 29, 2005 at 2:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Mental Health and Chemical Dependency Professionals, 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 regulation at its regularly scheduled meeting following the public hearing.

PUBLIC SERVICE COMMISSION**NOTICE OF PUBLIC HEARING**

By PSC Order No. 6298 (Nov. 4, 2003), the Public Service Commission ("PSC") adopted its "Electric Service Reliability and Quality Standards" regulation to govern the operations of the two PSC-jurisdictional electric distribution utilities, Delmarva Power and Light Company and the Delaware Electric Cooperative, Inc. Those rules imposed interim annual reporting requirements on the two electric distribution utilities related to their baseline reliability expenditures and also adopted interim electric service reliability and quality benchmarks. These interim requirements have governed during the period running from 2003 through 2005.

On October 11, 2005, by PSC Order No. 6745 (Oct. 11, 2005), the PSC proposed to supercede the prior interim regulation with its new "Electric Service Reliability and Quality Standards" ("ESR and QS"). As with the interim rule, the new proposed ESR and QS regulation imposes operational and reporting requirements related to reliability on electric distribution utilities. In addition the new regulation also includes a reporting requirement for electric generation companies located in Delaware. The new regulation changes some of the reliability standards originally utilized in the interim regulation in light of actual past experience under the Outage Management Systems used during the tenure of the interim regulation. The new ESR and QS regulation also includes provisions related to: (a) expected responses for restoration of services after storms; (b) public input into the preparation of planning studies; and (c) the adoption of specific inspection and maintenance requirements by distribution utilities. In addition, the new ESR and QS would now impose certain reporting requirements on entities operating electric generation facilities located in Delaware. The PSC has the authority to adopt the new ESR and QS rule under 26 Del.C. §§209(a), 1002(a)(1), and 1008.

You may review the proposed new ESR and QS regulation and Order No. 6745 in the November 2005 edition of the *Delaware Register of Regulation*. You may also review the Order and regulation at the PSC's Internet website located at www.state.de.us/delpsc. Written copies of the proposed regulation are also available at the PSC's Dover office, at the address set forth below, at the cost of \$0.25 per page.

Pursuant to 29 Del.C. §§1133 and 10115, the PSC now solicits written suggestions, compilations of data, briefs, comments, or other written documents concerning the proposed new ESR and QS regulation. If you wish to submit such written materials, you must file an original and ten copies of such materials at the PSC office at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904
Attn: Reg. Dckt. No. 50

If you able, you should also file an electronic copy of such materials as an attachment to an Internet e-mail message addressed to robert.howatt@state.de.us. You must accompany your written materials with a document setting forth your name, your organization (if any), address, telephone and facsimile numbers, and Internet e-mail address. **You must file such materials with the PSC on or before Monday, December 5, 2005.**

In addition, pursuant to 26 Del.C. §209(a) and 26 Del.C. §10117, the PSC will conduct an initial public hearing on the proposed new ESR and QS regulation on Wednesday, December 21, 2005. The hearing will be held at the following location beginning at 10:00 a.m.:

Third Floor Conference Room
Carvel State Office Building
820 North French Street
Wilmington, Delaware

At the hearing, persons or entities can also present their views concerning the proposed new ESR and QS regulation. If you do not file written materials or do not intend to appear at the public hearing but still wish to be included on the participant list in this matter in order to be notified of further proceedings, you must file a letter with the PSC requesting to be included on the participant list. That letter must be filed by Monday, December 5, 2005.

If you have questions or desire further information about this matter, you can contact the PSC at 1-800-282-8574 (Delaware only) or at (302) 739-4247 (text telephone also). You can also address your inquiries by Internet e-mail to robert.howatt@state.de.us. If you are disabled and need assistance to review materials or participate, please contact the PSC in order to make arrangements for such assistance.

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