Delaware Register of Regulations

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Pages 478 - 561

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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 September 15, 1999.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

2 **DE Reg.** 1000 - 1010 (12/1/98)

Refers to Volume 2, pages 1000 - 1010 of the Delaware Register issued on December 1, 1998.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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November 1	OCTOBER 15	4:30 P.M.
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.

DIVISION OF RESEARCH STAFF:

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF NURSING HOME
ADMINISTRATORS

Statutory Authority: 24 Delaware Code, Section 5204 (24 **Del.C.** 5204)

PLEASE TAKE NOTICE, pursuant to 29 <u>Del.C.</u>, Chapter 101 and 24 <u>Del.C.</u>, §2007(a)(1), the Delaware Board of Examiners of Nursing Home Administrators proposes the following addition of Rule 2(A)(8) which reads as follows:

"Direct supervision" shall mean oversight on the premises by the licensed nursing home administrator serving as preceptor. The licensed nursing home administrator shall be responsible and available to provide direction, observation, aid, training and instruction to the administrator-intraining, including the submission of progress reports. It is an interactive process between the preceptor and the AIT intended to insure the extent, quality and scope of experience of the duties performed as a nursing home administrator.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, November 9, 1999 at 1:45 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. The

Board will receive and consider input in writing from any person on the addition of Rule 2(A)(8). Written comments should be submitted to the Board in care of Mary Paskey at the above address. Final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should contact Mary Paskey at the above address or by calling (302) 739-4522, ext. 207.

THE DELAWARE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

RULES AND REGULATIONS

Rule 1. Source of Authority: 24 Delaware Code, Chapter 52
The Rules and Regulations herein contained constitute, comprise, and shall be known as the Rules and Regulations of the Board of Examiners of Nursing Home Administrators of the State of Delaware, and are hereby promulgated, pursuant to the authority granted to and imposed upon the said Board under and pursuant to the provisions of the State Licensing Statute, 24 Delaware Code, Chapter 52.

Rule 2. General Definitions.

- A. Whenever used in these Rules and Regulations unless expressly otherwise stated, or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated.
- 1. The term "Board" means the Delaware State Board of Examiners of Nursing Home Administrators.

- 2. The term "Nursing Home Administrator" means the individual responsible for planning, organizing, directing and controlling the operation of a nursing home, or who in fact performs such functions, whether or not such functions are shared by one or more other persons, and who is duly licensed by the Board.
- 3. The term "Nursing Home Administrator-In-Training" means an individual registered as such with the Board, under direct supervision of a currently licensed Delaware Nursing Home Administrator in the Sponsoring Facility (Spons), and/or Skilled Nursing Facility (SNF), and/or Assisted Living Facility (AL).
- 4. The term "Practice of Nursing Home Administration" means the performance of any act or the making of any decision involved in the planning, organizing, directing and/or controlling of a nursing home.
- 5. The term "Nursing Home" means any institution, building or agency in which accommodation is maintained, furnished or offered for any fee, gift, compensation or reward, for the care of more than four aged, infirm, chronically ill or convalescent persons, that is duly licensed by the State Division of Public Health.
- 6. The term "Person" means an individual and does not include the terms: firm, corporation, association, partnership, institution, public body, joint stock association or any other group of individuals.
- 7. Term "Preceptor" means an individual who currently has a Delaware Nursing Home Administrator license and is employed in a Skilled Nursing Facility (SNF) or Assisted Living Facility (ALF).
- 8. "Direct supervision" shall mean oversight on the premises by the licensed nursing home administrator serving as preceptor. The licensed nursing home administrator shall be responsible and available to provide direction, observation, aid, training and instruction to the administrator-in-training, including the submission of progress reports. It is an interactive process between the preceptor and the AIT intended to insure the extent, quality and scope of experience of the duties performed as a nursing home administrator.

Rule 3.Board Meetings.

- A. The Board may meet at least every other month, with location and dates set by the President, in accordance with the Freedom of Information Act.
- B. The President, or other presiding officer of the Board, may call special meetings of the Board when necessary, upon a minimum of 24 hours notice.

Rule 4.General Powers.

A. The Board shall exercise such powers as provided by the Laws of this State pertaining to the licensing and registration of Nursing Home Administrators. A majority of the Board shall constitute a quorum and no action shall be taken without the affirmative vote of five members of the Board.

- B. The Board may seek counsel and advice from appropriate State Agencies, as needed.
- C. From time to time, the Board shall make and publish such Rules and Regulations, not inconsistent with the Law, as it may deem necessary and proper for the execution and enforcement of the Law and Rules and Regulations governing the licensing and registration of Nursing Home Administrators.
- D. The Board shall exercise quasi-judicial powers, not inconsistent with the law.

Rule 5.Officers and Duties.

- A. The Board shall elect annually from its membership a President, Vice President, and Secretary.
- B. The President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the absence of the President, the Vice President shall preside at meetings and perform all duties usually performed by the President.

Rule 6.Scheduling of Examinations and Re-Examinations.

Examinations will be administered on the second Thursday of January, April, July and October of each year in Dover.

Rule 7. Pre-Examination Requirements; Conditions Precedent.

The Board shall admit to examination for licensure as a Nursing Home Administrator, any candidate who meets the qualifications or demonstrates to the satisfaction of the Board that within 30 days after the examination he/she will meet the following standards:

- A. Is at least 21 years of age.
- B. Shall meet the requirements of 1 or 2 or 3 set forth below:
- 1. Possesses a baccalaureate or graduate degree in Health & Human Services, Hospital Administration or Business Administration and,
- a. has three months experience as a Nursing Home Administrator or
- b. has successfully completed six months in a pre-approved Nursing Home Administrator-In-Training Program under Direct supervision of the applicant's Preceptor(s) (this program will include all subjects as listed in Rule 10, Content of the Administrator-In-Training Program) or
- c. has demonstrated administrative experience as the Board deems sufficient, or
- 2. Possesses a baccalaureate or graduate degree in a specialty other than Health & Human Services, Hospital Administration or Business Administration and,
 - a. has six months experience as a Nursing

Home Administrator or

- b. has successfully completed nine months in a pre-approved Nursing Home Administrator-In-Training Program under Direct supervision of the applicant's Preceptor(s) (this program will include all subjects as listed in Rule 10, Content of the Administrator-In-Training Program) or
- c. has demonstrated administrative experience as the Board deems sufficient, or
- 3. Possesses an associate degree or a current Delaware license as a Registered Nurse and,
- a. has twelve months experience as a Nursing Home Administrator or
- b. has successfully completed twelve months in a pre-approved Nursing Home Administrator-In-Training Program under Direct supervision of the applicant's Preceptor(s) (this program will include all subjects as listed in Rule 10, Content of the Administrator-In-Training Program) or
- c. has demonstrated administrative experience as the Board deems sufficient to satisfy this requirement.
- C. In addition to the degree requirements listed in Rule 7.,
- 1. has completed a course of study administered by an accredited educational institution, provided that both the course of study and the educational institution has been pre-approved by the Board as providing adequate academic preparation for nursing home administration, or
- 2. has demonstrated comprehensive experience and education which the Board deems sufficient to satisfy this requirement.

Rule 8. Application for Examination.

- A. An applicant for examination and qualification for a license as a Nursing Home Administrator shall make application in writing, on forms provided by the Board, and shall furnish evidence satisfactory to the Board that he/she has met the pre-examination requirements as provided for in the State Licensing Statutes and Rule 7 of these Rules and Regulations.
- B. To establish suitability and fitness to qualify for a license as a Nursing Home Administrator, as required by the State Licensing Statute, prior to being submitted to examination for licensure as a Nursing Home Administrator, the applicant shall furnish evidence satisfactory to the Board of ability to perform the essential functions of a licensed Nursing Home Administrator.

Some examples of essential functions of a Nursing Home Administrator are:

1. Ability to demonstrate understanding and communicate general and technical information necessary to the administration and operation of a nursing home with or without reasonable accommodation i.e., applicable health

and safety regulations, and

- 2. Ability to assume responsibilities for the administration of a nursing home as evidenced by prior accredited activities and evaluation of prior services and evidence secured by the Board, and
- 3. Ability to relate the physical, psychological, spiritual, emotional and social needs of ill and/or aged individuals to the administration of a nursing home and to create the compassionate climate necessary to meet the needs of the patients therein with or without reasonable accommodation, and
- 4. Thorough knowledge and demonstrated understanding of the subjects as incorporated in the list of Rule 10.
- C. The basic requirements for suitability set forth herein are to be considered minimal and may not be waived.

Rule 9.Conditional Admission to Examination; Disqualification; Re-Examination.

- A. An applicant for examination who has been disqualified shall be given written notification by certified mail of his/her disqualification and the reason therefore and the applicant's right to a hearing.
- B. All proceedings shall be conducted according to the Administrative Procedures Act.
- C. Where an applicant for examination has been disqualified, he/she may submit a new application for qualification for examination provided, however, that he/she shall be required to meet the requirements for licensing as shall be in force at the time of such reapplication.

Rule 10. Content of the Administrator-In-Training Program.

A. Every Administrator-In-Training (AIT) program shall be approved by the Board and shall be conducted under the direct supervision of the Pre-Approved Preceptor(s), the start date for which shall be the date of the Board's notification of preceptor(s) approval and must be completed within the allotted time (an extension may be granted upon request by either the applicant or preceptor(s) for bonafide reason(s).)

So as to encourage entry to qualified Nursing Home Administrator candidates, the following AIT program (see Addendum A attached) is split between a skilled nursing facility (SNF) and an assisted living facility (AL) and the sponsoring facility (Spons), so called because it is generally the applicant's employer and could be either SNF or AL. If the Spons is SNF, the Board will require at least 5% of the program be completed in a AL; if the Spons is AL, the Board will require at least 10% of the program be completed in a SNF, with the training for each subject of the program to be conducted in the facility identified by an "x" under the appropriate columnar heading. Since the AIT program is split between a SNF and an AL, each AIT Trainee will require a preceptor for each type of facility.

Rule 11. Grading Examinations.

- A. Every candidate for a Nursing Home Administrator's license shall be required to pass the National Association of Boards examination (NAB).
- B. In the event the national examination is failed, the applicant will be notified by the Administrative Assistant. The applicant for licensure will be permitted to retake the examination a maximum of two additional times. The fee for the examination will be set by Division of Professional Regulation. The first makeup examination must be taken within three months and the second, if necessary, within the following six month period. If an applicant must take the exam for a third time, it will be necessary for the applicant, prior to taking the third examination, to spend 40 hours working in a skilled care facility, previously approved by the Board, under a Delaware licensed administrator.

A passing score of seventy five percent (75%) will be required on the examination. Passing grade will:

National scale-113 correct out of 150

Rule 12. Approval of Programs of Study for Licensure of a Nursing Home Administrator.

Any program of study offered by an Educational Institute for the purpose of qualifying applicants for Nursing Home Administrator licensure and/or re-licensure shall be subject to the approval of the Board.

Rule 13. Programs for Continuing Education Credits.

- A. Continuing education programs consisting of Board approved seminars, resident or extension courses, conferences and workshops totaling 48 classroom hours or more, on any of the subject areas enumerated in Paragraph B below, are required for biennial licensure of a license as a Nursing Home Administrator. A maximum of 24 additional credit hours may be carried forward into the next licensure period, however, they must be earned within the last nine months of the preceding licensure period. The following are requirements for license renewal:
- 1. For licenses initially authorized during the first six months of the biennial period, 36 credit hours will be required for renewal.
- 2. For licenses initially authorized during the second six months of the biennial period, 24 credit hours will be required for renewal.
- 3. For licenses initially authorized during the third six months of the biennial period, 12 credit hours will be required for renewal.
- 4. For licenses initially authorized during the fourth six months of the biennial period, no credit hours will be required for renewal.
- 5. When continuing education units are not met, there will be no extensions, absent showing hardship.
- B. Content of programs of continuing education shall include one or more of the following general subject areas or

their equivalents:

- 1. Applicable standards of environmental health and safety,
 - 2. Local health and safety regulations,
 - 3. General Administration,
 - 4. Psychology of patient care,
 - 5. Principles of medical care,
 - 6. Personal and social care,
- 7. Therapeutic and supportive care and services in long-term care,
 - 8. Department organization and management,
 - 9. Community interrelationships, and,
 - 10. Business or financial management.
 - C. Programs of continuing education:
- 1. Those conducted solely by accredited educational institutions.
- 2. Those conducted jointly by educational institutions and associations, professional societies or organizations other than accredited colleges or universities.
- 3. Those conducted solely by associations, professional societies and other professional organizations other than accredited educational institutions.
- 4. Those self-instruction or home study courses, video computer-assisted programs, and teleconferences, preapproved by the Board, may be accumulated at no more than twelve hours per renewal period.
- D. Upon completion of an approved program of study the sponsor or sponsors of the program shall issue certificates of attendance or other evidence of attendance, satisfactory to the Board.
- E. Nothing contained in this rule shall preclude the Board from providing for any program of study which excludes subjects which shall be in derogation of, or in conflict with, the teachings and practices of any recognized religious faith, providing however, any applicant seeking to be entitled to be admitted to such program of study hereinunder, shall submit evidence satisfactory to the Board that he/she is in fact an adherent of such recognized religious faith.

Rule 14. Licenses.

A. An Applicant for license as a Nursing Home Administrator who has successfully complied with the requirements of the licensing laws and standards provided herein, passed the examination provided for by the Board and, where applicable, complied with the requirements for Nursing Home Administrator-In-Training, shall be issued a license on a form provided for that purpose by the Board, certifying that such applicant has met the requirements of the laws, rules and regulations entitling the applicant to serve, act, practice and otherwise hold the applicant out as a duly licensed Nursing Home Administrator. Unless otherwise suspended or revoked as provided in Rule 16 of these Rules and Regulations, such license, once issued, shall remain

valid and active until its official expiration date as noted on such license.

- 1. Any licensee requesting an inactive status shall be notified the Board has no provision for such status and, therefore, the license in question shall be considered active and valid, regardless of the place of residence and/or occupation of the license holder, until its official expiration date, after which any application for reinstatement will be addressed as provided in Rule 15 of these Rules and Regulations.
- B. Board approval for Acting Nursing Home Administrator
- 1. In the event of a permanent loss of a regularly licensed Nursing Home Administrator by death, disability, resignation, dismissal and or any other unexpected cause, or due to change of ownership of the facility, the owner, governing body or other appropriate authority of the nursing home suffering such removal, may designate an Acting Nursing Home Administrator. The Board may at its discretion, issue without examination a permit for a period not to exceed nine months. Such permit will be issued to an applicant who fulfills the requirements of a and b as follows:
 - a. Rule 7.
- b. Has been nominated to be the Acting Nursing Home Administrator in the particular facility which shall be identified in the application.
- 2. In the event of a change in the ownership of the facility, resulting in the removal of the licensed Nursing Home Administrator, the new owner, governing body or other appropriate authority of the nursing home may designate an Acting Nursing Home Administrator under the criteria in Rule 14, B1 above.
- C. No Board approval for acting Nursing Home Administrator shall be issued to an individual if that individual is employed by a facility whose administrator has operated under an acting permit within the previous year.
 - D. No facility may have concurrent acting permits.

Rule 15. Renewal of Licensure.

- A. Every person who holds a valid license as a Nursing Home Administrator, issued by the Board, shall biennially apply to the Board for a new license, and report any facts requested by the Board.
- B. On making application for renewal of license, the established fee shall be submitted and satisfactory evidence shall also be submitted to the Board that during the preceding two year period, the applicant has attended continuing education programs or courses of study as provided in Rule 13 of these Rules and Regulations.
- C. A licensed Nursing Home Administrator whose license has expired may, within two years following the licensure period, have his/her license reinstated without examination upon payment of the renewal fee, plus a late fee. In addition, satisfactory evidence shall also be submitted

to the Board that during the preceding two year period, the applicant has attended continuing education programs or courses of study as provided in Rule 13 of these Rules and Regulations. Any licensee whose license has expired for a period in excess of a two-year licensure period may have his/her license reinstated upon payment of the renewal fee, late fee and upon satisfying the Board as to the applicant's current qualifications by completing an application form as outlined in Rule 8 of these Rules and Regulations, providing, however, such applicant may attach a resume in lieu of completing sections 4 and 5 of the application form. Satisfactory evidence shall also be submitted to the Board that during the preceding two year period, the applicant has attended continuing education programs or courses of study as provided in Rule 13 of these Rules and Regulations.

- D. Only an individual who has qualified as a licensed Nursing Home Administrator and who holds a valid, current registration certificate pursuant to the provisions of these Rules and Regulations, shall have the right and the privilege of using the abbreviation "N.H.A." after his/her name. No other person shall use or shall be designated to such title or abbreviation or any other words, letters, sign, card or device, tending to or intended to indicate that such person is a licensed Nursing Home Administrator.
- E. The Board shall maintain all approved applications for licensing of Nursing Home Administrators. The Board shall maintain a complete file of such other pertinent information as may be deemed necessary.

Rule 16. Refusal, Suspension and Revocation of License.

- A. After due notice to the licensee with an opportunity to be heard at a formal hearing, the Board may suspend, revoke or refuse to issue a license for a Nursing Home Administrator, or may reprimand or otherwise discipline a licensee. Such license may be denied, revoked, or suspended if applicant or licensee has violated any of the following:
- 1. Willfully or repeatedly violated any of the provisions of the Laws, Rules or Regulations pertaining to the licensing of a Nursing Home Administrator.
- 2. Willfully or repeatedly violated any of the provisions of the Law, Rules or Regulations of the licensing or supervising authority or agency of the State or political subdivision thereof having jurisdiction over the operation and licensing of nursing homes;
 - 3. Been convicted of a felony;
- 4. Has practiced fraud, deceit or misrepresentation in securing a Nursing Home Administrator's license;
- 5. Has practiced fraud, deceit or misrepresentation in his/her capacity as a Nursing Home Administrator;
- 6. Has exhibited acts or practices as a Nursing Home Administrator that show he/she is unfit or

incompetent to practice by reason of negligence, habits or other causes, including but not limited to:

- a. Commission of acts of misconduct in the operation of a nursing home under his/her jurisdiction;
- b. Is currently using, in the possession of or has been convicted of the unlawful sale of narcotic drugs, look-alike substances or illegal drugs or alcohol;
- c. Has wrongfully transferred or surrendered possession of either an acting or permanent license;
- d. Has been guilty of fraudulent, misleading or deceptive advertising;
- e. Has falsely impersonated another licensee of a like or different name;
- f. Has failed to exercise true regard for the safety, health and life of any resident;
- g. Has willfully permitted unauthorized disclosure of information relating to a resident of his/her records:
- h. Has discriminated in respect to residents, employees or staff on the basis of age, race, religion, sex, color, disability, or national origin; or
- i. Is unable to perform the essential requirements of a Nursing Home Administrator.

Rule 17. Complaints and Hearing Procedures.

The procedure for the investigation and prosecution of alleged violations of this chapter and these Rules and Regulations, shall be set forth in 29 Del. C. Sec. 8810.

Rule 18. Reciprocity.

- A. The Board, at its discretion, and otherwise subject to the law pertaining to the licensing of a Nursing Home Administrator prescribing the qualifications for a Nursing Home Administrator license, may endorse a Nursing Home Administrator license issued by the proper authorities of any other State, upon payment of the regular established fee and upon submission of evidence satisfactory to the Board that:
 - 1. The applicant is at least 21 years of age,
- 2. The applicant submits a letter of good standing from another state as a Nursing Home Administrator by a regulatory body whose purpose is to regulate the qualifications of Nursing Home Administrators,
- 3. The applicant has taken the National Association of Boards of Examiners (NAB) examination and that the applicant's score on the NAB examination is equal to or exceeds the Board's requirement for this test,
- 4. The applicant meets all current Delaware requirements as set forth in Rule 7,
- 5. Such applicant for endorsement holds a valid license as a Nursing Home Administrator, which has not been revoked or suspended as such in each State from which he/she has ever received a Nursing Home Administrator license or reciprocal endorsement; provided, however, that the Board may waive this requirement if upon submission of

evidence to the Board, the Board is satisfied that the applicant has been rehabilitated.

B. The Board shall also have the power after due notice and an opportunity to be heard at a formal hearing, to revoke or suspend the endorsement of a Nursing Home Administrator license issued to any person upon evidence satisfactory to the Board that the duly constituted authorities of any State have lawfully revoked or suspended the Nursing Home Administrator license issued to such person by such State.

Rule 19. Restoration and Reinstatement of License.

- A. Restoration of a license may be considered after a period of one year from the revocation or suspension date by the Board, at its discretion, upon submission of evidence satisfactory to the Board that the grounds for suspension or revocation has been removed, except where the grounds are for a felony or conviction of Medicaid or Medicare fraud.
- B. Upon denial of such application for restoration of a license, the Board shall grant the applicant a formal hearing upon request, in accordance with the Administrative Procedures Act.

Rule 20. Display of Licenses.

Every person licensed as a Nursing Home Administrator shall display such license in a conspicuous place in the office or place of business or employment.

Rule 21. Duplicate Licenses.

Upon receipt of satisfactory evidence that a license has been lost, mutilated or destroyed, the Board may issue a duplicate license. The duplication fee is set by the Delaware Division of Professional Regulation.

Rule 22. Applicability, Legal Effect, Severability.

- A. The Rules and Regulations of the Board shall be supplemental to the law providing for the licensing of Nursing Home Administrators and shall have the force and effect of Law.
- B. Every rule, regulation, order and directive adopted by the Board shall state the date on which it takes effect and a copy thereof signed by the President of the Board and the Secretary of the Board shall be filed as a public record in the office of the Board and as may be required by Law.
- C. The Rules and Regulations of the Board are intended to be consistent with the applicable Federal and State Law and shall be reviewed, whenever necessary, to achieve such consistency.
- D. In the event that any provision of these Rules and Regulations is declared unconstitutional or invalid, or the application thereof to any person or circumstance is held invalid, the applicability of such provision to other persons and circumstances and the constitutionality or validity of every other provision of these Rules and Regulations shall

not be affected thereby.

- E. These Rules and Regulations shall not affect pending actions or proceedings, civil or criminal, but the same may be prosecuted or defended in the same manner and with the same effect as though these Rules and Regulations had not been promulgated.
- F. The Board shall furnish copies of these Rules and Regulations and Amendments thereof for a fee set by the Delaware Division of Professional Regulation, except, the Board may, at its discretion, provide one free copy to each nursing home, health related organization, educational institutions, State or Federal Government units and other public or noncommercial agencies or concerns.
- G. Amendments to these Rules and Regulations of the Board shall be made only at a regularly called meeting thereof by a majority vote of all members of the Board. No amendment shall be acted upon unless said amendment was presented at a prior meeting and unless notice has been given to the members of the Board that said amendment is to be acted upon at a particular meeting of the Board.
- H. These Rules and Regulations shall take effect the first day of December, 1982.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** 122(d))

Repeal of Regulation for Charter Schools - Admission

The Acting Secretary of Education seeks the approval of the State Board of Education to repeal the regulation Charter Schools - Admissions. The repeal of this regulation is necessary because of the following realities:

- The regulation was enacted in October 1995 before any school had recruited students or opened; with experience we are seeing that it is not operational.
- Title 14, Section 505, exempts all Charter Schools from Department of Education regulations.
- Title 14, Section 504A(I), says establish admissions procedures "to the extent practicable."
- The Department of Education has required 50 to 60% enrollment in Charter Schools by May 1st, beyond the April 1st deadline stated in the regulation and assumes continued enrollment after May 1st.
- Additional conditions have been set for existing Charter Schools requiring 85% enrollment by July 15th, well beyond the deadline stated in the regulation.
- The regulation would not allow Charter Schools to fill vacancies left by students who withdraw from the school

and since the size of the schools are generally small, it would jeopardize the viability of a school's operation.

• Public School Choice programs are also addressed in this regulation, but 14 <u>Del. C.</u>, Chapter 4, addresses choice program admission deadlines.

e. Charter Schools - Admissions

For the purpose of admission decisions made pursuant to the provisions of the Delaware Charter School Program, no Regular school district or Charter School shall accept for admission a student who is currently enrolled in a Delaware public school district after April 15th of the school year preceding the student's requested admission. The purpose of this regulation is to provide ample time for Districts of residence to make staff decisions in accordance with the notification requirements of the Delaware Code. This regulation does not apply to decisions affecting nonpublic student admissions, intra-district choice transfers, admissions to Kindergarten, or admission decisions made in accordance with the good cause provisions of the Choice law. (State Board approved October, 1995)

* PLEASE NOTE: THE ABOVE PROPOSED REGULATION WILL BE CONSIDERED AT THE STATE BOARD OF EDUCATION MEETING ON THURSDAY, OCTOBER 21, 1999

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 <u>DEL. C.</u>, SECTION 122(d)

PAYMENT OF PERSONNEL UNDER VARIOUS PROGRAMS

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulation Payment of Personnel Under Specific Project Proposals, pages 2-3 to 2-6 in the <u>Handbook of Personnel Administration for Delaware School Districts</u>. The amendment changes the style and format of the regulation to make it clearer and revises the language by removing the references that are no longer valid.

C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards?

The amended regulation addresses the payment of local

school district staff, not student achievement.

2. Will the regulation help ensure that all students receive an equitable education?

The amended regulation addresses the payment of local school district staff, not equitable education issues.

3. Will the regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation addresses the payment of local school district staff, not student health and safety.

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

The amended regulation addresses the payment of local school district staff, not the legal rights of students.

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

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

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

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation?

The regulation needs to be in place to provide local school districts with information concerning payment of staff.

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 amended regulation.

AS APPEARS IN THE HANDBOOK OF PERSONNEL ADMINISTRATION FOR DELAWARE SCHOOL DISTRICTS

Payment Of Personnel Under Various Programs

The following is adopted as State Board of Education policy relative to the payment of professional, salaried, hourly wage, and consultant personnel employed by the various school districts and other agencies:

This policy shall be applicable to all project proposals within the jurisdiction of this Board serving as the State Board of Education and State Board for Vocational Education, whether new, renewed, or amended, beginning with the date of enactment by the Board.

It is recognized that programs conducted in local school districts and other agencies and financed from various funding—sources are intended to be an improvement, enrichment, supplement to, and extension of the local educational programs but are at the same time intended to be a very integral part of the educational program of the school district.

A. Federal Regulation

Nothing in this regulation is intended to take precedent over or negate any Federal Program statute, rule or regulation. Federal funds shall not be available to pay all or a part of those expenses which the State or local educational agencies would have incurred even if they were not participating in a Federal grant program. The compensation of supervisory personnel, including superintendents of school districts, directors of instruction, supervisors of instruction in regular curriculum areas, and school principals, falls within the category of expenses that would have been incurred if a state were not participating in the program.

- B. A District May:
- 1. Employ additional administrative, supervisory, and teaching personnel, or other necessary personnel beyond those allocated in <u>Delaware Code</u>, Title 14, in order to implement a Federally supported project.
- 2. Extend the employment of a ten or eleven-month administrator or supervisor through the eleventh and twelfth month for purposes of conducting a Federally-supported program. Part-time assignments are to be paid a pro- rata share.
 - 3. Employ teachers of the school district during the

185 day school year in behalf of such activities as curriculum development, instruction and/or assessment task development, staff development or Federal programs up to and including a total of nine (9) additional hours per week.

- 4. Employ full-time instructional personnel who are qualified for administrative or supervisory positions to carry on administrative or supervisory activities beyond the regular school day or school week as described in Item "3" above.
- 5. Pay a salary equal to the combined State and local salary of other persons in similar assignments at the same rank
- 6. Pay an hourly rate for part-time assignment as an amount pro-rated against the annual salary for the same rank and assignment and in accordance with the qualifications of the individual so assigned and in accordance with previous sections of this statement. (An hourly rate table has been pre-pared in the Finance Division, State Department of Public Instruction.) Include all assignments and salary factors in the budget of the project.
 - D. A District Shall Not:
- 1. Supplant a local or State position by substituting Federal funds for payment of that position.
- 2. Employ a twelve-month district person, otherwise supported by State funds, for additional payment under a Federal program.
- 3. Employ any teaching personnel for more than nine (9) additional hours per week.
- 4. Pay a salary to cover paid vacation days during intended Federal employment when that Federal employment is an extension of a ten or eleven- month school year as assigned and paid by the State.

5.

6.

7. 8.

9. Extend the privileges of tenure, as described in Delaware Code, Title 14, Chapter 14, to any person whose salary is drawn from Federal funds; nor may tenure be applied for that part of an assignment that is paid for from Federal funds.

10.

- 11. Pay a salary or wage to a person involved in preplanning or preparation activities that are not a distinct part of the approved project. This does not preclude inservice activities during a project.
 - C A District Shall:
- 7. Include a description of the position in the project proposal as presented to the State Department of Public Instruction for approval.
- 8. In describing any new or additional position, align it with a recognized rank as described in <u>Delaware Code</u>,

- Title 14; or in the case of a nonpublic school institution describe the position in terms of a rank already existing in the institution and assigned to comparable work.
- 9. Include in the benefits of the employee all of those benefits that accrue to an employee of the State or the local school district except the benefit of tenure.
- 10. Seek and obtain approval of a Federally-funded project through the office of the appropriate coordinator in the State Department of Public Instruction prior to the assignment of personnel for the assumption of duties and payment of wages or salary.

11.

(State Board of Education, May 16, 1969)

AS AMENDED

- 700.3 Compensation of Personnel Under Specific Project Proposals
- 1.0 A district may use Federal or local funds to do the following:
- 1.1 Employ additional administrative, supervisory and teaching personnel, or other necessary personnel beyond those allocated in *Delaware Code*, Title 14, in order to implement a federally or locally supported project.
- 1.2 Extend the employment of a ten or eleven month employee through the eleventh and twelfth month for purposes of conducting a federally or locally supported program. Part-time assignments shall be paid a pro-rata share.
- 1.3 Employ teachers of the school district during the school year for additional hours each week to support such activities as extra-time tutoring.
- 1.4 Employ full-time instructional personnel who are qualified for administrative or supervisory positions to carry on administrative or supervisory activities beyond the regular school day or school week.
- 1.5 Pay a salary equal to the combined State and local salary of other persons in similar assignments at the same rank.
- 1.6 Pay an hourly rate for a part-time assignment as an amount pro-rated against the annual salary for the same rank and assignment and in accordance with the qualifications of the individual so assigned and in accordance with previous sections of this statement.
 - 2.0 A district shall do the following:
- 2.1 <u>Include a description of the position in the project proposal as presented to the State Department of Education for approval.</u>
- 2.2 In describing any new or additional position, align it with a recognized rank as described in *Delaware Code*, Title 14; or in the case of a nonpublic school institution describe the position in terms of a rank already existing in the institution and assigned to comparable work.

- 2.3 Include in the benefits of the employee all of those benefits that accrue to an employee of the State or the local school district except the benefit of tenure.
- 2.4 Seek and obtain approval of a Federally-funded project through the office of the appropriate coordinator in the State Department of Education prior to the assignment of personnel for the assumption of duties and payment of wages or salary.
 - 3.0 A district shall not do the following:
- 3.1 Supplant funds for a local or State position by substituting Federal funds for payment of that position.
- 3.2 Pay a salary to cover paid vacation days during intended Federal employment when that Federal employment is an extension of a ten- or eleven-month school year as assigned and paid by the State.
- 3.3 Extend the privileges of tenure, as described in *Delaware Code*, Title 14, Chapter 14, to any person whose salary is drawn from Federal funds; nor may tenure be applied for that part of an assignment that is paid for from Federal funds.
- * PLEASE NOTE: THE ABOVE PROPOSED REGULATION WILL BE CONSIDERED AT THE STATE BOARD OF EDUCATION MEETING ON THURSDAY, OCTOBER 21, 1999

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122 (3)(u) (16 **Del.C.** 122(3(u))

These regulations, "The State of Delaware Food Code," replace by recision the current "State of Delaware Regulations Governing Public Eating Places" previously adopted November 1978, and most recently amended March 15, 1991. The rescinded regulations will be replaced with Chapters 1 – 8 of the 1999 FDA Food Code, and the accompanying addendum, "Part 8-6" which states Delaware specific enforcement procedures, and are to be adopted in accordance with Chapter 1, Section 122 (3) u., Title 16, Delaware Code. "The State of Delaware Food Code" will supersede all previous regulations concerning public eating places adopted by the former Delaware State Board of Health.

The regulations impose requirements that apply to food service operations such as restaurants; retail food operations, i.e., grocery stores; and, vending machine operators that vend potentially hazardous foods. They set forth: operator knowledge expectations; science-based sanitary construction design requirements and operational procedures; plan review requirements; and, enforcement procedures to assist in protecting consumers from food borne illness.

Three public hearings will be held on at the following times, dates and locations: Wednesday, October 27, 1999 at 10:00 a.m., at the Department of Transportation Southern District Office, conference room, located at the corner of U.S. Rt. 113 and County Road 431, Georgetown; Wednesday, October 27, 1999 at 7:00 p.m. at the Department of Transportation Administration Building, South/Central/North Conference Rooms, located at 800 Bay Rd., Dover; and Thursday, October 28, 1999 at 1:00 p.m., at the Carvel State Office Building, Second floor conference room, 820 N. French Street, Wilmington.

Copies of the proposed Code are available for review by appointment at the following locations:

Environmental Health Field Services

Williams State Service Center, 3rd floor 805 River Road Dover, Delaware 19901 Phone: 302-739-5305

and

Environmental Health Field Services 2055 Limestone Road, Suite 100 Wilmington, DE 19808 Phone: 302-995-8650

and

Environmental Health Field Services
Georgetown State Service Center, Rm. 1000
546 S. Bedford Street
Georgetown, Delaware 19947
Phone: 302-856-5496

Anyone wishing to present his or her oral comments at a public hearing should contact Dave Walton at 302-739-4700 by October 22, 1999. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments on or before November 1, 1999 to:

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

STATE OF DELAWARE FOOD CODE ADDENDUM TO THE 1999 FDA FOOD CODE

Chapters 1 – 8 of the "1999 FDA Food Code" is being herewith proposed for adoption by the State of Delaware as the primary document in regulating retail food establishments in the State. The text below is an addendum to Chapter 8, also proposed for adoption, to comply with Delaware-specific requirements and is to be appended at the end of Chapter 8 in the primary document, Chapters 1 – 8 of the "1999 FDA Food Code", which can be found on the Internet at the following address: http://vm.cfsan.fda.gov/~dms/fc99-toc.html.

* Please note that the proposed regulations are being incorporated by reference in accordance with the procedures as authorized by 29 Del.C. 1134.

PART 8-6 ENFORCEMENT PROCEDURES

8-601 Re-inspection Fee 8-601.10

- (A) A re-inspection fee shall be assessed under the following circumstances:
- (1) When critical violations are shown to exist during a follow-up inspection
- (2) When non-critical violations are shown to exist on successive routine inspections
- (3) When a complaint inspection requires a follow-up inspection to confirm compliance.
- (4) When an inspection is required to determine compliance with the terms of a corrective action plan or an administrative hearing.
- (5) To determine the proper posting of a valid permit.
- (6) Any other follow-up inspection deemed necessary by the regulatory authority to determine compliance with these Regulations.
- (B) The fee shall be that required by 16 $\underline{\text{Del}}$. $\underline{\text{C}}$. Chap. 1, 134.
- (C) Failure to pay the re-inspection fee, as specified, shall result in the automatic suspension of the permit to operate a food establishment. The permit shall remain suspended until the regulatory authority receives full payment of all fees.

8-602 Administrative Action

8-602.10 General

If the regulatory authority determines that a food establishment is operating without a valid permit, or that condition(s) exist(s) in a food establishment which represent(s) an Imminent Health Hazard or if serious violations, repeat violations, or general unsanitary conditions

are found to exist, administrative action may occur. Administrative action will be conducted in accordance with the Procedures for Office of Food Protection Prosecutions.

(A) Operation without a Permit

If food establishment is found operating without a valid permit as required by 8-301.11 of these Regulations, the regulatory authority shall order the facility immediately closed. The closure shall be effective upon receipt of a written notice by the person in charge of the food establishment or employee of the food establishment. A closure notice statement recorded on the inspection report by the representative of the regulatory authority constitutes a written notice. The food establishment shall remain closed until a permit application and applicable fees and any required plans have been received and approved by the Regulatory Authority. In order to open, the food establishment must comply with 8-303.10 of these Regulations.

(B) Imminent Health Hazard(s)

(1) Suspension of Permit

If some condition(s) is/are determined to exist in the food establishment which present(s) an imminent health hazard to the public, the regulatory authority, or his designee, in the county in which the food establishment operates may suspend the operating permit of the food establishment without a hearing for a period not to exceed ten (10) government business days. The suspension shall be effective upon receipt of written notice by the person in charge of the food establishment or employee of the food establishment. A suspension statement recorded on the inspection report by the inspecting regulatory representative constitutes a written notice. The permit shall not be suspended for a period longer than ten (10) government business days without a hearing. Failure to hold a hearing within the ten (10) government business day period shall automatically terminate the suspension.

- (2) The permit holder of the food establishment may request, in writing, a hearing before the regulatory authority at any time during the period of suspension, for the purpose of demonstrating that the imminent health hazard(s) no longer exist. The request for hearing shall not stay the suspension.
- (C) Serious Violations, Repeat Violations and General Unsanitary Conditions

When conditions exist in a food establishment that represent serious violations, repeat violations and general unsanitary conditions in a food establishment, the regulatory authority may initiate a corrective action plan or schedule a hearing.

8-603 Agency Emergency Actions

8-603.10 Food may be examined or sampled by the regulatory authority as often as necessary for enforcement of these Regulations.

8-603.20 All food shall be wholesome and free from spoilage. Food that is spoiled or unfit for human consumption shall not be kept on the premises. The established administrative procedures for the implementation and enforcement of the provisions of 16 <u>Del</u>. <u>C</u>., Chapter 33, relating to the embargo of misbranded or adulterated food, and penalties shall be applicable to this Section.

8-604 Penalties

8-604.10 Any person (or responsible officer of that person) who violates a provision of these Regulations, and any person (or responsible officer of that person) who is the holder of a permit or who otherwise operates a food establishment that does not comply with the requirements of these Regulations shall be subject to the provisions of 16 <u>Del. C.</u> §107.

8-604.20 Any person (or responsible officer of that person) who violates a provision of these Regulations, and any person (or responsible officer of that person) who is the holder of a permit or who otherwise operates a food establishment that refuses, fails or neglects to comply with an order of the Secretary shall be subject to an administrative penalty of not less than \$100 and not more than \$1,000, together with costs.

8-604.30 The regulatory authority may seek to enjoin violations of these Regulations.

8-604.40 A conspicuous, colored placard shall be prominently displayed at all entrances of food establishments meeting the following criteria:

- (A) Failure to obtain a valid permit; or
- (B) whose permit stands suspended; or
- (C) whose permit stands revoked; or
- (D) whose permit has expired due to non-payment of a permit fee.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 **Del.C.** 505)

PUBLIC NOTICE

Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its general policy manual.

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 the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by October 31, 1999.

REVISION:

General Policy Manual

Who is eligible for the DHCP?

To be eligible for the DHCP the child must:

- be under the age of 19 years (through 18);
- have a family income less than or equal to 200% of the Federal Poverty Level (FPL);
- be a current Delaware resident with intent to remain;
- be uninsured for at least 6 previous months (exceptions to this would be made if coverage is lost due to: death of parent, disability of parent, termination of employment, change to a new employer who does not cover dependents, change of address so that no employersponsored coverage is available, expiration of the coverage periods established by COBRA, employer terminating health coverage as a benefit for all employees);

NOTE: Applicants who have been uninsured less than 6 months will be given a time when their pending application for the program can be approved. If children have been enrolled in the DHCP, but premiums have not been paid for 2 months, eligibility will be suspended and enrollment in the MCO will end. The family will then be ineligible for 6 months from the date of suspension and disenrollment, unless they can demonstrate good cause, as defined by the State, for non-payment of premium. Families who do not pay the premiums may re-enroll at any time without penalty, with the re-enrollment period starting with the first month for which the premium is paid.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 **Del.C.** 505)

PUBLIC NOTICE

The Delaware Health and Social Services, Division of Social Services, is proposing to add new policies to existing policies governing Child Care. The Division of Social Services Policy Manual at 11003.7, 11003.7.2, 11004.3 and

11004.11 allows DSS to establish an income limit to determine parent financial eligibility for child care assistance. The Division of Social Services Policy Manual at 11004.7.1 allows DSS to establish the basis upon which it sets parent fees for child care services. The new policy will allow DSS to increase its financial eligibility for child care assistance from 155% to 200% of the Federal Poverty Level. The increase in income limits expands the fee scale used to determine parent co-pays.

The Delaware Health and Social Services, Division of Social Services, is proposing to add new policies to existing policies governing Child Care. The Division of Social Services Policy Manual at 11003.7.7 and 11004.7 allows DSS to consider the possibility of waiving the income limitation for protective child care and to consider waiving parent/caretaker co-payments for protective child care. The new policy will allow DSS to definitively waive the income limitation for protective child care and to waive co-payments unless the Division of Family Services says otherwise.

SUMMARY OF PROPOSED REVISIONS:

- Allows the Division of Social Services to increase the income limit by which it establishes parent financial eligibility for child care assistance from 155% to 200% of the Federal Poverty Level.
- Expands the fee scale up to 200% of the Federal Poverty Level.
- Allows the Division of Social Services to definitively waive the income limitation for protective child care.
- Allows DSS to waive co-pays for protective child care unless the Division of Family Services says otherwise.

COMMENT PERIOD:

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 the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by October 31, 1999.

11003.0 ELIGIBILITY REQUIREMENTS

DSS provides child care services to eligible families with a child(ren) who resides in the home and who is under the age of 13, or children 13 to 18, who are physically or mentally incapable of caring for themselves or active with the Division of Family Services. Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years

from the date of obtaining status as either a refugee, asylee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who have worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction.

A family needs service when parent/caretakers are required to be out of the home, or are reasonably unavailable (may be in the home but cannot provide supervision, such as a parent works a third shift, is in the home, but needs to rest), and no one else is available to provide supervision.

- A. Parent/caretakers need service to:
 - 1. accept employment,
 - 2. keep employment,
 - 3. participate in training leading to employment,
 - 4. participate in education,
- 5. work and the other parent/caretaker or adult household member is chronically ill or incapacitated,
- 6. have someone care for the children because of a parent/caretaker special need.
 - B. A child(ren) needs service to:
- 1. provide for a special need (physical or emotional disabilities, behavior problems, or developmental delays, etc.);
- 2. provide protective supervision in order to prevent abuse or neglect.

In addition to having an eligible child and a child care need, certain DSS child care programs require parent/caretakers to meet income limits. Under certain other child care programs, DSS guarantees child care. These financial requirements along with other technical requirements help determine the parent/caretaker's child care category.

Categories relate to the funding sources used by DSS to pay for child care services.

The following sections discuss the technical requirements for child care services based on category and need.

11003.1 Technical Requirements

Technical requirements relate to the circumstances which qualify a parent/caretaker for a specific category of child care funding. These circumstances help determine whether a child care need exists, whether DSS guarantees child care, whether DSS considers income, and whether the parent pays a child care fee.

11003.2 Parent/Caretaker in ABC

DSS guarantees child care for a dependent child, or a child who would be dependent except for the receipt of benefits under SSI, when the parent/caretaker receives ABC benefits and it is necessary for the parent/caretaker to:

A. accept employment or remain employed (Category 12),

B. participate in ABC (Category 11), or Child

care is available to a caretaker in the above instance only if the caretaker is part of the TANF assistance unit. The child also needs to be a dependent child.

11003.2.1 ABC Sanctions

Recipients who fail without good cause to meet requirements for ABC are sanctioned. A sanction means that the recipient's needs are not considered in determining the family's need for assistance and the recipient loses her/his share of the TANF grant. When these recipients receive sanctions, they lose their ABC Child Care and, as long as the ABC case remains open, they cannot receive other categories of child care. In order to retain ABC Child Care, the recipient will have to cure the sanction, meaning they will have to cooperate with their ABC requirements, or they will have to become exempt.

11003.3 Parent/Caretaker on Food Stamps

- A. DSS provides child care for a dependent child when a parent/caretaker receives Food Stamps and the parent/caretaker needs to:
- 1. participate in Food Stamp Employment and Training activities, or
- 2. volunteer to participate in Employment and Training activities (both are Category 21).
- B. Persons can volunteer to participate in E&T Food Stamps activities only as long as the activity for which they volunteer is a component activity of E&T Food Stamps. Acceptable E&T Food Stamps component activities are:
 - 1. Independent Job Search,
 - 2. Self-Directed Job Search Training,
 - 3. Basic Life Skills Enrichment,
 - 4. High School and/or Adult Education,
 - 5. Post-Secondary Education (first degree

only), and

6. Vocational Skills Training.

Mandatory participants who fail to participate receive a sanction. Persons who receive a sanction lose their child care while the sanction remains in effect.

11003.3.1 Food Stamp Guarantee

To the extent that child care is necessary for an eligible Food Stamp recipient to participate in First Step - Food Stamps, DSS guarantees the recipient's child care. Note, however, that parent/caretakers responsible for a child under the age of six are exempt from participation in E&T - Food Stamps activities unless they choose to volunteer. DSS considers parent/caretakers receiving First Step - Food Stamps Child Care a priority, and will typically provide service when DSS has a waiting list. Again, because DSS provides E&T - Food Stamps Child Care as an entitlement, recipients are to receive timely and adequate notice requirements before any termination or reduction in benefits.

11003.4 Transitional Child Care

Parent/caretakers who received TANF and who are working can continue to receive child care if they:

- A. stopped receiving TANF because of income from work or because their income disregards expired,
 - B. request Transitional Child Care (Category 13). 11003.5 In-Home Child Care

The Fair Labor Standards Act requires that in-home child care providers be treated as domestic service workers. As a result, DSS must pay these providers the minimum wage. Paying the federal minimum wage would make the cost of in-home care disproportionate to other types of care. As a result, DSS has placed a limit on parental use of the in-home care option.

- A. As of July 1994, in-home care has been limited to:
- 1. families in which four or more children require care, or
- 2. families with fewer children only as a matter of last resort.
 - B. Examples of "last resort" may include:
- 1. the parent works the late shift in a rural area where other types of care are not available, or
- 2. there is a special needs child for whom it is impossible to find any other child care arrangement.

Federal regulations define in-home care as child care provided in the child's own home. In-home care also includes situations where the caregiver and the child share a home.

11003.6 Income Limits

To be eligible for child care services, a family is to have gross income equal to or less than 155 percent of the current federal poverty level for a family of equal size. This income requirement typically applies to all income eligible child care programs. Refer to Appendix I for current income limits.

11003.7 Income Eligible Child Care

- A. DSS provides child care to families who are financially eligible to receive care because the family's gross income is equal to or under 155 200 percent of the federal poverty level and they have one or more of the following needs for care:
- 1. a low-income (455 200 percent or less of the federal poverty level) parent/caretaker needs child care in order to accept employment or remain employed and would be at risk of becoming eligible for ABC if child care were not provided (At-Risk Child Care, Category 31); or
- 2. a low-income (155 200 percent or less of the federal poverty level) parent/caretaker needs child care in order to work, attend a job training program, or participate in an educational program, or are receiving or need to receive protective services (CCDBG Child Care, Category 31); or
- 3. a parent/caretaker needs child care to work or participate in education or training; searches one month for employment after losing a job; because the child or the parent/caretaker or other adult household member has special needs; because they care for a protective child who is

active with the Division of Family Services or the parent/caretaker is homeless. (SSBG Child Care, Category 31).

B. DSS programmed its CCMIS to include all the above child care needs into one category, Category 31. Therefore, Child Care Case Managers will only have to consider whether parent/caretakers meet just one of the above needs to include them in a Category 31 funding stream. However, DSS also programmed its CCMIS so that it could make the policy distinctions needed to make payments from the appropriate funding source for each child in care. Though Child Care Case Managers will not have to make these distinctions, it is helpful to know them.

They are:

1. At-Risk Child Care will only include parent/caretakers who need child care to accept a job or to keep a job.

It will include parent/caretakers who have the need for child care because of a special needs child or a protective child, but it will always coincide with the parent/caretaker's need to accept or keep a job.

- 2. CCDBG Child Care will include:
- a. parent/caretakers who need child care to accept or keep a job, and/or
 - b. participate in education or training, or
- c. children who receive or need to receive protective services.

It will also include parent/caretakers who need care because of a special needs child. It will always coincide with the parent/caretaker's need to work or participate in education or training. It will not include parent/caretakers who have a special need or other adult household member who has a special need.

- 3. SSBG Child Care will include:
- a. parent/caretakers who need child care to accept or keep a job,
- b. parent/caretakers who need child care to participate in education or training,
- c. parent/caretakers whose only need is a special need child or special needs adult household member,
 - d. children who need protective services,

or

e. parent/caretakers who are homeless. 11003.7.1 Income Eligible/Program Limitation

There is no child care guarantee with the funding sources which make up the income eligible category like there is with First Step - ABC and Transitional Child Care. Funding is limited by the amount of DSS' grant award. This means that DSS cannot serve all the income eligible parent/caretakers who have a legitimate child care need. Though families may be eligible, a lack of available funding will prevent DSS from authorizing service. DSS therefore, reserves the right to limit, where appropriate, its income eligible child care services whenever the demand for income eligible services comes near or matches available funding

resources. DSS also reserves the right, under these conditions, to determine who it will serve, when it will serve them, and how it will serve them.

11003.7.2 Income Eligible/Homeless

Parent/caretakers who are homeless and whose incomes are at or below 155 200 percent of the federal poverty level can receive income eligible services exclusive of meeting any other need requirement. DSS defines homeless as:

- A. families living in a shelter or receiving emergency assistance to live in a temporary arrangement (an example of a temporary arrangement are those families receiving assistance to live in a local motel); or
- B. families without a fixed address or not living in a permanent dwelling (examples of families without a fixed address are families living in cars or tents, excluding families who live with other families).

DSS will provide child care services to homeless families for up to three months or until the family is able to obtain suitable living arrangements. Once families have obtained suitable living arrangements, child care services can only continue if families have another need for service, such as the family needs child care in order to work.

11003.7.3 Income Eligible/Loss of Employment or Job Transition

Parent/caretakers who lose employment or who have a gap in employment because of a transition between jobs, can continue service for up to one month. Child care services will cease if employment does not begin again after this time.

11003.7.4 Income Eligible/Training

Parent/caretakers who participate in a training program can continue receiving child care services for the duration of their participation as long as:

- A. the training was part of a First Step Employability Development Plan; or
- B. there is a reasonable expectation that the training course will lead to a job within a foreseeable time frame (6 to 18 months), such as persons participating in apprenticeship programs, on-the-job training programs, or vocational skill programs.

Child care services can continue for up to one month to allow for breaks between training programs or to allow for an employment search upon completion of training.

11003.7.5 Income Eligible/Education and Post-Secondary Education

Parent/caretakers who participate in education and post-secondary education can receive income eligible child care for the duration of their participation as long as:

- A. their participation will lead to completion of high school, a high school equivalent or a GED; or
- B. their participation in post-secondary education was part of a First Step Employability

Development Plan; or

- C. their participation in post-secondary education began as a requirement for participation in the First Step Food Stamps program; and
- D. there is a reasonable expectation that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, medical technology students, secretarial or business students.

DSS will not authorize child care services for parent/caretakers who already have one four year college degree or are in a graduate program.

DSS will provide child care services for children who need to receive or who receive protective services from the Division of Family Services exclusive of other child care needs. DSS will also give service priority to protective children, meaning DSS will provide an exemption to protective children during a waiting list period. However, by agreement with the Division of Family Services, this exemption will only exist for a limited number of protective children. Currently the limitation is 280 children, but is subject to change based on available funding and forecasted need. (An Interagency Agreement exists between the Department of Services For Children, Youth and Their Families, Division of Family Services, and the Department of Health and Social Services, Division of Social Services.)

11003.7.7 Income Waiver

DSS may will waive the 155 200 percent income eligibility limitation for families only on a case-by-ease basis when the child is receiving or needs to receive protective services. The need for care in this instance is coordinated with the Division of Family Services and is part of a range of services being provided to and/or required of the parent to help ensure the protection of the child.

11003.7.8 Special Needs Children Policy is yet to be decided.

11003.8 Necessity of Child Care

For parent/caretakers to receive child care services, DSS will need to consider whether child care is necessary. Child care will be considered necessary when:

- A. the child is not in school during the hours of the parent/caretaker's employment; or
- B. the child is not in school during the hours of the parent/caretaker's participation in training or education; or
- C. in all cases of two parent households, both parents must have a need for child care in order for DSS to provide child care services, for example:
- 1. in two parent households both parents work: or
- 2. one works and the other has another need (such as education or training), is incapacitated (a parent who needs to participate in in-patient rehabilitation is included in the meaning of incapacitated) or is unavailable

(such as one parent works the late shift and needs to sleep during the day while the other parent works); or

D. there is no other legally responsible and capable adult in the household (such as another family member).

DSS will make an exception in the last case if the other adult household member is incapacitated, the child is at risk of abuse, or the age or disposition of the other adult makes it unlikely to expect him/her to provide care (such as grandparents are not required to provide care if they are not inclined to do so on their own).

11003.9 Financial Requirements

Child care services are available to families who otherwise cannot pay for all or part of the cost of care. This determination of who cannot afford to pay all, or a portion of the cost of care, is always a determination based on income. The financial requirements, which follow, relate to the circumstances which qualify parent/caretakers for child care services based on income. These requirements help determine whose income to count or not count, what is counted, and when and how to count it.

11003.9.1 Countable Income

- A. All sources of income, earned (such as wages) and unearned (such as child support, social security pensions, etc.) are countable income when determining a family's monthly gross income. Monthly gross income typically includes the following:
- 1. Money from wages or salary, such as total money earnings from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses earned before deductions are made for taxes, bonds, pensions, union dues, etc.
- 2. Gross income from farm or non-farm self-employment is determined by subtracting business expenses such as supplies, equipment, etc. from gross proceeds. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the ABC standard allowance for work connected expenses. In the case of unusual situations (such as parent/caretaker just beginning business), refer to DSSM 9605 and 9701 through 9702.3.
- 3. Social Security pensions, public assistance payments, net rental income, unemployment compensation, workers compensation, pensions, annuities, alimony, and child support.
- B. Monies received from the following sources are not counted:
- 1. per capita payments to or funds held in trust for any individual in satisfaction of a judgement of Indian Claims Commission or the Court of Claims;
- 2. payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the

Act;

- 3. money received from the sale of property such as stocks, bonds, a house or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds are counted as income from self-employment);
 - 4. withdrawal of bank deposits;
 - 5. money borrowed or given as gifts;
 - 6. capital gains;
- 7. the value of USDA donated foods and Food Stamp Act of 1964 as amended;
- 8. the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;
- 9. any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- 10. earnings of a child under the age of 14 years of age;
- 11. loans or grants such as scholarships obtained and used under conditions that preclude their use for current living costs;
- 12. any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act:
- 13. home produce utilized for household consumption;
- 14. all of the earned income of a minor parent who is a full-time student or a part-time student who is working but is not a full-time employee (such as high school students who are employed full-time during summer);
- 15. payments derived from participation in projects under the First Step (such as CWEP) program or other job training programs; and

16. all Vista income.

Resources (such as cars, homes, savings accounts, life insurance, etc.) are not considered when determining financial eligibility or the parent fee.

11003.9.2 Whose Income to Count

In all Category 13 and 31 cases, count all income attributable to the parent(s) as family income. Family as used here means those persons whose needs and income are considered together. A person who acts as a child's caretaker (as defined in DSSM 11002.9), is not included in the definition of family. In this instance, any income attributable to the child or children is the income which is counted.

11003.9.3 Family Size

The people whose needs and income are considered together comprise the definition of family size. Family size is the basis upon which DSS looks at income to

determine a family's financial eligibility. Therefore, knowing who to include in the determination of family size is an important part in deciding financial eligibility. Rules to follow when considering family size are relationship and whose income is counted.

- A. Parents (natural, legal, adoptive, or step) and their children under 18 living in the home, will always be included together in the make up of family size.
- B. Adults who are not the natural, legal, adoptive, or step-parent of the child or children under 18 living in the home are not included.

11003.9.4 Parents Under 18 and Family Size

Consider minor parents (under 18) for child care services separately from their legal guardian or parents. This means that minor parents can apply for child care services on their own even if they live with their legal guardian or parents. In this case, need for care and financial eligibility is based on the minor parents' circumstances and not that of their parents or legal guardian.

11000.9.4.1 Minor Parents and ABC

In the case of a minor parent who is a mandatory First Step - ABC participant, the minor parent will have to comply with First Step - ABC requirements for DSS to maintain child care services. Requirements for First Step - ABC are satisfactory participation in the assigned activity and making good progress toward the completion of the activity.

11003.9.5 Making Income Determinations

DSS programmed the CCMIS to automatically make financial eligibility decisions. As long as the appropriate income for the appropriate persons is entered into the system, and as long as the correct family size is entered, the CCMIS will calculate income and determine eligibility.

The following are examples for converting various pay schedules to monthly income.

- A. Client A is paid \$200.00 per week 200 x 4.33 = 866/month.
- B. Client A is paid \$200 per week, but has a varying work schedule.

Week one - \$200; week two - \$100; week three - \$176; week four - \$200. \$200 + \$100 + \$176 + \$200 = \$676 divided by 4 = \$169/week average. \$169 x 4.33 = \$731.77/month.

- C. Client B is paid \$400 every other week. $400 \times 2.16 = 8864$.
- D. Client C is paid \$950 twice a month. $$950 \times 2 = $1900/month$.
- E. Other sources of income, such as child support, are added to wages either as the actual amount received or as an average of the amount received in the past three months.

11003.10 Changes in Need or Income

Parent/caretakers are required to report changes that

affect either their need for child care or their income. Parent/caretakers are to report these changes to their Child Care Case Manager within 10 days. The types of changes that parent/caretakers are to report are:

- A. loss of job;
- B. new employment;
- C. for Category 13, 21, or 31 cases, any increase or decrease in wages resulting in a change to income of \$75 or more:
- D. for Category 13, 21, or 31 cases, any other change to income which will result in an increase or decrease to income of \$75 or more (such as a change in child support); or
- E. any change in education/training or other status which would impact the parent/caretakers need for care.

11004.0 APPLICATION PROCESSING

Any parent/caretaker who expresses a desire for child care services may apply by contacting a DSS office. The process to actually obtain child care services starts when parent/caretakers contact a Child Care Case Manager or a First Step Case Manager. Consider this an informal inquiry unless or until it results in the completion of a written application (Form 600, Eligibility Screening Application).

11004.1 Formal Application Process

The formal application process will always consist of the following:

- A. a Case Manager, parent/caretaker interview;
- B. a review and verification of eligibility requirements;
- C. a review of the parent information about child care certificates:
- D. a determination of eligibility along with written parent/caretaker notification of the eligibility decision;
- F. as necessary, a determination of the child care fee;
 - G. creation of a case in the CCMIS;
- H. as appropriate, completion of the Service Authorization Form (Form 618d);
- I. completion of the Child Care Payment Agreement (Form 626); and
- J. a review of the parent/caretaker's rights and responsibilities, such as keeping their Case Manager informed of changes.

11004.2 Interviews

Case Managers normally conduct face-to-face formal interviews. This means that Case Managers normally schedule office appointments for parent/caretakers. However, there may be occasions where a face-to-face interview is not necessary.

Schedule appointments for formal interviews in the following manner.

- A. As soon as reasonably possible after the parent/caretaker makes an informal contact, set a specific day and time for an interview. Consider the parent/caretaker's schedule and attempt to schedule appointments at parent/caretaker convenience.
- B. Advise the parent/caretakers of the information they will need to bring to the formal interview. At a minimum parent/caretakers should bring:
- 1. if employed, current pay stubs from the most recent month of the date of application or a letter or employer statement noting the employer's name, the parent/caretaker's work schedule, earnings, and start date;
- 2. if in training and/or school, a statement from the school/training program with starting and completion dates and days and hours required to attend or a copy of a registration form and class schedule;
 - 3. any other income information;
- 4. any other information which may have a bearing on establishing need, such as:
- a. in cases of a special need for either a child or an adult, parent/caretakers must complete the Special

Needs Form (Form #601);

- b. for a protective need, complete the Division of Family Services Referral; or
- c. provide some other written documentation from a recognized professional (such as doctor, social worker, nurse, school counselor, etc.) of the special needs.
- C. Along with appointment information, send and/or give parent/caretakers a child care certificate package and a list of approximately five available contracted providers. Instruct parent/caretakers to select a provider prior to the formal interview. Even though parent/caretakers may ultimately select providers under contract with DSS, provide them with enough information to make an informed choice. Therefore, in all instances, send and/or give parent/caretakers a certificate package.
- D. For parent/caretakers who come into the office without a scheduled appointment, conduct the formal interview process that same day if possible. However, the parent/caretakers need to select a child care provider before care can be authorized. Though verification of the appropriate information to establish need is important, service can be authorized for approximately one month in an emergency. In this case, allow parent/caretakers ten days from the date of the initial application to secure and provide the necessary documentation. If the initial application in this case occurs between the first and the ninth of the month. authorization for care will extend to the end of the current month. If the initial application in this case occurs from the tenth of the month or after, authorization for care will extend to the end of the following month. If after the ten days, documentation is not provided, send the parent/caretaker a

Failure To Provide Information Closing letter (CCMIS letter 4020) informing the parent/caretaker that services will end. If the parent/caretaker provides documentation, extend the authorization accordingly.

11004.2.1 Conducting the Interview

The formal interview will include:

- A. an evaluation of parent/caretaker need for child care services (see DSSM 11003);
- B. a determination of financial eligibility as needed:
- C. an assessment of the family's child care needs as well as the needs of the child(ren) to be placed in care;
- D. an explanation of the available types of child care; the choices parent/caretakers have regarding these provider types; the various provider requirements regarding licensure, health, and safety, including record of immunization; and required child abuse and criminal history checks;
- E. an explanation of DSS payment rates and fee scale, including a discussion of how fees are assessed, where fees are to be paid, what happens if the fee is not paid, and how parent/caretakers are to keep DSS informed of changes that affect fees;
- F. an explanation of parent/caretakers rights and responsibilities;
- G. completion of the Child Care Screening Application, and as applicable completion of the Child Care Authorization and the Child Care Payment Agreement form; and
- H. verification of appropriate information establishing need and income.

11004.3 Review and Verification of Eligibility Requirements

As part of the formal application process, use the parent/caretaker interview to review and verify eligibility requirements. This interview will always include an evaluation of the parent/caretaker need for child care and, as appropriate, a determination of financial eligibility. DSSM 11003, Eligibility Requirements, provides guidance for this review.

When a parent/caretaker makes a contact to inquire about child care, ask the following questions of the parent/caretaker to determine and verify need (these questions follow the eligibility requirements noted in DSSM 11003 and match CCMIS need codes in the CCMIS User Manual, Section 9.8).

- A. Is the parent/caretaker employed or do they need child care to accept employment (Category 12 for Non-First Step employed or Category 31 if not on ABC)? The caretaker must be part of the ABC grant to be a Category 12.
- B. Is the parent/caretaker a former ABC recipient who is now employed and no longer receiving ABC because of this employment (Category 13 TCC)?

- C. Is the parent/caretaker a First Step participant? (Remember, for a caretaker to be a First Step ABC participant, she/he must be part of the ABC grant. This is Category 11 or 21.)
- D. Is the parent/caretaker a self-initiated participant (First Step ABC) or volunteer (Food Stamp) for First Step? (This includes Categories 11 or 21.)
- E. Is the parent/caretaker enrolled in and regularly attending a training program or going to school (Category 31)?
- F. Is a special needs child or parent/caretaker in the household (Category 31)?
- G. Is there a protective referral from Family Services (Category 31)?
- H. If the parent/caretaker meets a Category 13 or 31 need, is their income equal to or below 155 200 percent of the federal poverty level needs.

Use the appropriate documents identified in DSSM 11004.2 to verify the need for service. However, verification will not delay authorization of service in the event documentation is not immediately available. See DSSM 11004.3.1, Service Priorities, to determine what may delay service. Authorize service while allowing parent/caretakers ten days to provide the appropriate verification. If after this time documentation is not provided, send the parent/caretaker the Failure to Provide Information Closing letter (CCMIS letter 4020) informing theparent/caretaker that services will end (see DSSM 11004.2 for details).

Place the appropriate category and service need in the marked boxes of the Child Care Screening Application (Form 600).

11004.3.1 Service Priorities

In addition to the eligibility questions in DSSM 11004.3, determine if the applicant meets a priority for service. If the applicant has a need, but is not a service priority, services may be delayed. Delay services by placing non-service priority applicants on a waiting list while authorizing service for those who are a priority. The following families qualify for priority service:

- A. First Step ABC participants in approved First Step components (Category 11);
- $B. \quad \text{Non-First Step families in Child Care} \\ \text{Category 12;}$
- C. families who qualify for Transitional Child Care in Category 13;
- D. families qualifying for child care services under the First Step Food Stamps program in an approved First Step ABC component (Category 21);
- E. families in Category 31 with the following need for service:
- $1. \quad \text{teen parents who attend high school or } \\ ABE \ \text{or GED programs,} \\$
 - 2. special needs caretaker or child, and
 - 3. homeless families as defined in

DSSM 11003.7.2; and

F. protective children as referred by Family Services up to the number agreed upon between DSS and Family Services.

Parent/caretakers in the above circumstances will continue to receive child care services as long as they meet the service need and they continue to meet program requirements, e.g. they continue in First Step.

11004.4 Child Care Certificates

As part of the formal application process, inform all parent/caretakers of their right to choose a child care provider. Parent/caretakers may elect to use a provider under contract with DSS or elect to receive a child care certificate. The child care certificate allows parent/caretakers to select any licensed non-contract provider or license-exempt provider. The child care certificate is part of a package of information provided to parent/caretakers as part of the formal application process. It is necessary to not only provide parent/caretakers with a copy of this package, but explain the purpose of this package and ensure that parent/caretakers reasonably understand its contents.

11004.4.1 Explanation of Certificates

Use the following as a guide to explain the child care certificate package.

- A. Parent/caretakers can use this package to select a child care provider of their choice. However, they must select care that is legal. Legal care is care that is licensed or that is exempt from licensing requirements.
- B. Licensed Care: In Delaware, all family child care homes, group homes, and child care centers must have a license to operate. Do not allow a parent to select an unlicensed family, group, or center child care provider.
- C. License-exempt Care: The following provider types are exempt from licensing requirements in Delaware:
- 1. persons who come into the child's own home to care for the parent/caretaker's child,
- 2. relatives who provide care in their home for the parent/caretaker's child;
 - 3. public or private school care,
 - 4. preschools and kindergarten care, and
 - 5. before and after school care programs.

Though the above provider types are exempt from licensing requirements, they are still required to meet certain health and safety standards. These standards are:

- 1. maintaining documentation of the child's immunization record,
 - 2. safe and clean building premises,
- 3. providers and those 18 and older who live in the home where care is being provided must not have any record of child abuse or neglect (do not allow persons to provide care where there is a known record of abuse or neglect), and

- 4. relatives who provide care cannot be part of the welfare grant.
- D. Once parent/caretakers know the appropriate provider to select, they also need to know how DSS will pay for the care provided. DSS has established rates above which it will not pay (see Appendix II for current reimbursement rates).

Parent/caretakers will need to know these rates and whether or not the provider is willing to accept them. If the provider is willing, the certificate will act just like a DSS contract and DSS will pay the provider directly less any child care fee. If the provider is not willing, the parent/caretaker will self-arrange care with the individual provider.

The parent/caretaker will pay the provider and submit an original receipt to DSS for reimbursement. The parent/caretaker, however, will only receive reimbursement up to the DSS statewide limit.

- E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the Child Abuse/Neglect History Clearance Form or forms for all members 18 and older living in the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member.
- F. Service will not be delayed because of an incomplete child abuse clearance check, but remind parent/caretakers that DSS will not pay for care if, after authorization, the check should reveal a history of abuse or neglect.
- G. Allow parent/caretakers one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the parent/caretakers will need to obtain a new certificate if they still wish to receive service.
- H. The original copy of the child care certificate is completed and returned by the provider. The certificate package provides instructions for completion. The provider should keep a copy.

11004.5 Determination of Eligibility

DSS programmed the CCMIS to make eligibility decisions. As Case Managers enter the appropriate parent/caretaker information, the CCMIS will notify Case Managers whether they can proceed to authorize service. As a case is determined either eligible or ineligible, use the appropriate letter of the CCMIS letter function to inform the parent/caretaker of the DSS child care decision. Letters are not automatically generated by the CCMIS; therefore, ensure they complete this step. Parent/caretakers, whether ineligible or not, will always receive a written decision regarding their official request for child care services.

11004.6 Child Care Eligibility Screening Application

Complete a Child Care Eligibility Screening Application for all parent/caretakers before authorizing child care services. The information from this form becomes the basis upon which child care services are authorized. Therefore, the information should be as complete and accurate as possible. It is important for the parent/caretaker requesting service to sign this application. Their signature represents their official request for service. If a face-to-face interview is not conducted to obtain the information to complete the application, obtain the parent/caretaker signature on the application at the earliest opportunity after service is authorized. Do not allow parent/caretakers to receive services beyond one month without having a signed application on file.

When it is necessary to authorize new child care services to parent/caretakers because of a category change (such as parent/caretakers going from a Category 11 to 13), it is not necessary to have parent/caretakers complete a new child care screening application. This enables DSS to maintain the concept of seamless service.

11004.7 Determination of the Child Care Fee

Under regulations, families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a child care fee. DSS, however, provides child care services to certain families at no cost. Part of the process, therefore, of determining fees includes not only the decision of how much parent/caretakers should pay for the cost of care, but also which families should receive services at no cost.

Parent/caretakers who have a need for service or who receive child care services in Categories 11 or 12 receive service at no cost. In addition, Caretakers in Category 31, who have a need for services and who are caretakers of children who receive ABC or GA assistance, will receive service at no cost. Also, parents/caretakers in Category 31 who are in need of protective services will receive service at no cost, unless the Division of Family Services specifically requests that a parent/caretaker pay a fee.

NOTE: The CCMIS is designed so that if Category 11 or 12 are entered as the child care category, the child care fee is waived automatically.

Parent/caretakers in Categories 13, 21, and 31 are to pay a child care fee, unless the fee is waived. However, regulations do not allow DSS to waive fees for Category 13 parent/caretakers.

In categories other than 13 where parent/caretakers are to pay a child care fee, the fee may still be waived under the following circumstances:

A. a child has a protective need;

B. a family has extensive medical expenses for which there are no payments through Medicaid or other insurance carriers:

- C. a family's shelter costs exceed 30 percent of household expenses;
- D. a family's utility costs, exclusive of telephone, exceed 15 percent of household income;
- E. a family has additional food expenses resulting from diets prescribed by a physician;
- F. a family has additional transportation costs due to lack of public transportation in rural areas;
 - G. a family is homeless;
- H. a family has a special need and this need poses a financial hardship; or
- I. other situations of hardship exist (multiple children in care, household crisis, etc.).

Document the decision to waive the fee as well as obtain supervisory approval before doing so. The CCMIS User Manual contains the appropriate waiver codes for waiving fees in the CCMIS.

As is the case with income, a person who acts as a child's caretaker, as defined in DSSM 11002.9, pays a child care fee based only upon income attributable to the child.

11004.7.1 Child Care Fee Scale and Determination of Fee

The assessed child care fee is based on family size, family income as a percentage of the poverty scale and the cost of care. The child care fee scale used to determine the child care fee is attached as Appendix III. To arrive at the actual fee, look at this scale and use the following steps.

- A. Determine the family size.
- B. From the family size column, determine the income range of the parent/caretaker.
- C. At the top of the income ranges are percentages from 0% to 36% all the way up to 190% to 200%. These are the percentages of the federal poverty scale as it relates to family income by family size. It means that a family's income can range between 0% to 36% all the way up to 190% to 200% of the federal poverty scale. Find the appropriate percentage column for your family. Based upon the income range of the parent/caretaker, find the percentage of the cost of care that the parent/caretaker will pay.
- D. Finally, based on family size and income at that appropriate percentage range, look at the percentages below (these are ranges from 1% to 80%). This is the percentage of the cost of care that this family will pay per child based on the percentage of their income as it relates to the federal poverty level Finally, based upon the type of care (i.e. home, center, etc.) a parent/caretaker selects, multiply the percentage of the cost of care by the cost for that type of care. This is the fee the parent/caretaker will pay.

Families with income between: 0% and 36% of poverty pay 1% of the cost of care, 36% and 45% pay 5% of the cost of care, 45% and 55% pay 7% of the cost of care, 55% and 65% pay 8% of the cost of care, 65% and 75% pay 10% of the cost of care, 75% and 85% pay 12% of the cost of care, 85% and 95% pay 14% of the cost of care, 95% and

100% pay 16% of the cost of care, 100% and 105% pay 21% of the cost of care, 105% and 115% pay 23% of the cost of care, 115% and 120% pay 25% of the ocst of care, 120% and 125% pay 30% of the cost of care, 125% and 135% pay 32% of the cost of care, 135% and 145% pay 44% of the cost of care, 145% and 155% pay 46% of the cost of care, 155% and 160% pay 48% of the cost care, 160% and 170% pay 50% of the cost of care, 170% and 180% pay 60% of the costs of care, 180% and 190% pay 70% of the cost of care and 190% and 200% pay 80% of the cost of care.

11004.7.2Paying the Child Care Fee

Parent/caretakers will pay their child care fee directly to the child care provider. This fee, in combination with what DSS pays the provider, represents the reimbursement limit DSS allows for child care services. These limits are based on the child care type and the age of the child. DSS either has contracts with providers for these rates or providers agree to accept them as their rates. If, however, providers do not accept these rates, parent/ caretakers will self-arrange care directly with the provider. In this instance, the parent/caretaker will not only pay their fee, but also the provider's full charge for care. The parent/ caretaker will submit an original receipt for reimbursement, at which time DSS will reimburse the parent/caretaker in an amount up to the statewide limits (see 11004.4.1 above), less the child care fee. Parent/caretakers who fail to pay their child care fee or who fail to make arrangements to pay past fees owed will have their child care services terminated. Providers are responsible for informing DSS of the parent/ caretaker's failure to pay the fee. Obtain such information in writing from providers whenever possible. However, it is acceptable to obtain this information verbally if the following procedures are used:

- A. Accept and document (e.g. note the date and time of the call/conversation and the information given in the case record) the information from the provider.
- B. Request that the provider follow up this information in writing to the child care monitor in their county.
- C. Send the Failure to Pay Child Care Fee Closing (CCMIS Notice 4060) to the parent/caretakers informing them that service will terminate due to non-payment of the fee unless arrangements are made with providers to pay past fees owed.
- D. Require parent/caretakers to submit information in writing which details the arrangements they made with providers to pay past fees owed.

Parent/caretakers whose child care case closes because of failure to pay child care fees cannot receive a new authorization for service until they satisfy or make arrangements to pay past fees owed.

11004.8 Creation of a Case in the CCMIS

It will not be possible to complete a child care application until a case is created in the CCMIS. Only by

creating a case is it possible to authorize and allow payment for child care services. If the CCMIS is not functioning when the parent/caretaker is interviewed, manually complete the information needed to create a case and authorize care, and enter the information into the CCMIS at the earliest opportunity. The beginning date for service in this instance will be the actual interview date or the date the parent/caretaker needs service to begin. Follow the Client Management Section of the CCMIS User Manual.

In creating a case, observe the following rules.

- A. The first person entered in the case is the casehead, e.g parent/caretaker.
- B. Complete a search of the Master Client Index (MCI) for each participant before initiating new records (see the User Manual for instructions). If clients are not currently receiving DSS benefits, ask if clients ever received benefits in the past. This will assist the MCI search.
- C. Register each participant (i.e. parent/caretaker or child) who is not already registered in the Master Client Index.
- D. CCMIS data screens have required data fields. These fields are "starred" on the CCMIS data screens. It is necessary to complete the data for these fields before the system will allow case processing to proceed.
- E. When entering a "new" case, enter an "N" for Action Type (see the User Manual for coding instructions).
- F. Review dates for new cases on the CASE INFORMATION screen should have a maximum time period of six months from the date of application (use end of month dates, e.g. January 31). Time periods can be for less time, but must never exceed six months. This date does not correspond to the authorization ending date, but is used for Case Manager worklisting purposes. The next review period is the time during which redetermination of parent/caretaker eligibility is done to ensure that child care services can either continue or should close.
- G. DSS programmed the CCMIS to allow for entry of information related to category and need at the child level instead of the case level. DSS did this to enable Case Managers to split children into different categories when all the children from the same household cannot be placed into one category.
- H. It is not possible to add income sources or employers for active DCIS cases (i.e. open in ABC or Food Stamps). However, it is possible to adjust wages or other income sources. Remember it is from these income sources that the CCMIS will determine financial eligibility and fees. Case Managers should make every effort, therefore, to ensure this information is accurate.
- I. Once all appropriate casehead information has been entered, add the "child" participant(s) to the case. Add child participant(s) in the same way as the casehead. However, enter information related to category and need, and the fee waived reason (if the fee is to be waived), at the

child level for this information to register in the CCMIS. If this is a Category 11 or 12 case, the CCMIS waives the fee automatically.

11004.9 Authorizing Service

Once a case is created, service must be authorized before parent/caretakers can receive subsidized child care. Authorization is both the name for the form (618d) and the process to grant parent/caretakers child care services (see DSSM 11002.9 for definition).

Complete a separate authorization for each child who is eligible to receive child care services. Therefore, if there is more than one child in a family who needs service, complete separate authorizations for each child. Complete an authorization by creating one in the CCMIS. Again, as when entering a case, CCMIS authorization data screens have required data fields which are "starred." Complete these data fields before proceeding. Follow the rules below in creating authorizations.

A. Obtain provider information before completing an authorization.

This means that if parent/caretakers wish to select a provider by using a child care certificate, they must have the certificate returned before an authorization can be issued.

- B. Parent/caretakers can only choose providers who are either self-arranged, licensed exempt or who can be matched to existing information in the Site Referral function of the CCMIS. If the provider selected has a contract with DSS, this provider will be listed in the CCMIS under the Site Referral section. Access these providers through their site ID#. Finally, if parent/caretakers use a certificate and they select a contracted provider, consider this as contracted care even though the parent/caretaker used a certificate.
- C. When parent/caretakers wish to self-arrange child care, ensure the parent submits the information on the Self-Arranged Provider Agreement and Registration Form. When parent/caretakers wish to arrange certificate child care, ensure the parent submits the information on the Child Care Certificate Provider Agreement and Registration Form. Send the appropriate form to the Child Care Monitor for CCMIS processing. The monitor will notify the Case Manager when the information is data entered.
- D. When the monitor notifies the Case Manager that data has been entered in CCMIS, enter effective and expiration dates on the authorization. Effective dates will always start when service is due to begin. In most cases, service will begin either the same day the authorization is completed or on a date in the near future. However, there may be occasions when service will begin prior to the actual date of the child care interview.
- 1. For categories 11, 12, and 21 child care, authorize care for periods of up to one year.
- 2. For Category 13, Transitional Child Care, authorize care for the parent/caretaker's entire eligibility

period up to a maximum of 12 months.

NOTE: Eligibility for TCC begins the first month after the closing of the ABC case and extends for 12 consecutive months.

3. For Category 31 child care, authorize care for periods of up to six months or less depending upon the parent/caretaker's circumstances.

Though care can be authorized for periods greater than six months, it is still necessary to review each child care case at least every six months to ensure that the parent/caretaker remains eligible for services.

As noted above, the ending date will always be the last day of the month of the authorization period.

- E. Ensure that service is authorized only for the days and hours that parent/caretakers actually need care. Therefore, only enter the following on the authorization:
- 1. the appropriate number of days per week that parent/caretakers will need care, for example 1, 2, 3, 4, or 5 days;
- 2. the appropriate type of care needed, half-day (P), full-day (X), day and a half (T), or two full days (D) (supervisory approval is necessary for T and D care);
- 3. whether absent days are paid (absent days correspond to the number of authorized days, however, when care is self-arranged, DSS pays only for the days the child attends care);
 - 4. whether extended care is authorized; and
 - 5. whether school care is authorized.
- F. When completing authorizations for First Step participants (Categories 11 or 21), complete the Employment and Training type and the Employment and Training component fields of the authorization screen. Employment and Training type refers to whether the participant is mandatory or a volunteer. Components refer to participant activities. The User Manual contains the appropriate codes.
- G. The remaining fields (Category, Waive Fee Reason, Family Size, and Family Income) of the authorization screen are system completed, depending upon the information previously entered on the CHILD CARE CASE INFORMATION screen. The authorization is now complete. Press the appropriate key to post the authorization in the system. Complete separate authorizations if there are more children who need care.

11004.9.1Changing Authorizations

Complete a change to an existing authorization whenever a situation occurs within the authorization period which requires a change to the parent/caretaker's situation. The CCMIS defines this as a Change Authorization. Examples of when Change Authorizations occur are:

- A. a change in the authorized level of service, for example number of days, type of service, absent days, etc.;
 - B. a change of provider;

- C. a change in category;
- D. a change in parent/caretaker need;
- E. a change in family size;
- F. a change in income; or
- G. a change in the child care fee.

11004.9.2Interrupted Child Care

Families receiving child care during the school year sometimes need to change their service requirements during the summer months. For instance, some parents make alternate arrangements during the summer for a school-age child who receives care throughout the school year. These arrangements may not require the need for child care services. However, the parent may still need child care when the school year starts again in September. In addition, some parents only work during the school year and may not need child care during the summer months, such as parents who drive a school bus.

DSS will continue service to those families who do not need service for the summer but who will need service again in September. This break is considered an interruption of service and not as an end to the family's service need. Therefore, even though these families need to re-apply for service before September, they will not be reapplying as totally new cases and will not have to go on the waiting list.

Certain families who have an authorization end date for June may not keep their redetermination appointments (due to making alternate arrangements for child care during the summer or not needing care at all). These families are notified to contact their Case Manager if they need care again in September. If they fail without good cause to keep their re-application appointments or to contact their Case Manager, their service will not continue as before. They will go on the waiting list.

11004.9.3Changing Provider

DSS designed the CCMIS so that there would not be two "active" authorizations for one child at the same time. However, there is one exception: when a parent/caretaker wishes to change providers. In this instance, enter the change of provider and the CCMIS will (1) change the old authorization to close it effective the end of the current month, and (2) create a new authorization effective the date of the change in provider. Both authorizations will remain in effect until the first expires. This will allow DSS to pay both providers.

However, because DSS requires that providers be given at least five days notice of this change, there may be instances when the original authorization will remain in effect until the last day of the next month. Since the Change Authorization will be mailed to the provider, do not send a separate notice. Ensure that parent/caretakers pay any fees they may owe the old child care provider.

11004.9.4Creating Unmet Needs

Under certain conditions, DSS may not be able

to provide service to eligible parent/caretakers. Either because of a lack of funding or because DSS cannot match child's child care need with an available provider, do not authorize service. When an authorization for one of the above reasons cannot be completed, place the child or children on an Unmet Need Waiting List. Follow the Unmet Needs Section of the User Manual both for placement and removal of a child(ren) on the Unmet Need Waiting List.

When services to parent/caretakers who are a non-service priority must be delayed, do the following:

- A. continue to accept requests and applications for child care services,
- B. complete the child care case information to create a CCMIS case,
- C. place the child(ren) on the Unmet Need Waiting List,
- D. inform parent/caretakers that DSS is placing them on a waiting list and that they will be notified when an opening becomes available, and
- E. either authorize care when services are available or close the case if parent/caretakers no longer desire service.

11004.10 Child Care Payment Agreement

Parent/caretakers will no longer receive a copy of the authorization. Instead, as authorizations are created, the CCMIS will automatically batch and process the authorizations each night at the DCIS data center. The DCIS data center will mail the authorization to providers the next work day. Instead of the authorization, provide parent/caretakers with a copy of the Child Care Payment Agreement Form (Form 626). Parent/caretakers will present this copy of the Child Care Payment Agreement form to providers as their initial verification of service authorization. (Providers have been instructed to accept this as a sign of authorization until the official authorization arrives in the mail.)

The purpose of the Child Care Payment Agreement Form is to ensure that parent/caretakers acknowledge their responsibilities as recipients of DSS child care services. Complete the blank spaces of this form with information appropriate to each parent/caretaker. Complete the form, give two copies to the parent/caretaker (one for their records and one for presentation to the provider), and keep one copy with the Case Manager's file.

11004.11 Review/Determination

Authorizations remain effective for the entire authorization period as long as parent/caretakers continue to meet the requirements for service (such as the parent/caretaker remains a First Step participant, keeps employment, remains income eligible, etc.). At least once every six months and just prior to the end of each authorization period, review/redetermine the circumstances of each parent/caretaker to see if child care services can continue. The review/redetermination process will differ for

each child care category.

- A. For Category 11, 12, and 21 child care cases, perform the following every six months:
- 1. review each Category 11 and 21 case to ensure the parent/caretaker is still active with First Step by having the parent/caretaker provide some proof they are a First Step participant;
- 2. review each Category 12 case to ensure that theparent/caretaker is still employed by having the parent/caretaker provide some proof of employment.

For this review, it will not always be necessary to schedule parent/caretakers for a face-to-face interview or to repeat the application process. As long as parent/caretakers provide some proof that they remain a First Step participant or remain an employed ABC recipient, they remain eligible for child care services. However, at least once per year, schedule parent/caretakers for a face-to-face interview.

Prior to the end of each authorization period, not only complete the review described above, but also complete a new authorization under Action Type "R" for redetermination and set new dates for the next authorization period.

Because parent/caretakers receiving Category 11, 12, and 21 child care can receive child care as long as they meet requirements, do not allow an authorization to end or close a case without first providing parent/caretakers with timely and adequate notice. Do not simply send Category 11, 12, and 21 families a redetermination notice and then close a case if there is no response to this notice (i.e. they either fail to keep an appointment or fail to provide requested information). Send a separate ten day closing notice to parent/caretakers who fail without good cause to keep an appointment or provide proof of information about First Step or employment. If after ten days there is no response, close the case at the end of the current month. However, if the ten days extends into the next month, the case will not close until the end of the following month.

If parent/caretakers provide good cause for their failure to act, continue service. Good cause can be anything believed to be reasonable, but generally includes things such as:

- 1. illness;
- 2. court required appearance;
- 3. a household emergency (fire, heating problem, family crisis, etc.);
 - 4. lack of transportation; or
 - 5. bad weather.

If it is believed that good cause does not exist, but the parent/caretaker requests a fair hearing, close the case after proper notice. Child care services for Category 11, 12, and 21 do not continue pending the outcome of a fair hearing.

If a Category 11, 12, or 21 case is closed without providing timely and adequate notice, it is to be

administratively reopened to ensure uninterrupted service.

- B. For Category 13 child care cases, at least every six months:
- 1. review each Category 13 case to ensure the parent/caretakers are still employed by having them provide

some proof of employment;

- 2. review income and family size information to determine income eligibility and to reset the child care fee (if income changes the fee, do a Change Authorization to set a new fee);
- 3. complete a new Child Care Payment Agreement Form resulting from a change in fee;

NOTE: If the fee increases, the new fee will not take effect until proper notice is given. When the Change authorization is completed, the CCMIS will determine whether the change can occur the first day of the next month or the first day of the month following the next month.

4. close the parent/caretaker if income is over the 155 200 percent of poverty limit.

NOTE: Give proper notice. If unable to give ten day notice of the closing before the end of the month, then the case will not close until the last day of the next month.

For this initial review, it will not be necessary to conduct a face-to-face interview or to repeat the application process. However, parent/caretakers will have to submit documentation for Case Managers to verify employment and income.

Prior to the end of the TCC authorization period, send parent/caretakers an appointment letter for a redetermination interview. At this appointment, redetermine the parent/caretaker's eligibility for service as a Category 31 child care case. Service cannot continue if the parent/caretakers fail to meet Category 31 eligibility requirements.

If parent/caretakers fail, without good cause, to either provide proof of employment and income or to keep their appointment, follow the notice requirements noted above regarding Category 11, 12, and 21 cases. Note the following difference: TCC services can continue pending a fair hearing request, but only within the 12 month limitation.

Parent/caretakers whose TCC eligibility ends, but who meet requirements for Category 31 child care, can continue receiving child care. Complete a new authorization under Action Type "R" for redetermination. Complete a category change and set a new authorization period. Since this is now a Category 31 case, the authorization period should now be six months.

- C. For Category 31 child care cases, perform the following at least every six months:
- 1. complete a redetermination by scheduling parent/caretakers for a redetermination interview and requesting parent/caretakers to provide verification of need

and income;

- 2. at the redetermination interview, redetermine eligibility using the criteria in DSSM 11003, Eligibility Requirements;
- 3. update case information (it will not be necessary for the parent/caretaker to complete a new application);
- 4. update the child care fee by reviewing income and family size;
- 5. complete a new Child Care Payment Agreement Form;

NOTE: Complete a new form whether the fee changes or not. Also, if the fee increases, the fee will not take effect until proper notice is given. Do not use the approval letter in the CCMIS to notify parent/caretakers of the fee change. Use instead the Child Care Approval Letter after Redetermination (Form 629).

6. complete a new authorization under Action Type "R" for redetermination and set new dates for the authorization or close the case if the parent/caretaker is no longer eligible.

Parent/caretakers who fail without good cause to keep their redetermination interview, or who do not provide verification of need and income, will have their child care case close. Though there is no requirement in Category 31 cases to provide parent/caretakers with notice of this closing, send a Generic Closing Letter (Form 630), to the parent/caretaker. State the reason for the closing on this form.

In situations where good cause is believed (such as a parent/caretaker calls the Case Manager with this information), or where the parent/caretaker is unable to keep the interview appointment due to illness, it is possible to do a redetermination for one month to allow the parent/caretaker time for another interview.

Parent/caretakers whose child care case closes because of their failure to keep a redetermination interview or provide verification of need and income may request a fair hearing. Child care services, however, will not continue past the authorization end date.

In the event the agency errs in not completing a redetermination before a parent/caretaker's current authorization expires (such as change of Case Manager causes no redetermination letter to go out), still do a redetermination authorization, backdated to the first day of the month the new authorization would have begun had the agency not erred.

Parent/caretakers whose child care cases close because they failed to keep a redetermination or provide verification, can reapply for service (see instructions for reopening a case in the User Manual). However, if DSS is in a "wait list" situation, these parent/caretakers will be subject to DSS' priority service order.

11004.12Closing Cases

- A parent/caretaker's authorization for service should end when any of the following occurs:
 - A. the parent/caretaker need no longer exists,
- B. the parent/caretaker's income exceeds income limits,
- C. the parent/caretaker fails to pay the child care fee or fails to make arrangements to pay past fees owed,
- D. the parent/caretaker refuses to provide verification of eligibility,
- E. the parent/caretaker is a First Step participant who is sanctioned.
- F. a protective case fails to follow the Division of Family Services case plan,
- G. a TCC parent/caretaker quits a job without good reason,
 - H. at the request of the parent/caretaker, and
 - I. if program funds should be reduced.

When a case needs to be closed due to one of the above reasons, complete the Close Case function in the CCMIS (see instructions for closing cases in the User Manual).

When closing cases for Categories 11, 12, 13, and 21, send the appropriate closing notice which provides a ten day notice (see discussion above in DSSM 11004.11). Even though DSS programmed the CCMIS to allow for ten day notice before an authorization closes, separately send the notice through the CCMIS letter function. For Category 31 cases, send a Generic Closing Letter (Form 630). State the reason for the closing on this form.

When parent/caretakers make a request to close their case, allow a minimum of five care days to notify providers of the case closing. Again the CCMIS is programmed to make allowance for this time.

11004.12.1 Loss of Need Transition

If parent/caretakers should lose their need for service, child care authorization should generally end. However, under certain circumstances, continue to authorize service for up to one month for parent/caretakers who:

- A. lose employment and who need to search for new employment,
- B. experience a gap in employment because of a transition between jobs,
- C. end an education/training program and need to search for employment, or
- D. experience a break in an education/training program.

DEPARTMENT OF STATE

OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** 121(b))

NOTICE OF PROPOSED AMENDMENT OF REGULATIONS OF THE STATE BANK COMMISSIONER

Summary:

The State Bank Commissioner proposes to adopt amended Regulation Nos. 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009. Proposed amended Regulation Nos. 5.1101etal.0002 ("Instructions for Preparation of Franchise Tax"), 5.1101etal.0005 ("Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in this State") and 5.1101etal.0009 ("Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks") are being amended to conform to statutory changes in Senate Bill No. 57, signed by the Governor on April 9, 1999, that reintroduce an exemption for all bank franchise taxpayers from the provisions in §1104(c) of Title 5 of the Delaware Code for additional tax for underpayment of estimated bank franchise tax when total estimated tax payments equal or exceed the amount of actual bank franchise tax owed for the preceding year, and in House Bill 156, signed by the Governor on May 18, 1999, that authorizes a foreign bank that elects Delaware as its home state to establish a branch in Delaware, and to make other technical and conforming changes. Proposed amended Regulation Nos. 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009 would be adopted by the State Bank Commissioner on or after November 2, 1999. regulations issued by the State Bank Commissioner are not affected by the proposed amendments. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Comments:

Copies of the proposed amended regulations are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware, and will be available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed amended regulations should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address. Comments must be received before the public hearing on November 2, 1999.

Public Hearing:

A public hearing on the proposed revised regulations will be held in Room 114, Tatnall Building, William Penn Street, Dover, Delaware on Tuesday, November 2, 1999 at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

Regulation No.: 5.1101etal.0002

Proposed

INSTRUCTIONS FOR PREPARATION OF FRANCHISE TAX

(5 <u>Del</u>. <u>C</u>., Chapter 11)

I. This regulation applies to banking organizations and trust companies, other than resulting branches in this State of out-of-state banks or federal savings banks not headquartered in this state but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0003 and 5.1101etal.0004, respectively. 5.1101etal.0005, 5.1101etal.0006 Regulations 5.1101etal.0007 are applicable to federal savings banks not headquartered in this State but maintaining branches in this State. Regulations 5.1101etal.0009, 5.1101etal.0010 and 5.1101etal.0011 are applicable to resulting branches in this State of out-of-state banks.

II. Definitions

A. "Bank" means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

- B. "Banking organization" means:
- 1. A bank or bank and trust company organized and existing under the laws of this State;
- 2. A national bank, including a federal savings bank, with its principal office in this State;
- 3. An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq., or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System, and maintaining an office in this State;
 - 4. A federal branch or agency licensed pursuant

to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;

- 5. A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or
- 6. A resulting branch in this State of an out-ofstate bank, or a branch office in this State of an out-of-state bank.
- C. "International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 <u>Del</u>. <u>C</u>. §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:
- 1. The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
- 2. The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
- 3. The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
- 4. The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State:
- 5. The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to a banking organization described in subsection B.3 above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or
- 6. The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.
- D. "International Banking Facility" means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.
- E. "National Bank" means a banking association organized under the authority of the United States and having a principal place of business in this State.
- F. "Net Operating Income Before Taxes" means the total net interest income plus total non-interest income, minus provision for loan and lease losses, provision for allocated transfer risk, and total non-interest expense, and

- adjustments made for securities gains or losses and other appropriate adjustments.
- G. "Out-of-state bank" has the same meaning as in §795 of Title 5 of the Delaware Code, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.
- H. "Resulting branch in this State of an out-of-state bank" has the same meaning as in §1101(a) of Title 5 of the Delaware Code, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the Delaware Code, and, in addition, a branch office in this State of an out-of-state bank.
- I. "Securities Business" means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.
- J. "Trust Company" means a trust company or corporation doing a trust company business which has a principal place of business in this State.

III. Estimated Franchise Tax

A banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax:

- A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.
- 2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.
- B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0003;
- C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:
- 1. The estimated net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;
- 2. Adjusted for any estimated income from an insurance division or subsidiary;
- 3. Less any deductions set forth in 5 $\underline{\text{Del}}$. $\underline{\text{C}}$. §1101;
- 4. Multiplied by .56 to arrive at estimated taxable income;
 - 5. The appropriate rate of taxation set forth in 5

Del. C. §1105 shall be applied;

- 6. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 <u>Del</u>. <u>C</u>. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.
- 7. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.
- D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

40% due on or before June 1 of the current taxable year;

20% due on or before September 1 of the current taxable year;

20% due on or before December 1 of the current taxable year.

IV. Final Franchise Tax

- A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization and the final franchise tax report, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a banking organization entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year, except as otherwise required by 5 Del. C. §904.
- 2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection IV. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.
- B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0004.
- C. Calculation of final tax. The total final franchise tax shall be calculated as follows:
- 1. The net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;
- 2. Adjusted for any income from an insurance division or subsidiary;
- 3. Less any deduction set forth in 5 $\underline{\text{Del}}$. $\underline{\text{C}}$. §1101;
 - 4. Multiplied by .56 to arrive at "taxable income";
- 5. The appropriate rate of taxation set forth in 5 <u>Del</u>. <u>C</u>. §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;
 - 6. The subtotal annual franchise tax shall be

adjusted for tax credits applicable pursuant to 5 <u>Del.</u> C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

7. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

V. Payment of Final Franchise Tax

- A. Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.
- B. The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.
- VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment
- A. In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:
- 1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;
- 2. The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.
- B. The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;
- C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

VII. Penalty - Late Payment of Final Franchise Tax

In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

VIII. Election to be listed as a "Subsidiary Corporation"

Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 5.1101(f).0001 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for a banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the final franchise tax report due January 30 or February 15, as applicable.

Regulation No.: 5.1101etal.0005

Proposed

INSTRUCTIONS FOR PREPARATION OF FRANCHISE TAX FOR FEDERAL SAVINGS BANKS NOT HEADQUARTERED IN THIS STATE BUT MAINTAINING BRANCHES IN THIS STATE

(5 Del. C., Chapter 11)

I. This regulation applies only to federal savings banks not headquartered in this State but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0006 and 5.1101etal.0007, respectively.

II. Definitions

A. "Net operating income before taxes" means the total net income calculated in accordance with Section VIII of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

III. Estimated Franchise Tax

A federal savings bank not headquartered in this State whose franchise tax liability for the current year is anticipated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax.

A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of

March of the current year.

- 2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.
- B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0006;
- C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:
- 1. The estimated net operating income before taxes of the branch or branches located in Delaware;
- 2. Less the interest income from obligations of volunteer fire companies;
- 3. The appropriate rate of taxation set forth in 5 <u>Del</u>. <u>C</u>. §1105 shall be applied;
- 4. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 <u>Del</u>. <u>C</u>. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.
- 5. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.
- D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

40% due on or before June 1 of the current year;

20% due on or before September 1 of the current year;

20% due on or before December 1 of the current year.

IV. Final Franchise Tax

- A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income of the Delaware branch or branches of the federal savings bank not headquartered in this State and the final franchise tax report shall be filed with the Office of the State Bank Commissioner on or before January 30 each year;
- 2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in section IV. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.
- B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0007.
- C. Calculation of final tax. The total final franchise tax shall be calculated as follows:
- 1. The net operating income before taxes of the branch or branches located in Delaware;
- 2. Less the interest income from obligations of volunteer fire companies;

- 3. The appropriate rate of taxation set forth in 5 <u>Del</u>. <u>C</u>. §1105 shall be applied;
- 4. The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 <u>Del. C.</u> §1105, which are calculated in accordance with Regulation No. 5.1105.0008.
- 5. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

V. Payment of Final Franchise Tax

- A. Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.
- B. The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.
- VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment
- A. In the case of any underpayment of estimated franchise tax or installment of estimated franchise tax required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:
- 1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;
- 2. The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.
- B. The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;
- C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of

the federal savings bank not headquartered in this State for the preceding taxable year.

VII. Penalty - Late Payment of Estimated Franchise Tax or Installment or Final Franchise Tax

In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

VIII. Separate Accounting by Delaware Branches

- A. Books and Records. Each branch in this State of a federal savings bank not headquartered in this State must keep a separate set of books and records as if it were an entity separate from the rest of the federal savings bank that operates such Delaware branch. These books and records must reflect the following items attributable to the Delaware branch:
- 1. Assets and the credit equivalent amounts of off-balance sheet items used in computing the risk-based capital ratio under 12 C.F.R. part 567;
 - 2. Liabilities;
 - 3. Income and gain;
 - 4. Expense and loss.
- B. Consolidation of Delaware Branches. If a federal savings bank not headquartered in this State operates more than one Delaware branch, it may treat all Delaware branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.
- C. Determining Assets Attributable to a Delaware Branch
- 1. General Principle of Asset Attribution. The general principle will be to attribute assets to a Delaware branch if personnel at the Delaware branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.
- 2. Loans and Finance Leases. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.
- 3. Stocks and Debt Securities. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.
- 4. Foreign Exchange Contracts and Futures Options, Swaps, and Similar Assets. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or

administration of such assets.

- 5. Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the licensing of such asset.
- 6. Currency. U.S. and foreign currency will be attributed to a Delaware branch if physically stored at the Delaware branch.
- 7. Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a Delaware branch if they are located at or are part of the physical facility of a Delaware branch.
- 8. Other Business Assets. Other business assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.
- 9. Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in 12 C.F.R. part 567 not otherwise addressed above (e.g., guarantees, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending federal savings bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities). These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.
 - D. Liabilities Attributable to a Delaware Branch.

The liabilities attributable to a Delaware branch shall be the deposits recorded on the books of the Delaware branch plus any other legally enforceable obligations of the Delaware branch recorded on the books of the Delaware branch or the federal savings bank not headquartered in this State.

- E. Income of a Delaware Branch.
- 1. Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a Delaware branch in accordance with the rules in subsection C above will be attributed to the Delaware branch.
- 2. Income from Fees. Fee income not attributed to a Delaware branch in accordance with subsection 1 above will be attributed to the Delaware branch depending on the type of fee income.
- a. Fee income from letters of credit, travelers checks, and money orders will be attributed to the Delaware branch if the letters of credit, travelers checks, or money orders are issued by the Delaware branch, except to the

extent that subsection 1 above requires otherwise.

- b. Fee income from services (e.g., trustee and custodian fees) will be attributed to the Delaware branch if the services generating the fees are performed by personnel at the Delaware branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.
 - F. Determining the Expenses of a Delaware Branch.
- 1. Interest. The amount of interest expense of a Delaware branch shall be the actual interest booked by the Delaware branch, which should reflect market rates.
- 2. Direct Expenses of a Delaware Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the Delaware branch are direct expenses of such Delaware branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the Delaware branch, some taxes, insurance, the cost of supplies and fees for services rendered to the Delaware branch.
- 3. Indirect Expenses of a Delaware Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a Delaware branch must be allocated between the Delaware branch and the rest of the federal savings bank operating the Delaware branch. If the federal savings bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the federal savings bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the Delaware branch to the assets of the entire federal savings bank or based on the ratio of gross income of the Delaware branch to gross income of the entire federal savings bank.

Regulation No.: 5.1101etal.0009

Proposed

INSTRUCTIONS FOR PREPARATION OF FRANCHISE TAX FOR RESULTING BRANCHES IN THIS STATE OF OUT-OF-STATE BANKS

(5 Del. C., Chapter 11)

I. This regulation applies only to resulting branches in this State of out-of-state banks. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0010 and 5.1101etal.0011, respectively.

II. Definitions

- A. "Bank" means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.
 - B. "Banking organization" means:
- 1. A bank or bank and trust company organized and existing under the laws of this State;
- 2. A national bank, including a federal savings bank, with its principal office in this State;
- 3. An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq., or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System, and maintaining an office in this State:
- 4. A federal branch or agency licensed pursuant to \$4 and \$5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;
- 5. A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or
- 6. A resulting branch in this State of an out-ofstate bank, or a branch office in this State of an out-of-state bank.
- C. "International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 <u>Del</u>. <u>C</u>. §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:
- 1. The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
- 2. The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
- 3. The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
- 4. The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;
- 5. The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to a banking organization described in subsection B.3 above, or any of its

- subsidiaries, in connection with the transaction of banking or other financial operations; or
- 6. The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.
- D. "International Banking Facility" means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.
- E. "National Bank" means a banking association organized under the authority of the United States and having a principal place of business in this State.
- F. "Net Operating Income Before Taxes" means the total net income calculated in accordance with Section IX of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.
- G. "Out-of-state bank" has the same meaning as in §795 of Title 5 of the Delaware Code, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.
- H. "Resulting branch in this State of an out-of-state bank" has the same meaning as in §1101(a) of Title 5 of the Delaware Code, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the Delaware Code, and, in addition, a branch office in this State of an out-of-state bank.
- I. "Securities Business" means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.
- J. "Trust Company" means a trust company or corporation doing a trust company business which has a principal place of business in this State.

III. Estimated Franchise Tax

A resulting branch or branches in this State of an out-ofstate bank whose franchise tax liability for the current year, on a consolidated basis, is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated tax.

- A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.
- 2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III.A.1., unless the State Bank Commissioner is satisfied that

such failure was not willful.

- B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0010;
- C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:
- 1. The estimated net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;
- 2. Increased by the resulting branch imputed capital addback for the preceding income year (calculated in accordance with Section IV.C.2. of this Regulation).
- 3. Adjusted for any estimated income from an insurance division or subsidiary;
- 4. Less any deductions set forth in 5 $\underline{\text{Del}}$. $\underline{\text{C}}$. §1101;
- 5. Multiplied by .56 to arrive at estimated taxable income;
- 6. The appropriate rate of taxation set forth in 5 <u>Del</u>. <u>C</u>. §1105 shall be applied;
- 7. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant 5 <u>Del</u>. <u>C</u>. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.
- 8. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.
- D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

40% due on or before June 1 of the current taxable year;

20% due on or before September 1 of the current taxable year;

20% due on or before December 1 of the current taxable year.

IV. Final Franchise Tax

A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income, on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank and the final franchise tax report, setting forth the "taxable income", on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a resulting branch of an out-of-state bank that is entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year.

- 2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection IV.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.
- B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0011.
- C. Calculation of final tax. The total final franchise tax shall be calculated as follows:
- 1. The net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;
- 2. Increased by the resulting branch imputed capital addback, which is the product of the greater of the products determined under subparagraphs (a) and (b) of this subsection (2) and the average of the monthly short-term applicable federal rates, as determined under \$1274(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. \$1274(d)), or any successor provisions thereto, and as published each month in the Internal Revenue Bulletin, for the twelve-month period preceding the date on which the resulting branch imputed capital addback is being determined.
- (a) The product of (i) the deposits recorded on the books of the resulting branch in this State, and (ii) the minimum risk-based capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed "adequately capitalized" pursuant to 12 C.F.R. Part 325.
- (b) The product of (i) the value of that portion of the total risk-weighted assets (as defined in 12 C.F.R. Part 325) of the out-of-state bank operating the resulting branch in this State that are attributable to such resulting branch in accordance with section IX.C of this regulation, and (ii) the minimum risk-based capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed 'adequately capitalized' pursuant to 12 C.F.R. Part 325.
- 3. Adjusted for any income from an insurance division or subsidiary;
- 4. Less any deduction set forth in 5 $\underline{\text{Del}}$. $\underline{\text{C}}$. §1101;
 - 5. Multiplied by .56 to arrive at "taxable income";
- 6. The appropriate rate of taxation set forth in 5 <u>Del. C.</u> §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;
- 7. The subtotal annual franchise tax shall be adjusted for tax credits pursuant to 5 <u>Del.C.</u> §1105, which are calculated in accordance with Regulation No. 5.1105.0008.
- 8. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance

with Department of Transportation Travelink tax credit reporting requirements.

V. Payment of Final Franchise Tax

- A. Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.
- B. The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

- A. In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:
- 1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;
- 2. The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.
- B. The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year:
- C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the resulting branch(es) of the out-of-state bank for the preceding taxable year.
- D. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the addition is attributable to the difference between the imputed capital addback for the current and preceding income years.

VII. Penalty - Late Payment of Final Franchise Tax

In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the Delaware Code, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

VIII. Election to be listed as a "Subsidiary Corporation"

Any corporation which has elected to be treated as a "subsidiary corporation" of the resulting branch(es) of the out-of-state bank pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation 5.1101(f).0001 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for the resulting branch(es) of the out-ofstate bank whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the Final Franchise Tax Report due January 30 or February 15, as applicable.

IX. Separate Accounting by Resulting Branches

- A. Books and Records. Each resulting branch must keep a separate set of books and records as if it were an entity separate from the rest of the bank that operates such resulting branch. These books and records must reflect the following items attributable to the resulting branch:
- 1. Assets and the credit equivalent amounts of off-balance sheet items used in computing the risk-based capital ratio under 12 C.F.R. part 325;
 - 2. Liabilities:
 - 3. Income and gain;
 - 4. Expense and loss.
- B. Consolidation of Delaware Branches. If a bank operates more than one resulting branch, it may treat all resulting branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.
- C. Determining Assets Attributable to a Resulting Branch
- 1. General Principle of Asset Attribution. The general principle will be to attribute assets to a resulting branch if personnel at the resulting branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.
- 2. Loans and Finance Leases. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.

- 3. Stocks and Debt Securities. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.
- 4. Foreign Exchange Contracts and Futures, Options, Swaps, and Similar Assets. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.
- 5. Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the licensing of such asset.
- 6. Currency. U.S. and foreign currency will be attributed to a resulting branch if physically stored at the resulting branch.
- 7. Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a resulting branch if they are located at or are part of the physical facility of a resulting branch.
- 8. Other Business Assets. Other business assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.
- 9. Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in Appendix A to 12 C.F.R. part 325 (the "Appendix") not otherwise addressed above (e.g., guarantees, surety contracts, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities, note issuance facilities described in the Appendix). These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.
- D. Liabilities Attributable to a Resulting Branch. The liabilities attributable to a resulting branch shall be the deposits recorded on the books of the resulting branch plus any other legally enforceable obligations of the resulting branch recorded on the books of the resulting branch or its parent.
 - E. Income of a Resulting Branch.
- 1. Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a resulting branch in accordance with the rules in section IX.C above will be attributed to the resulting branch.

- 2. Income from Fees. Fee income not attributed to a resulting branch in accordance with 1. above will be attributed to the resulting branch depending on the type of fee income.
- a. Fee income from letters of credit, travelers checks, and money orders will be attributed to the resulting branch if the letters of credit, travelers checks, or money orders are issued by the resulting branch, except to the extent that 1. requires otherwise.
- b. Fee income from services (e.g., trustee and custodian fees) will be attributed to the resulting branch if the services generating the fees are performed by personnel at the resulting branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.
 - F. Determining the Expenses of a Resulting Branch.
- 1. Interest. The amount of interest expense of a resulting branch shall be the actual interest booked by the resulting branch, which should reflect market rates.
- 2. Direct Expenses of a Resulting Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the resulting branch are direct expenses of such resulting branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the resulting branch, some taxes, insurance, the cost of supplies and fees for services rendered to the resulting branch.
- 3. Indirect Expenses of a Resulting Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a resulting branch must be allocated between the resulting branch and the rest of the bank operating the resulting branch. If the bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the resulting branch to the assets of the entire bank or based on the ratio of gross income of the resulting branch to gross income of the entire bank.

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION BOARD OF ELECTRICAL EXAMINERS

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

Before The Electrical Examiners of The State of Delaware

ORDER

WHEREAS, the Board of Electrical Examiners (Board) is charged with carrying out Chapter 14 of Title 24 of the Delaware Code; and

WHEREAS, no unregistered person shall "install, alter or repair any wiring or appliance for electric light, heat or power..." under section 1433; and

WHEREAS, the statute as it applies to low voltage wiring is not currently enforced; and

WHEREAS, the Board sought public input with respect to a proposed change to Rule 4 to enable it to carry out its responsibility under the chapter; and

WHEREAS, a hearing was held for public comment on February 4, 1998 after due notice by publication in the Delaware Register of Regulations and two newspapers; and

WHEREAS, there are clearly issues that need further consideration and perhaps legislative changes to accomplish

the goal of protecting the public in the least restrictive manner:

NOW, THEREFORE, in consideration of the premises and by the powers derived from 24 <u>Del. C.</u> Section 1404;

The proposed changes to Rule 4 relating to a Low Voltage Special Certificate are hereby WITHDRAWN.

SO ORDERED THIS 3rd day of June, 1998.

Board of Electrical Examiners

Anthony Szczuka Charles Davis C. Kenneth Draper R. Jerald Craig Charles Towles David L. Whitt Michael Day

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

DELAWARE STATE LOTTERY OFFICE

Statutory Authority: 29 Delaware Code, Section 4805(a) (29 **Del.C.** 4805(a))

Order

Pursuant to 29 Del.C. Section 10118, the Delaware State Lottery Office hereby issues this Order adopting proposed amendment to the Lottery's Rule 23. Following notice as required by 29 Del.C. Section 10115, the Lottery Office makes the following findings and conclusions:

Summary of Evidence and Information Submitted

- 1. The Lottery Office posted public notices of proposed rule amendments in the August 1, 1999 Register of Regulations. A copy of the proposed rule amendment is attached to this Order as exhibit #1. The Lottery proposed amendment to Rule 23- Payment of Prizes. The proposed amendment would clarify the prize procedure for players in the Lottery's Powerball game. The proposed amendment would essentially allow a player to choose between the annuity or cash option at the time he or she becomes a winner, not at the time of purchase. This rule change is consistent with rules now recommended by other state lotteries participating in the Multi-State Lottery which administers the Powerball game.
- 2. The Lottery Office received no written comments during the formal comment period in August, 1999.

Finding of Fact

3. The public was given notice and an opportunity to provide Lottery with comments in writing on the proposed amendment to the Lottery's rules. The Lottery received no public comments. This may be due to the fact the proposed rule amendment benefits all Lottery players by extending the time period for when a Powerball player can choose between the annuity or cash option. The Lottery finds that the proposed Rule is necessary and desirable for the efficient and economical operation and administration of the Lottery's games and will improve overall convenience of the game for purchasers of Powerball tickets. Therefore, pursuant to 29 Del.C. Section 4805(a), the Lottery adopts the proposed amendment to Rule 23 on the Payment of Prizes.

Conclusions

4. The proposed rule was promulgated by the Lottery Office in accord with its statutory duties and authority as set for in 29 Del.C. Section 4805. The Lottery deems this

proposed rule amendment necessary for the effective operation of the Delaware Lottery and its games, as established under 29 Del.C., Chapter 48. A copy of the rule amendment to section 23 - Payment of Prizes, adopted by the Lottery, is attached as exhibit #1 and incorporated as part of this Order. The Lottery adopts this rule pursuant to 29 Del.C. Section 4805 and 29 Del.C., Section 10113.

5. This adopted rule replaces in their entirety the former version of the Lottery Rules and any amendments. The effective date of this Order shall be ten (10) days from the publication of this Order in the Register of Regulations on October 1, 1999.

IT IS SO ORDERED this 1st day of September, 1999. Wayne Lemons, Lottery Director

(23) Payment of Prizes

- (a) All prizes shall be paid within a reasonable time after they are awarded and after the claims are verified by the Director. For each prize requiring annual payments, all payments after the first payment shall be made on the anniversary date of the first payment in accordance with the type of prize awarded. The Director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim, or any other matter that may have come to his attention. All delayed payments will be brought up to date immediately upon the Director's confirmation and continue to be paid on each original anniversary date.
- (b) For Grand Prizes in the Lottery's Powerball game, those prizes shall be paid at the election of the player made no later than 60 days after the player becomes entitled to the prize with either a per winner annuity or cash payment. If the payment election is not made at the time of purchase and is not made by the player within 60 days after the player becomes entitled to the prize, then the prize shall be paid as an annuity prize. An election for an annuity payment made by a player before ticket purchase or by system default or design may be changed to a cash payment at the election of the player until the expiration of 60 days after the player becomes entitled to the prize. The election to take the cash payment may be made at the time of the prize claim or within 60 days after the player becomes entitled to the prize. An election made after the winner becomes entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed. Shares of the Grand Prize shall be determined by dividing the cash available in the Grand Prize pool equally among all winners of the Grand Prize. Winner(s) who elected a cash payment shall be paid their share(s) in a single cash payment. The annuitized option prize shall be determined in accordance with the rules and procedures approved by the Multi-State Lottery Association, of which the Delaware Lottery is a participating member. Neither the Multi-State Lottery Association nor the member lotteries

including the Delaware Lottery shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to the Multi-State Lottery Association. In certain instances announced by the Multi-State Lottery Association Product Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to MUSL rules and procedures. If individual shares of the cash held to fund an annuity is less than \$250,000, the MUSL Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize pool. All annuitized prizes shall be paid annually in twenty-five equal payments with the initial payment being made in cash, to be followed by twenty-four payments funded by the annuity.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** 122(d))

Regulatory Implementing Order Child Nutrition

I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation requiring each local school district to have a Child Nutrition Policy. The regulation requires that the following six elements be addressed in the local district policy: Meals served to children will be nutritious and well balanced, the foods sold in addition to meals be selected to promote healthful eating habits and exclude those foods of minimal nutritional value, purchasing practices ensure the use of quality products, students have adequate time to eat breakfast and lunch, nutrition education be an integral part of the curriculum from preschool to twelfth grade and food service personnel, faculty and administrators use training and resource materials developed by the Department of Education and the United States Department of Agriculture to motivate children in selecting healthy diets.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 10, 1999 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to adopt this regulation because it will assist each school district in organizing their nutrition program in a way that will support and enhance academic achievement and good health.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to adopt the regulation. Therefore, pursuant to 14 <u>Del. C.</u>, Section 122, the regulation attached hereto as Exhibit B is hereby adopted. Pursuant to the provisions of 14 <u>Del. C.</u>, Section 122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation adopted hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be found in the <u>Regulations of the Department of Education</u>.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 <u>Del. C.</u>, Section 122, in open session at the said Board's regularly scheduled meeting on September 16, 1999. The effective date of this Order shall be ten (10) days from the date this Order is published in the <u>Delaware Register of Regulations</u>.

IT IS SO ORDERED this 23rd day of September, 1999.

DEPARTMENT OF EDUCATION

Valerie A Woodruff Acting Secretary of Education

Approved this 16th day of September, 1999.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President Jean W. Allen, Vice President Mary B Graham, Esq. John W. Jardine, Jr. Dr. Joseph A. Pika Dennis J. Savage Dr. Claibourne D. Smith

800.21 Child Nutrition

- 1.0 Each school district shall have a Child Nutrition Policy which at a minimum shall provide that:
- 1.1 Meals served to children will be nutritious and well balanced
 - 1.2 The foods sold in addition to meals be selected to

promote healthful eating habits and exclude those foods of minimal nutritional value as defined by the Food and Nutrition Service, USDA 7 CFR Part 210, Appendix B.

- 1.3 Purchasing practices ensure the use of quality products.
- 1.4 Students have adequate time to eat breakfast and lunch.
- 1.5 <u>Nutrition education be an integral part of the curriculum from preschool to twelfth grade.</u>
- 1.6 Food service personnel use training and resource materials developed by the Department of Education and the United States Department of Agriculture to motivate children in selecting healthy diets.

Regulatory Implementing Order Changes to DSSAA By-laws

I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education in adopting these recommended changes and revisions to the Constitution and Bylaws of the Delaware Secondary School Athletic Association (DSSAA). The attached changes are the result of an annual review of the Constitution and Bylaws by the DSSAA Constitution and Bylaws Committee and the DSSAA Board of Directors. These two additional changes reflect items that clarify the amateur status rule and that codify the current practices regarding the sanctioning of all star contests and tournaments/meets and the inclusion of the new elements of the National Federation of State High School Associations sanctioning programs for interstate tournaments/meets.

Notice of the proposed amendment was published in the News Journal and the Delaware State News on August 10, 1999 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to amend these regulations because situations and conditions have changed and the rules need to reflect real needs of the athletic programs of the state.

III. Decision to Amend the Regulations

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 <u>Del. C.</u>, Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 <u>Del. C.</u>, Section

122(e), the amended regulations hereby shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the <u>Regulations of the Department of</u> <u>Education</u> and the annual <u>Official Handbook of DSSAA</u>.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 <u>Del. C.</u>, Section 122, in open session at the said Board's regularly scheduled meeting on September 16, 1999. 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 23rd day of September, 1999.

DEPARTMENT OF EDUCATION

Valerie A Woodruff Acting Secretary of Education

Approved this 16th day of September, 1999.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President Jean W. Allen, Vice President Mary B. Graham, Esq. John W. Jardine, Jr.

Dr. Joseph A. Pika Dennis J. Savage

Dr. Claibourne D. Smith

1000.4 CONSTITUTION AND BYLAWS PROPOSALS

Rule 1. Eligibility, Section 5. Amateur 5.

5. Receives cash <u>or a cash equivalent (savings bond, certificate of deposit, etc.)</u>, merchandise <u>or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized <u>team or individual</u> competition, <u>or an</u> instructional camp, or clinic.</u>

Accepting <u>an event program and/or</u> a complimentary t-shirt or event program <u>item (t-shirt, hat, equipment bag, etc.)</u> that is inscribed with a reference to the event, has a value of no more than \$25.00, and is provided to all of the <u>participants</u> shall not jeopardize his/her amateur status.

Rule 33. Sanctions - School Team Competition

- A. During the DSSAA designated sport season, schools may obtain sanctions to participate only in competition involving school sponsored teams. In an interstate tournament or meet in which four (4) or more schools participate, sanctions must be obtained from the state associations involved and from the National Federation of State High School Associations. Sanctions shall be granted in accordance with the following criteria:
- 1. The competition shall not be for determining a regional or national champion.
- 2. The competition shall be sponsored by and all profits go to a nonprofit organization.
- 3. Nonsymbolic awards shall have a utilitarian value not to exceed \$25.00 and shall require the prior approval of the Executive Director.

School sanction forms are included in the DSSAA Book of Forms. These forms must be submitted to the DSSAA office in sufficient time to be forwarded to the National Federation of State High School Associations, i.e., at least thirty (30) days prior to the contest.

- A. Member schools may participate in tournaments/meets involving four(4) or more schools only if the event has been sanctioned by DSSAA and, if applicable, by the National Federation of State High School Associations. Tournaments/meets shall be sanctioned in accordance with the following criteria:
- 1. The event shall not be for determining a regional or national champion.
- 2. The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.
- 3. Nonsymbolic competition awards shall have a value of not more than \$25.00 and shall require the prior approval of the Executive Director.
- 4. Non-school event organizers shall submit a full financial report to the DSSAA office within ninety (90) calendar days of the date of the event.
- 5. The event organizer shall submit a list of outof-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.
- 6. Out-of-state schools which have been invited to participate and are not members of their state athletic association shall verify in writing that their athletes are in compliance with their state athletic association's eligibility rules and regulations.
- 7. The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.
- <u>8. The event organizer shall comply with all applicable NFHS sanctioning requirements.</u>

Regulatory Implementing Order Health Examinations for School District Employees

I. Summary of the Evidence and Information Submitted

The Acting Secretary seeks the consent of the State Board of Education to amend the regulation Health Examinations found on page 1-10 in the Handbook for Personnel Administration for Delaware School Districts. The amendment is necessary to update the language. The present regulation reads: "At initial employment in a school district, all employees shall file, together with other employment credentials, a physician's certification that he or she is free from any disease or physical defect or emotional instability that would interfere with the performance of duties and function of the school district." The amended regulation reads: "At initial employment in a school district, all employees shall file, together with other employment credentials, a physician's certification that he or she is free from any medical condition which would prevent the applicant from performing the essential functions of the applicant's job and which cannot be remedied through reasonable accommodations."

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 30, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisement.

II. Findings of Fact

The Secretary finds that it is necessary to amend this regulation because the existing language is inappropriate and out of date.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 <u>Del. C.</u>, Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 <u>Del. C.</u>, Section 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation repealed hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the document Regulations of the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 <u>Del. C.</u>, Section 122, in open session at the said Board's regularly scheduled meeting on June 17, 1999. 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 26th day of August, 1999.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff Acting Secretary of Education

Approved this 26th day of August, 1999.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President Jean W. Allen, Vice President Mary B. Graham, Esq. John W. Jardine, Jr. Dr. Joseph A. Pika Dennis J. Savage Dr. Claibourne D. Smith

800.21 Health Examinations for School District Employees

1.0 At initial employment in a school district, all employees shall file, together with other employment credentials, a physician's certification that he or she is free from any medical condition which would prevent the applicant from performing the essential functions of the applicant's job and which cannot be remedied through reasonable accommodations."

Regulatory Implementing Order Maternity Leave

I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal the regulation Maternity Leave found on pages 7-2 to 7-4 in the Handbook for Personnel Administration for Delaware School Districts. It is necessary to repeal the regulation to reflect the repeal in 1997, of 14 Del. C., Section 1323, on Maternity Leave. The Federal Family and Medical Leave Act of 1993 (FMLA) now serves as the basis of all family leave policies both at the Department of Education and in each local school district.

Notice of the proposed repeal was published in the News Journal and the Delaware State News on August 10,

1999 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to repeal these regulations because the corresponding section of the <u>Delaware Code</u> has been repealed and the Federal Family and Medical Leave Act now serves as a basis for policy making in this area.

III. Decision to Repeal the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to repeal the regulation. Therefore, pursuant to 14 <u>Del. C.</u>, Section 122, the regulation attached hereto as Exhibit B is hereby repealed.

IV. Text and Citation

The text of the regulation repealed hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be removed from the Handbook for Personnel Administration for Delaware School Districts.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 <u>Del. C.</u>, Section 122, in open session at the said Board's regularly scheduled meeting on September 16, 1999. The effective date of this Order shall be ten (10) days from the date this Order is published in the <u>Delaware Register of Regulations</u>.

IT IS SO ORDERED this 23rd day of September, 1999.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff Acting Secretary of Education

Approved this 16th day of September, 1999.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President Jean W. Allen, Vice President Mary B. Graham, Esq. John W. Jardine, Jr. Dr. Joseph A. Pika Dennis J. Savage Dr. Claibourne D. Smith

Repeal of Regulation on Maternity Leave

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal the regulation Maternity Leave found on pages 7-2 to 7-4 in the Handbook for Personnel Administration for Delaware School Districts. It is necessary to repeal the regulation to reflect the repeal in 1997, of 14 Del. C., Section 1323, on Maternity Leave. The Federal Family and Medical Leave Act of 1993 (FMLA) now serves as the basis of all family leave policies both at the Department of Education and in each local school district.

Maternity Leave

In accordance with the rules and regulations of the Federal Register, Vol. 37, No. 66, dated Wednesday, April 5, 1972, and with the instructions of the Attorney General in an opinion of August 17, 1972, the State Board of Education has approved the following rules and regulations as being in effect until the Delaware maternity leave law is amended to conform with the Federal law:

- a. Illnesses and temporary disabilities associated with pregnancy shall be treated as any other illness and shall be subject to the provisions of Delaware Code, Title 14,§1318, entitled, Sick Leave and Absence for Other Reasons, except for the following provisions necessitated by reasons of "business necessity" or optionally granted provisions for the additional benefit of the employee, said exceptions reflecting the practicalities of the situation.
- b. An employee who is ill because of pregnancy may be absent and remain on the payroll under the provisions of \$1318 for any number of days to which the employee has earned entitlement under the provisions of the section, except as otherwise herein provided.
- e. Prior to the expected delivery of a child, absence with pay will be recognized in accordance with §§1318,1319, entitled, Records of Absence: Proof, and §1320, entitled, Deduction for Unexcused Absence, as these sections may be applicable.
- d. Beginning with the day on which the child is born to an employee, that employee may continue to be absent from employment and remain on the payroll to the extent of earned entitlement under §1318 for each working day in a period of twenty eight (28) calendar days.

Any employee who is absent for any illness during all of the working days in a period of twenty eight (28) calendar days may remain on the payroll for that period but if then unable to return to work assignment, said employee shall present a report concerning the condition of illness.

The employee may extend the number of days of absence with pay beyond that defined above upon certification of illness by an attending physician and subject to carned eligibility for sick-leave time.

- e. An employee who is absent on account of pregnancy or other temporarily disabling illness but who has not carned or who does not have a sufficient reserve of earned sick leave days under §1318, may be absent in accordance with the provisions in Paragraphs (c) and (d) above, without any jeopardy to employment status but without pay for the period of time after exhaustion of earned sick leave, if any.
- f. An employee who is absent in accordance with the provisions of Paragraphs (e), (d), or (e) above, on account of pregnancy or after the delivery of a child, may request and shall be granted additional days of absence, without pay, in accordance with the provisions of Paragraphs (g), (h), (i), and (j) of this section without any showing of illness regarding the additional days.

An employee who is absent in accordance with provisions of Paragraphs (d) or (e) on account of other temporarily disabling illness shall present a physician's certification as documentation in support of the request.

- g. As a condition for the granting of such additional leave, the employee shall indicate to the Board of Education of the school district that said employee will, at the completion of the leave and on such date as is determined in agreement with the Board, return to regular employment in the district or resign from the position held, thus authorizing the Board to employ a regular, full-time person.
- h. The maximum additional days of leave requested by and granted to an employee may be for the remainder of any semester during which the illness occurs and the next succeeding semester of that or the subsequent school term. In the event that a classroom teacher requests additional days of leave without pay for a period shorter than that referred to above, the Board of Education of the school district may require that the teacher remain absent from school until some appropriate and regularly scheduled change in the school schedule, such as the end of a semester, or a marking period.
- i. At the end of any leave as herein described, the professional employee shall be accepted into full-time employment by the leave-granting Board and assigned to the same or a similar position to the one from which leave was granted. In no case may assignment be made so as to invalidate a professional employee's certification status or to bring about a demotion in position or salary for the employee.
- j. The period of absence granted under these provisions during which an employee remains on paid sick leave_shall be applicable to the determination of experience, salary or pension eligibility and the computation of pension eligibility time in the same manner as any other absence under 14 <u>Delaware Code</u> § 1318.
- k. No State funds shall be used for any payment of salaries to persons absent under the provisions of these sections, except as provided for in 14 <u>Delaware Code</u> §1318 and 1319.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 222-223 (16 **Del.C**. 222-223)

In the Matter Of:

Revision of State of Delaware
Rules and Regulations Relating
To Birth Defects

Delaware Health and Social Services ("DHSS") initiated proceedings to amend existing Rules and Regulations FOR TITLE 16, CHAPTER 2, RELATING TO BIRTH DEFECTS. The DHSS proceedings to amend its regulations were initiated pursuant to 29 <u>Delaware Code</u> Section 10114 and its authority as prescribed by 16 <u>Delaware Code</u> Chapter 2.

On June 1, 1999, the DHSS published in the Delaware Register of Regulations Volume 2 Issue 12 (page 2225) its notice of proposed regulation changes, 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 August 2, 1999, or be presented at public hearings on June 24 or July 27, 1999 at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations.

Oral and written comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings of Fact:

The Department finds that the proposed changes, as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed revision to the State of Delaware Regulations for Title 16, Chapter 2, Relating to Birth Defects are adopted and shall become effective October 11, 1999, after publication of the final regulation in the Delaware Register.

Gregg C. Sylvester, MD Secretary

September 13, 1999

Summary of Evidence

State of Delaware Rules and Regulations Relating to Birth Defects

Public hearings were held on June 24, 1999 at the Jesse Cooper Building, Dover, Delaware and on July 27, 1999 at the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware, with Jo Ann Baker, Hearing Officer, to discuss the proposed revision to the Regulations for Title 16, Chapter 2, Relating to Birth Defects. The announcements regarding the hearings were advertised in the Delaware State News, The News Journal and the Delaware Registry of Regulations in accordance with Delaware law. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Comments were provided by family members of children with a diagnosed metabolic disorder, and concerned citizens. Community Health Care Access Staff, DPH leadership, and DHSS administration conducted a thorough review of all comments. In general, comments fell into two areas of concern. Those concerns are as follows:

 Five individuals spoke at the public hearing and voiced concern that coverage for PKU is necessary for a lifetime.

Agency Response: After conferring with the Deputy Attorney General it was determined that these regulations were written under the Birth Defect Code which covers children and women of childbearing years. DHSS does not have the authority to cover other categories of people other than mentioned above under the current Delaware Code as written. However, the regulation does provide for a review of all requests for specialty formula coverage by a Case Review Panel made up of health professionals familiar with metabolic disorders and community members.

 Insurance companies should be mandated to cover specialty formula for diagnosed metabolic disorders.

Agency Response: DHSS does not have the authority to mandate insurance coverage. An insurance company mandate was investigated prior to the development of the regulations. It was found that only one third of the insurance providers would be effected by a mandate; the majority of these companies already provide some coverage. The regulation does provide for the establishment of a point of contact list and a directory of insurance providers who provide benefits for metabolic disorders.

There were no changes made to the draft Regulations.

The public comment period was open from June 1, 1999 to August 2, 1999.

Verifying documents are attached to the Hearing

Officer's record. The Delaware Attorney General's office and the Cabinet Secretary of DHSS have approved the regulations.

Division of Public Health

Regulations for Title 16, Chapter 2 Relating to Birth Defects

Delaware Code 201 provides for the assistance with the cost of treatment of children with birth defects. Inherited Metabolic Disorders are one such birth defect for which a fund has been established to assist with the cost of treatment.

I. Purpose

Inherited metabolic disorders, if undetected and untreated, can result in severe mental retardation, and possibly death, in infancy. Universal screening and milk product substitution is now a standard of medical care. If a child diagnosed with an inherited metabolic disorder amenable to dietary treatment is not able to maintain a strict dietary regime throughout life the individual will likely be developmentally delayed.

The Specialty Formula Fund ("Fund") provides that certain expenses for specialty formula, in the on-going treatment of inherited metabolic disorders, may be covered through the Department of Health and Social Services, Division of Public Health, Specialty Formula Fund.

The purpose of the Fund is to assist families in meeting the high cost of special or metabolic formulas, required to treat inherited metabolic disorders. The Division of Public Health will work to coordinate services and reduce obstacles families encounter regarding information and resource referral

Supporting individuals with special health care needs can place economic constraints on families. The cost of special formula may be prohibitive for some families. In situations where special formula has been prescribed by a physician, and not covered by insurance, there is justification to provide economic assistance under the Fund.

II. Definitions

- 1) "Inherited Metabolic Disorder," means a disorder caused by an inherited abnormality of body chemistry, which includes those disorders screened for by the state's Newborn Screening Program located within the Division of Public Health.
- 2) "Speciality Formula" means a milk product substitution that is intended for the therapeutic dietary treatment of inherited metabolic disorders for which nutritional requirements are established by medical evaluation.
- 3) "Case Review Panel" means a group composed of individuals with knowledge of inherited metabolic disorders, whose purpose is to review each newly diagnosed case

involving the special formula fund.

4) "Speciality Formula Fund" means funds provided to the Division of Public Health by the General Assembly, for prescribed specialty formula for women of child bearing age and children with inherited metabolic disorders.

III. Eligibility

- 1) Any Delaware woman of child bearing age or child diagnosed with an Inherited Metabolic Disorder, that warrants the prescription of a specialty formula may be eligible to receive assistance through the Specialty Formula Fund if uninsured or if current insurance benefit does not include this coverage. The assistance will be based on the current Department of Health and Social Services *Ability to Pay Fee Schedule* (see attached), less the average cost of formula for a normal newborn/infant or citizen using soy based milk products annually. The Fee Schedule is adjusted annually with the revised federal poverty guidelines.
- 2) The Division of Public Health may provide assistance from the Fund to a woman of child bearing age or child diagnosed with an Inherited Metabolic Disorder, if:
- (a) The specialty formula is prescribed as medically necessary for the therapeutic treatment of an Inherited Metabolic Disorder; and
- (b) The specialty formula is administered under the direction of a physician; and
- (c) The client's insurer does not provide benefits to cover prescribed formula for inherited metabolic disorder or there are special circumstances as determined by the Division of Public Health, Case Review Panel.

IV. Application

The Division of Public Health will:

- (1) Staff the Case Review Panel; and
- (2) Review and refer non-compliant woman of child bearing age, parents/guardians of children with an inherited metabolic disorder to appropriate agencies for follow-up; and
- (3) Determine, on a case by case basis, any assistance to be provided to a woman of child bearing age or child from this fund.

V. Roles/Responsibilities

1) The Division of Public Health will appoint a Case Review Panel to make recommendations to assist the Division of Public Health in determining the assistance provided to a woman of child bearing age or child from this fund. This group will also act as a case management team for women of child bearing age, children and their families, if necessary, with public and private providers of health care and/or insurance providers. The members may have a background in metabolic disease. The panel may include a Geneticist, Nutritionist, Newborn Screening Program staff member, a Physician who treats metabolic disorders, and one

or more community member(s). The Genetics Director will chair the Case Review Panel and the Division of Public Health will provide staff.

The Case Review Panel will meet on a regular basis to review cases and make recommendations to the Division of Public Health. All current cases will be reviewed within the first six months of initiation of the Case Review Panel. The Case Review Panel will convene, as needed, to review newly diagnosed cases.

VI. Authorization for Payment

- 1) The Division of Public Health may authorize assistance prior to the review of the Case Review Panel in cases of immediate need based on physician prescription.
- 2) The Division of Public Health may provide assistance based on the physician's prescription, recommendation of the Case Review Panel, the calculation of the quantity of formula needed, economic need, and the availability of appropriated funds.
- 3) Assistance under this fund is limited to the appropriation of the General Assembly for this purpose.
- 4) The Division of Public Health will reevaluate each case every year or if health benefit coverage changes.
- 5) Women of child bearing age or the parent or guardian of a child receiving assistance from the Fund are obligated to contact the Division of Public Health, immediately, if any changes in status or eligibility occur.

VII. Referrals

- 1. The Division of Public Health will accept referrals from specialty hospitals, institutions, other state agencies, primary care physicians, other health care professionals, self referrals, or referrals from the family.
- 2. Referrals should include the following information: client's name, parent or guardian's name, address, phone number, social security number of client, diagnosis, formula prescription type and amount per month, feeding schedule, client's age, financial information, and any pertinent medical data.

DIVISION OF SOCIAL SERVICES

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

In the Matter Of:

Revision of the Regulations Of the Medicaid/medical Assistance Program Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to the independent laboratory provider manual. The Department's proceedings to amend its regulations were initiated pursuant to 29 <u>Delaware Code</u> Section 10114 and its authority as prescribed by 31 <u>Delaware Code</u> Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the August 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 1999, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings of Fact:

The Department finds that the proposed changes as set forth in the August 1999 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective October 10, 1999.

Gregg C. Sylvester, M.D. Secretary

September 14, 1999

Independent Laboratory Provider Manual

I. General Information

All tests performed by an independent laboratory must be documented in the patient's medical record by a written order from the ordering practitioner. The signing of the practitioner's name by another individual or the use of facsimiles are not acceptable. Any tele Phoned-in orders for laboratory testings must be followed with a written order within 30 days. supported by a signed order from the practitioner.

An independent laboratory may use a reference laboratory to perform a test for which the independent lab is not certified.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

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

Secretary's Order No. 99-A-0046

Delaware's Regulations Governing the Control of Air Pollution Relating to PM 2.5 and the National Low Emissions Vehicle Program

Date of Issuance: September 1, 1999

Effective Date of the Amendments: October 11, 1999

I. Background Findings

A public hearing was held on July 8, 1999, at the DNREC Auditorium in Dover to receive comment on two new proposed regulatory provisions. The first involves a new primary and secondary ambient air quality standard for fine particulate matter, commonly called PM25, which would be incorporated into Regulation No. 3. The second aspect of this hearing involved the National Low Emission Vehicle Program the purpose of which is to reduce emissions from automobiles through more stringent NLEV regulations which automobile manufacturers have voluntarily opted to implement rather than alternative restrictions. Proper notice of the public hearing was provided as required by law. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated August 16, 1999, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

- 1. Proper notice of the hearing was provided as required by law.
- 2. Included as an exhibit to the hearing is a letter from the United States Protection Agency Region III expressing support for the fine particulate standard.
- 3. Absolutely no public comments were entered into the hearing record either orally or in written form.
- 4. In view of the support for the fine particulate standard from EPA and in the absence of any opposition to either proposal, evidence in the record supports promulgation of the proposed changes to the regulations.
- 5. Although the NLEV program was proposed in response to requests from automobile manufacturers and it

appears to be entirely federally enforceable, the purpose and intent of it should reduce the amount of pollutants in Delaware's air.

6. The complete lack of public opposition to the proposed changes demonstrates that any burden of compliance to the regulated community is offset by the potential environmental benefits from the proposed regulatory changes.

III. Order

In view of the above, I hereby order that the proposed changes to the Delaware Regulations Governing the Control of Air Quality (as shown in hearing exhibit no. 1) be adopted in the manner and form provided for by law.

IV. Reasons

Adopting the proposed amendments to Delaware's Regulations Governing the Control of Air Pollution will further the policies and purposes of 7 <u>Del. C.</u> Chapter 60, because the standards and program should help reduce the amount of pollutants in Delaware's air. Further, the complete lack of public opposition to the proposed changes demonstrates that any burden of compliance to the regulated community is offset by the potential environmental benefits from the proposed regulatory changes.

Nicholas A. Di Pasquale, Secretary

MEMORANDUM

TO: Nicholas A. DiPasquale, Secretary FROM: Robert R. Thompson, Hearing Officer

RE: Regulations Governing the Control of Air Pollution

PM 2.5/NLEV Rulemaking

DATE: September 1, 1999

I. Background

A public hearing was held on July 8, 1999, at the DNREC Auditorium in Dover to receive comment on two new proposed regulatory provisions. The first involves a new ambient primary and secondary air quality standard for fine particulate matter, commonly called $PM_{2.5}$, which would be incorporated into Regulation No. 3. The second aspect of this hearing involved the National Low Emission Vehicle Program the purpose of which is to reduce emissions from automobiles through more stringent NLEV regulations which automobile manufacturers have voluntarily opted to implement rather than alternative restrictions. Proper notice of the public hearing was provided as required by law.

II. Summary of the Record

The Department submitted six exhibits including the text of the proposed regulation as well as a letter from Region III of EPA expressing support for the fine particulate standard. Although some questions were posed during a brief discussion that was not "on the record" and is not part of the hearing transcript, there was absolutely no public comment either orally or in writing as a result of this hearing. Moreover, the complete lack of public opposition to the proposed changes likely demonstrates that any burden of compliance to the regulated community is offset by the potential environmental benefits from the proposed regulatory changes.

III. Recommendation

In view of the support for the fine particulate standard from EPA and in the absence of any opposition to either proposal, I find that the evidence in the record supports promulgation of the proposed changes to the regulations and recommend your signature on the attached Order. I also note that the NLEV program was proposed in response to requests from automobile manufacturers and it appears to be entirely federally enforceable; however, the purpose and intent of it should reduce the amount of pollutants in Delaware's air.

The following regulation was adopted by Secretary's Order on September 1, 1999, as a Revision to the State of Delaware Implementation Plan (SIP) for the Attainment and Maintenance of the National Ambient Air Quality Standard for Ozone and included in The Delaware Regulations Governing the Control of Air Pollution.

Regulation No. 40
Delaware's National Low Emission Vehicle
(NLEV) Regulation

10/11/99

Section 1 - Applicability

The environmental benefits of this regulation will be realized in all counties in the State of Delaware.

10/11/99

Section 2 - Definitions

The following terms, when used in this regulation, shall have the following meanings:

"NLEV Program" or "National Low Emission Vehicle Program" means a federally enforceable, voluntary nationwide clean car program designed to reduce smog and other pollution from new motor vehicles and that would achieve emission reductions from new motor vehicles in the Ozone Transport Region equivalent to or greater than would be achieved by the adoption of the CAL-LEV Program by all the OTC states.

10/11/99

Section 3 – Program Participation

- a) For the duration of Delaware's participation in NLEV, manufacturers may comply with NLEV or equally stringent mandatory Federal standards in lieu of compliance with any program, including the provisions of this subchapter and including any mandates for sales of ZEVs, adopted by the State pursuant to the authority provided in '177 of the Clean Air Act (CAA), 42 U.S.C. '7401 et seq., applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and/or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, '1900, incorporated herein by reference.
- b) Delaware's participation in NLEV extends until the commencement of model year 2006, except as provided in 40 C.F.R. '86.1707. If, no later than December 15, 2000, the EPA does not adopt standards at least as stringent as the NLEV standards provided in 40 C.F.R. Part 86, subpart R, that apply to new motor vehicles in model year 2004, 2005 or 2006, the State=s participation in NLEV extends only until the commencement of model year 2004, except as provided in 40 C.F.R. '86.1707.
- c) If a covered manufacturer, as defined at 40 C.F.R. 86.1702, opts out of the NLEV program pursuant to the EPA NLEV regulations at 40 C.F.R. '86.1707, the transition from NLEV requirements to any State Clean Air Act '177 Program applicable to passenger cars, light-duty trucks up through 6000 pounds GVWR, and/or medium-duty vehicles from 6001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, '1900, incorporated herein by reference will proceed in accordance with the EPA NLEV regulations at 40 C.F.R. '86.1707.

DIVISION OF AIR AND WASTE MANAGEMENT HAZARDOUS WASTE MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Chapters 60 & 63 (7 **Del.C.** Chp. 60, 63)

Secretary's Order No. 99-A-0045

Proposed Amendments to the Regulations Governing Hazardous Waste

Date of Issuance: August 23, 1999

Effective Date of the Amendments: October 11, 1999

I. Background

On Wednesday, May 12, 1999, at approximately 7:03 p.m., a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of this hearing was to receive public comment on proposed amendments to the Regulations Governing Hazardous Waste. After the hearing, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated August 18, 1999, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated August 18, 1999, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the amendments to the Regulations Governing Hazardous Waste as proposed at the public hearing be adopted in the manner and form provided for by law.

IV. Reasons

Adopting the proposed amendments to the Regulations Governing Hazardous Waste will further the policies and purposes of 7 <u>Del</u>. <u>C</u>. Chapters 60 and 63, because appropriate regulation of hazardous wastes is necessary to protect public health, welfare and the environment in Delaware.

Nicholas A. DiPasquale, Secretary

1999 Amendments To Delaware Regulations Governing Hazardous Waste Summary

This summary presents a brief description of the 1999 amendments to Delaware Regulations Governing Hazardous Waste (DRGHW), and a list of those sections generally affected by the amendments. This summary is being provided solely for the convenience of the reader.

These changes incorporate certain Federal RCRA amendments into Delaware's hazardous waste management program. The State is required to adopt these amendments in order to maintain its RCRA program delegation and remain current with the Federal hazardous waste program.

The State is also making certain technical changes for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

The regulatory amendments in this package are listed below and organized by the promulgating <u>Federal Register</u> notice. For additional information please contact the Hazardous Waste Management Branch at (302) 739-3689.

1. Title:Clarification of Standards for Hazardous Waste LDR Treatment Variances

Federal Register Reference:62 FR 64504-64509 Federal Promulgation Date:December 5, 1997

Summary: In this rule EPA finalizes clarifying amendments to the rule authorizing treatment variances from the national LDR treatment standards, adopting EPA's interpretation that a treatment variance may be granted when treatment of any given waste to the level or by the method specified in the regulations is not appropriate, under either technical or environmental circumstances. (NOTE: 40 CFR 268.44(a) - (g) are not delegable to the states because the variance addressed by these provisions may have a national impact. However, EPA strongly encourages the states to adopt these provisions in order to provide as much information to the regulated community as possible.)

Sections or portions of DRGHW affected by these changes include but are not limited to: 268.44.

2. Title:Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment

Federal Register Reference: 62 <u>FR</u> 64636-64671 Federal Promulgation Date: December 8, 1997

Summary: In this federal register EPA makes clarifying amendments to the subpart CC standards and provides

clarification of certain preamble language that was contained in previous documents for this rulemaking.

Sections or portions of DRGHW affected by these changes include but are not limited to: 264.15, 265.73, 264.1030, 264.1031, 264.1033, 264.1050, 264.1060, 264.1062, 264.1064, 264.1080, 264.1082 - 264.1087, 264.1089, 265.15, 265.73, 264.1030, 265.1033, 265.1050, 265.1060, 265.1062, 265.1064, 265.1080 - 265.1088, 265.1090, 265 Appendix VI, and 122.14.

3. Title:Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities

Federal Register Reference:63 <u>FR</u> 24596-24628 Federal Promulgation Date:May 4, 1998

Summary: This rule adds K140 and U408 hazardous waste codes to the current lists found in part 261, as well as modifies the land disposal treatment standards for hazardous waste in part 268 to include these new wastes. The effect of listing these wastes will be to subject them to stringent management and treatment standards, as well as to emergency notification requirements for releases of hazardous substances to the environment (CERCLA and EPCRA). Additionally, EPA has made a final determination not to list as hazardous ten waste streams from the production of bromochloromethane, ethyl bromide, tetrabromobisphenol A, 2,4,6-tribromophenol wastewaters, octabromodiphenyl oxide, and decabromodiphenyl oxide.

Sections or portions of DRGHW affected by these changes include but are not limited to: 261.32, 261.33, 261 Appendix VII, 261 Appendix VIII, 268.33, 268.40, and 268.48.

4. Title:Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

Federal Register Reference:63 <u>FR</u> 24963-24969 Federal Promulgation Date:May 6, 1998

Summary: This rule clarifies: 1) when used oil contaminated with PCBs is regulated under the used oil management standards and when it is not, 2) that the requirements applicable to releases of used oil apply in States that are not authorized for the RCRA base program, 3) that mixtures of CESQG wastes and used oil are subject to the used oil management standards irrespective of how that mixture is to be recycled, and 4) that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. This rule

also amends incorrect references to the pre-1992 used oil specifications in the provisions which address hazardous waste fuel produced from, or reclaimed from, oil bearing hazardous wastes from petroleum refining operations.

Sections or portions of DRGHW affected by these changes include but are not limited to: 261.5, 261.6, 279.10, 279.22, 279.45, 279.54, 279.64, and 279.74.

5. Title:Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters; Final Rule

Federal Register Reference:63 <u>FR</u> 28556-28753 Federal Purgation Date:May 26, 1998

Summary: This rule addresses five interrelated areas associated with the land disposal restrictions. First, new land disposal restrictions treatment standards are promulgated for wastes identified as hazardous because they exhibit the toxicity characteristic for metals. The universal treatment standards for 12 metal constituents are also revised. Second, this rule establishes a land disposal prohibition and treatment standards for a group of newly identified hazardous wastes/ mineral processing wastes that exhibit a characteristic of hazardous waste. This group includes not only those mineral processing wastes exhibiting the toxicity characteristic but also mineral processing wastes exhibiting the characteristics of ignitability (D001), corrosivity (D002) or reactivity (D003). Third, this rule amends the provisions defining when secondary materials from mineral processing which are recycled within the industry sector are solid waste. Secondary materials from mineral processing which are generated and reclaimed within that industry are not solid wastes (and therefore not hazardous waste) unless they are managed in land disposal units before being reclaimed. This rule also addresses issues related to whether materials are within the scope of the Bevill exclusion and allows secondary materials from mineral processing to be coprocessed with normal raw materials in beneficiation operations which generate Bevill exempt wastes, without changing the exempt status of the resulting Bevill wastes, provided certain requirements are met. Fourth, this rule includes alternative treatment standards for soil that contains a listed hazardous waste or which exhibits a characteristic of hazardous waste. Finally, this rule clarifies certain portions of the land disposal restrictions as well as corrects typographical errors.

In addition to the changes to the land disposal restrictions, this rule clarifies that a previously promulgated exclusion from hazardous waste regulation for recycled shredded circuit boards also applies to whole circuit boards

under certain conditions. An exclusion from RCRA jurisdiction is provided for certain wood preserving wastewaters and spent wood preserving solutions when recycled.

Sections or portions of DRGHW affected by these changes include but are not limited to: 261.2 - 261.4, 268.2, 268.3, 268.7, 268.34, 268.40, 268.44, 268.45, 268.48, 268.49, 268 Appendix VII, and 268 Appendix VIII.

6. Title:Hazardous Waste Combustors; Revised Standards; Final Rule Part 1: RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent To Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions

Federal Register Reference:63 <u>FR</u> 33782-33829 Federal Promulgation Date:June 19, 1998

Summary: DNREC is excluding, from the regulatory definition of solid waste, fuels produced from a hazardous waste which are comparable to some currently used fossil fuels. DNREC is also adding a new permit modification provision intended to make it easier for facilities to make changes to their existing hazardous waste permits. Facilities with certain hazardous waste combustion units can use this permit modification provision when adding air pollution control equipment, making other changes in equipment or making changes in operation needed to comply with upcoming air emission standards. DNREC is also adding notification requirements for sources which intend to comply with this rule. Finally, DNREC is adding allowances for extensions to the compliance period to promote the installation of cost effective pollution prevention technologies.

Sections or portions of DRGHW affected by these changes include but are not limited to: 261.4, 261.38, and 122.42.

7. Title:Petroleum Refining Process Wastes

Federal Register Reference: 63 <u>FR</u> 42110-42189 Federal Promulgation Date: August 6, 1998

Summary: DNREC is listing four petroleum refining process wastes as hazardous (K169-K172). The wastes will be subject to stringent management and treatment standards and emergency notification requirements. The rule excludes certain recycled secondary materials from the definition of solid waste. The materials include both oil-bearing residuals from petroleum refineries and oil from associated petrochemical facilities, when they are inserted into the refining process; and spent caustic from liquid treating

operations when used as a feedstock to make certain chemical products. The rule clarifies an existing exclusion for recovered oil from certain petroleum industry sources. Finally, this rule applies the universal treatment standards to the petroleum refining wastes.

Sections or portions of DRGHW affected by these changes include but are not limited to: 261.3, 261.4, 261.6, 261.31, 261.32, 261 Appendix VII 266.100, 268.35, and 268.40.

8. Title:Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production

Federal Register Reference:63 <u>FR</u> 47409-47418 Federal Promulgation Date:August 26, 1998

Summary: This rule revises the waste treatment standards applicable to 40 waste constituents associated with the production of carbamate wastes. First, the rule establishes revised treatment standards for seven specific carbamate waste constituents (A2213; bendiocarb phenol; diethylene glycol, dicarbamate; dimetilan; formparanate; isolan; and tirpate) for which there are no available analytical reference standards. The revised treatment standards for the seven hazardous waste constituents are in effect at the federal level; they extend indefinitely the temporary alternative treatment standards previously in effect, that expired federally on August 26, 1998. This rule also deletes the treatment standard for one additional constituent (o-phenylenediamine) for which available analytical methods do not achieve reliable measurements.

Secondly, this rule deletes the eight affected carbamate waste constituents as underlying hazardous constituents.

Thirdly, the rule extends for an additional six months (until March 4, 1999), the temporary alternative treatment standards for 32 carbamate waste constituents that expired federally on August 26, 1998.

Sections or portions of DRGHW affected by these changes include but are not limited to: 268.40, and 268.48.

9. Title:Land Disposal Restrictions Phase IV -- Extension of Compliance Date for Characteristic Slags

Federal Register Reference: 63 <u>FR</u> 48124-48127 Federal Promulgation Date: September 9, 1998

Summary: This rule extends the compliance date until November 26, 1998 for a limited portion of the Phase IV Final Rule (63 FR 28556). The Phase IV Final Rule amended the Land Disposal Restriction treatment standards for metal-bearing hazardous wastes exhibiting the toxicity characteristic. This action extends the date for treatment standards only for secondary lead slags exhibiting the

toxicity characteristic for one or more metals that are generated from thermal recovery of lead-bearing wastes (principally batteries). This action is being taken because of potential short term logistical difficulties that may result in a temporary shortage of available treatment capacity for these particular wastes.

Sections or portions of DRGHW affected by these changes include but are not limited to: 268.34.

10. Title:Land Disposal Restrictions B Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule

Federal Register Reference:63 <u>FR</u> 51254-51267. Federal Promulgation Date:September 24, 1998

Summary:DNREC is adopting EPA's interim replacement standards for spent potliners from primary aluminum reduction (EPA hazardous waste K088) under its Land Disposal Restrictions program. Spent potliners will now be prohibited from land disposal unless the wastes have been treated in compliance with the numerical standards contained within this rule. The newly promulgated treatment standards will be in place until EPA has fully reviewed all information on all treatment processes which may serve as a basis for a more permanent revised standard.

Sections or portions of DRGHW affected by these changes include but are not limited to: 268.40.

11. Title:Post-Closure Requirements and Closure Process

Federal Register Reference:63 <u>FR</u> 56710-56735 Federal Promulgation Date:October 22, 1998

Summary: With this rule, DNREC is modifying the requirement for a post-closure permit, to allow for the use of a variety of authorities to impose requirements on nonpermitted land disposal units requiring post-closure care. As a result, DNREC will have the flexibility to use alternate mechanisms under a variety of authorities to address postclosure care requirements, based on the particular needs at the facility. The rule also amends the regulations governing closure of land-based units that have released hazardous constituents, to allow certain units to be addressed through the corrective action program. This will allow regulators the discretion to use corrective action requirements, rather than closure requirements, to address the closure of regulated Finally, the rule specifies the Part B information submission requirements for facilities that receive postclosure permits.

Sections or portions of DRGHW affected by these changes include but are not limited to: 264.90, 264.110, 264.112, 264.118, 264.140, 265.90, 265.110, 265.112, 265.118, 265.121, 265.140, 122.1, 122.14, and 122.28.

12. Title:Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

Federal Register Reference: 64 <u>FR</u> 3381-3391 Federal Promulgation Date: January 21, 1999

The changes contained in this Federal Register revise the definitions for "equipment", "open-ended valve or line", and adds a definition for "sampling connection system". In addition, clarification is being made regarding an exemption from subpart CC requirements for waste management units used solely for on-site treatment or storage of hazardous waste that was placed in the unit as a result of implementing Federally required remedial activities. Changes are also being made that affect the requirements for when an owner or operator must make a determination of the volatile organic concentration of the Tank standards in paragraph (h)(3) in 264.1084 and 265.1085 is being amended to allow owners or operators who elect to use a pressure tank, to control air emissions under subpart CC, to purge the inert materials from the tank as is required by normal operation for that type of tank system. Finally, transfer requirements are being added to the Level 3 container standards. These standards were inadvertently left out of the November 1996 EPA rule.

Sections or portions of DRGHW affected by these changes include but are not limited to: 262.34, 264.1031, 264.1080, 264.1083, 264.1084, 264.1086, 265.1080, 265.1084, 265.1085, and 265.1087.

12. Technical Amendments: Technical changes will be made to the *Delaware Regulations Governing Hazardous Waste* to correct errors and inconsistencies in the regulations. In some cases, changes will be made to enhance the performance of the State's hazardous waste management program.

Sections or portions of DRGHW affected by these changes include but are not limited to: 260.1, 261.6, 262.23, 264.18, 264.19, 264.91, 264.145, 264.221, 265.145, [122.1].

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (29 **Del.C.** 209(a))

In the Matter of the Adoption
Of Rules and Regulations to
Implement the Provisions of
26 Del. C. Ch. X Relating to the
Creation of a Competitive Market
For Retail Electric Supply Service
(Opened April 27, 1999)

Order No. 5207

AND NOW, this 31st day of August, A.D. 1999, the Commission determines and Orders the following:

- 1. On March 31, 1999, the "Electric Utility Restructuring Act of 1999" (72 Del. Laws ch. 10) became law. The goal of the Act is to transform the generation, supply, and retail sale of electricity from an integrated, regulated regime to a competitive enterprise where retail customers will have the opportunity to choose an electric supplier.
- 2. In several provisions, the Act obligates the Commission to adopt implementing rules and regulations in order to facilitate the transition to the new competitive environment and to ensure that retail consumers will be adequately informed and protected after the onset of customer choice. In particular, as outlined in PSC Order No. 5068 (April 27, 1999), the Commission must adopt rules and regulations pertaining to:
- (a) the certification of electric suppliers (26 <u>Del</u>. C. § 1012(a));
- (b) the protection of consumers, including provisions related to standardized billing information, the terms and conditions for service, the procedures for resolving customer and electric supplier disputes, the procedures for changing electric suppliers, and the standards for electric suppliers who offer environmentally-advantageous "Green Power" options (26 <u>Del. C.</u> §1012(b));
- (c) the disclosure by each electric supplier of information, in a uniform format, about the fuel mix of electricity purchased by its customers (26 <u>Del</u>. <u>C</u>. § 1012(b));
- (d) the procedures for a retail customer's return to Standard Offer Service, including provisions related to the amount of notice a retail customer must provide, the amount of time a returning customer must remain on Standard Offer Service, and the charges to be imposed for such return (26 <u>Del. C.</u> §§ 1005(a)(1)(v), 1005(b)(1)(vi), 1010(c)); and
- (e) the implementation of net energy metering for residential and small commercial customers who own and operate a renewable-resource electric generation facility (26

<u>Del</u>. <u>C</u>. § 1014(d)).

- 3. Because the Act opens the market for electric supply to competition on October 1, 1999, the General Assembly granted the Commission the power to forego compliance with the Administrative Procedures Act (29 <u>Del. C. ch. 101</u>) in promulgating the required rules, regulations, and standards. 26 <u>Del. C. § 1015(a)</u>. The Commission exercised that power in Order No. 5068. Indeed, the short period between the date of the Act's enactment and the opening date for competition, compelled the Commission to construct such rules in a fair, but very expeditious, process.
- 4. On June 29, 1999, the Commission Staff proposed and circulated revised rules and regulations pertaining to each of the above-described areas. Comments were received and the designated Hearing Examiners in this matter reviewed Staff's rules and proposed certain modifications to those rules which were contained in a report dated August 4, 1999.
- 5. At its meetings on August 24, 1999 and August 31, 1999, the Commission reviewed Staff's proposed rules, the Hearing Examiners' modifications to those rules, and the viewpoints of interested participants.
- 6. After deliberations, the Commission, in large part, decided to adopt Staff's rules rather than the modifications made by the Hearing Examiners, primarily because the Commission found that Staff's rules more appropriately reflected the intent of the Act. Given the impending onset date for competition, the Commission believes it most important to promulgate and publish the applicable rules as quickly as possible, rather than delay for the entry of some larger Order explaining each participant's position. By granting exemption from the APA in this process, the General Assembly seemingly endorsed just such an abbreviated adoption procedure. Moreover, at heart, the rules required by the Act call for decisions on policy, some at the minor administrative level with only a few on larger issues. The Commission thinks that the language of the rules are, in large part, self-explanatory as the reasons for the policy chosen by the Commission. As noted above, the Commission believes that it is imperative to have rules in place to govern the electric supply market when the competitive door opens in thirty-one (31) days. At the same time, the Commission stands prepared to enter a more detailed explanation for its choice of a particular rule if any of the interested participants desire such exposition and believes it necessary. If a person desires any such further explanation, they should file a request for such explanation on one or more of the rules with the Commission within thirty (30) days after the date of this Order. Commission will decide, after such request, whether such further explanation is necessary; now, therefore,

IT IS ORDERED:

- 1. That the proposed "Rules for Certification and Regulation of Electric Suppliers" attached hereto as Exhibit "A" are adopted, pursuant to 26 <u>Del</u>. <u>C</u>. §§ 1010(a)(2), 1012(a), and 1014(d).
- 2. That pursuant to 26 <u>Del</u>. <u>C</u>. § 1015(a), the Secretary of the Commission shall transmit a copy of this Order and the rules governing the certification and regulation of electric suppliers adopted herein to the Delaware Registrar of Regulations for publication in the next issue of the Delaware Register of Regulations.
- 3. That section IX of the Commission Staff's proposed rules is not adopted. Instead, the Commission orders that the retention issues be handled as part of the individual utility's restructuring plan.
- 4. That the Secretary shall mail a copy of this Order and the rules adopted herein to each entity or person that previously filed comments or appeared in this docket.
- 5. That the Commission reserves the right to hereafter, by Order, alter, amend, or waive the rules adopted herein for use in any particular matter or proceeding.
- 6. 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:

Robert J. McMahon, Chairman Joshua M. Twilley, Vice-Chairman Arnetta McRae, Commissioner Donald J. Puglisi, Commissioner John R. McClelland, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

DELAWARE PUBLIC SERVICE COMMISSION

Rules for Certification and Regulation Of Electric Suppliers

Effective: August 31, 1999

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Section I: Definitions

"Affiliated Interest" - means:

- 1. Any person or entity who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of the Applicant;
- 2. Any person or entity, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in 1 above; or
- 3. Any person or entity, 10% or more of whose voting securities are owned, directly or indirectly, by the Applicant.

"Ancillary Services" - services that are necessary for the transmission and distribution of electricity from supply sources to loads and for maintaining reliable operation of the transmission and distribution system.

"Applicant" - an entity or person seeking to obtain an Electric Supplier Certificate.

"Broker" - an entity or person that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to Retail Electric Customers.

"Commission" - the Delaware Public Service Commission

"Cramming" – the practice of charging Customers for services that they have not ordered or have been sold in a deceptive manner such that the customer is not reasonably aware of the nature or price of the service for which he or she is being charged.

"Customer" or "Retail Electric Customer" - a purchaser of electricity for ultimate consumption and not for resale in Delaware, including the owner/operator of any building or facility, but not the occupants thereof, that purchases and supplies electricity to the occupants of such building or facility.

"Delaware Electric Cooperative, Inc." or "Cooperative" or "DEC" - or its successor(s).

"Delmarva Power & Light Company d/b/a Conectiv Power Delivery" or "Delmarva" or "DP&L" - or its successor(s).

"Distribution Services" – those services, including metering, relating to the delivery of electricity to a Retail Electric Customer through Distribution Facilities.

"Distribution Facilities" – 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 Retail Electric Customers, up through and including the point of physical connection with electric facilities owned by the Retail Electric Customer.

"Electric Distribution Company" or "EDC" - a public utility owning and/or operating Transmission and/or Distribution Facilities in Delaware.

"Electric Supplier"- an entity or person certified by the

Commission, including municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999), Broker, Marketer or other entity (including public utilities and their affiliates), that sells electricity to Retail Electric Customers, utilizing the Transmission and Distribution Facilities of an Electric Distribution Company.

"Electric Supplier Certificate" or "ESC"- a certificate granted to Electric Suppliers by the Commission which have fulfilled the Commission's certification requirements.

"Electric Supply Service" - the provision of electricity or electric generation service.

"FERC" - The Federal Energy Regulatory Commission.

"Green Power" - electricity generated from any one of the following renewable resources: solar; hydro; wind; biomass (the burning of agricultural wastes and landfill gas); and geothermal (heat from the earth).

"Marketer" - an entity or person that purchases and takes title to electricity for sale to Retail Electric customers.

"PJM Interconnection, LLC" or "PJM" - the Pennsylvania-New Jersey-Maryland Independent System Operator that is responsible for the operation and control of the bulk electric power system throughout all or portions of Delaware, Pennsylvania, New Jersey, Maryland, Virginia and District of Columbia.

"Slamming" - the unauthorized transfer of a customer to another Electric Supplier.

"Standard Offer Service" or "SOS" - the provision of Electric Supply Service after the Transition Period by a Standard Offer Service Supplier to Customers who do not otherwise receive Electric Supply Service from an Electric Supplier.

"Standard Offer Service Supplier" or "SOSS" - an Electric Supplier that provides Standard Offer Service to Customers within an Electric Distribution Company's service territory after the Transition Period.

"State" - The State of Delaware.

"Telemarketing" – Any unsolicited telephone calls initiated by, or on behalf of, an Electric Supplier to a Customer in order to market Electric Supply Service.

"Transition Period" - the period of time described in 26 <u>Del. C.</u> § 1004, which: begins October 1, 1999 and ends September 30, 2002 for Delmarva's non-residential customers; begins October 1, 1999 and ends September 30, 2003 for Delmarva's residential customers; and begins April 1, 2000 and ends March 31, 2005 for all Cooperative customers.

"Transmission Facilities" - 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.

"Transmission Services" - the delivery of electricity from supply sources through Transmission Facilities. Section II: Certification of Electric Suppliers

All Electric Suppliers must obtain an Electric Supplier Certificate from the Commission to sell electric supply service to or arrange the purchase on behalf of Retail Electric Customers prior to offering contracts to Customers or commencing service.

- 1. Certification Requirement. All Electric Suppliers shall file with the Commission an original and ten (10) copies of an Application for an Electric Supplier Certificate. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial and operational ability to adequately serve the public.
- (a) Authority to Do Business In Delaware. Each Applicant shall provide documentation from the Delaware Secretary of State and/or the Delaware Division of Revenue that it is legally authorized and qualified to do business in the State of Delaware.
- (b) Resident Agent. Pursuant to 26 <u>Del</u>. <u>C</u>. § 401, each Applicant shall file a designation in writing of the name and post-office address of a person resident within the State upon whom service of any notice, order or process may be made. This information must be updated if changed.
- (c) Performance Bonds. Each Applicant shall submit a copy of their performance bond or guarantee that they have obtained as security to the Electric Distribution Company if required in the Service Agreement between the Applicant and the Electric Distribution Company.
- (d) Compliance with Regional Requirements. Each Applicant, except for Brokers, must demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity through compliance with all applicable requirements of PJM. Brokers must submit relevant evidence of technical fitness to conduct their proposed business. Any Broker arranging the purchase of Electric Supply Service for their Customers must procure electricity from an entity that complies with PJM's requirements.
- (e) Financial, Operational, Managerial and Technical Ability. Each Applicant shall be required to present substantial evidence supporting their financial, operational, managerial and technical ability to render service with the State of Delaware. Such evidence shall include, but is not limited to:
- (1) Certified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders and SEC Form 10-K. Other indicia of financial capability may also be filed.

- (2) Brief description of the nature of business being conducted, including types of customers to be served, services provided and geographic area in which services are to be provided.
- (3) A list of states in which Applicant or any of its affiliated interests is presently selling electric supply service to Retail Electric customers and a list of states in which Applicant or any of its affiliated interests has pending applications to sell electric supply service to Retail Electric customers.
- (4) A list of states in which Applicant or any of its affiliated interests has been denied approval by a State Commission to sell electricity to Retail Electric Customers or has had its authority revoked.
- (5) Relevant operational experience of each principal officer responsible for Delaware operations.
- (6) A copy of any FERC approval as a Marketer or date and docket number of the application to FERC.
- (7) If the Applicant requires deposits, advance payments, prepayments, financial guarantees or the like from customers, then the Applicant must secure a bond with corporate surety licensed to do business in Delaware guaranteeing the repayment of all customer deposits and advances upon the termination of service. The amount of the bond will be the lesser of (i) 150 percent of the projected amount of deposits and advances for the next one year period; or (ii) \$50,000. If at any time the actual amount of the deposits and advances held by the Applicant exceeds the amount projected, the amount of bond shall be increased to comply with the requirement in the preceding sentence.
- (8) All new Applicants shall demonstrate in their applications that they possess a minimum of \$100,000 of assets in excess of encumbrances or a minimum of \$100,000 in cash, cash equivalents, or financial instruments that are reasonably liquid and readily available to meet their costs of providing electricity to Customers or any combination thereof.
- (9) Demonstration of cash or cash equivalents can be satisfied by the following:
- (i) Cash or cash equivalents, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;
- (ii) Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;
- (iii) Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;
- (iv) Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;

- (v) Line of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;
- (vi) Loan, issued by a qualified subsidiary, affiliate of Applicant, or a qualified corporation holding controlling interest in the Applicant, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission, and payable on an interest-only basis for the same period;
- (vii)Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;
- (vii)Guarantee, issued by a qualified subsidiary, affiliate of Applicant, or a qualified corporation holding controlling interests in the Applicant, irrevocable for a period of at least twelve (12) months beyond the certification of the Applicant by the Commission; and,
- (ix) Identifiable physical assets set forth in a balance sheet or similar statement.
- (10) The Applicant shall disclose whether the entity or any of its affiliated interests has filed for bankruptcy in the past 24 months.
- (11) The Commission or its Staff may consider any other information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant.
- (f) Verification of Application. The Application must be verified by a principal or officer of the Applicant.
- (g) Consent to the Jurisdiction. All Electric Suppliers shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State.
 - (h) Other Requirements:
- (1) Legal name as well as the name under which the Applicant proposes to do business in Delaware;
- (2) State of incorporation, business address, and address of the principal officer;
- (3) Name, title and telephone number of a regulatory contact person;
- (4) A toll-free telephone number of customer service department;
- (5) Description of the Applicant's experience in the energy market and a brief description of the services its plans to offer in Delaware and the type of customers it plans to serve; and
- (6) Statement detailing any criminal activities of which the Applicant or any of its affiliated interests has been charged or convicted, or which the principal or corporate officers of the Applicant or any of its affiliated interests has been charged or convicted.
- (i) Contracts. The Applicant shall provide the Commission with a copy of its standard contract that it

proposes to use with its prospective customers. Such standard contract shall be filed twenty-one (21) calendar days prior to use by the Applicant. Commission Staff shall have the authority at any time to require changes to a standard contract, if Staff determines that such contract is not consistent with these Rules for Certification and Regulation of Electric Suppliers. Such contract shall be in clear and plain language and include explicit terms and conditions which at a minimum contain the following:

- (1) A clear statement of the duration of the contract:
- (2) The price stated in cents per kWh or a clear and unambiguous statement of the precise mechanism or formula by which the price will be determined;
- (3) A complete list of any other fees, including early termination penalties, late fees, and interest charges, which can be imposed on the customer, including but not limited to the magnitude of the fees and the specific conditions under which such fees can be imposed;
- (4) A statement of the Electric Supplier's termination rights, which shall explain the specific conditions, under which the Electric Supplier may terminate service. At a minimum, the Electric Supplier shall provide the customer with at least 30 days notice prior to the next meter read date to terminate service and procedures to maintain ongoing service;
- (5) The Electric Supplier's local or toll-free telephone number; the name, address and local or toll-free telephone number of a company contact person; the Electric Distribution Company's emergency telephone number; and the Commission's address and telephone number;
- (6) A statement that the customer should call the Electric Distribution Company in the event of an electricrelated emergency, such as a power outage; and,
- (7) A statement informing the customer that if he/she relocates outside his/her current EDC area, he/she may terminate his/her contract with his/her Electric Supplier after providing a 30-day notice in writing to the Electric Supplier.
- 2. Notice. Each Applicant shall publish notice of the filing of the application in two (2) newspapers having general circulation throughout the State in a form to be prescribed by the Commission.
- 3. Application Fee. A non-refundable application fee of \$750 shall be submitted with the application for Certification.
- 4. Incomplete or Abandoned Applications. Applications that do not include the necessary fees, supporting documentation or information may be rejected. The Commission Staff will provide the Applicant with a list of deficiencies and the Applicant will be given time to provide the necessary information to complete its certification. However, an incomplete or abandoned application will be closed four (4) months after the filing

date, unless such time frame is extended by the Commission.

5. Waiver of Certification Requirements. Upon the request of any Applicant, the Commission may, for good cause, waive any of the requirements of these Rules that are not required by statute. The waiver may not be inconsistent with the purpose of these Rules or Chapter X of Title 26 of Del. C.

Section III: Post-certification Requirements

- 1. Term of ESC. ESCs are valid until revoked by the Commission or abandoned by the Electric Supplier after the requisite notice to the Commission and to their customers.
- 2. Minimum Length of Service by Electric Supplier. For each Customer class, each Electric Supplier must offer Electric Supply Service to each of its Customers for a minimum period of one billing cycle.
- 3. Transfer or Abandonment of ESC. The transfer of an ESC is prohibited. No electric service provider shall abandon service without 60 days written notice to the Commission, the affected Electric Distribution Companies, and its customers.
- 4. Contracts and Revised Contracts. An Electric Supplier shall supply Electric Supply Service only by a contract substantially similar to the standard contract filed by the Electric Supplier under Section II, paragraph 1(i) of these Rules. The contract must be signed and dated by the customer. If an Electric Supplier offers the Customer a check, prize, or other incentive which requires a signature, that signature cannot be used as the contract signature. A customer has ten (10) calendar days from the day the utility sends the confirmation letter to rescind their selection. If the Electric Supplier makes changes to its standard contract form, the Electric Supplier must submit these changes to the Commission Staff for review and comment. Such revised contract shall be filed twenty-one (21) calendar days prior to use by the Electric Supplier. Commission Staff shall have the authority at any time to require changes to a standard contract, if Staff determines that such contract is not consistent with these Rules for Certification and Regulation of Electric Suppliers.
- 5. Price Terms. Any price term shall not be inconsistent with pricing terms in a Customer's contract with his/her Electric Supplier. The Electric Supplier must provide thirty (30) days written notice to its Customer(s) of any price term changes.
- 6. Information that Must be Provided to a Customer by the Electric Supplier. The Electric Supplier must provide the customer with the following a copy of its contract which includes the terms and conditions of service.
- 7. Customer Information. An Electric Supplier cannot release customer information without the written authorization of the customer.
 - 8. Marketing and Advertising.
 - (a) Pursuant to 26 <u>Del</u>. <u>C</u>. § 1012 (b) and as further

defined in Section I of these Rules, all Electric Suppliers are prohibited from using Telemarketing to solicit customers. This prohibition does not include initial contact by any medium other than a voice telephone call or a Customer's telephone response to any non-telephone initial contact.

- (b) An Electric Supplier or its marketing or advertising agent shall not make misrepresentations or use deceptive practices in its direct solicitations, advertising or marketing materials.
- (c) An Electric Supplier or its marketing or advertising agent must comply with all federal, state or local laws applicable to advertising or marketing products or services.
- 9. Reports to be Provided to the Commission. All Electric Suppliers shall provide such information concerning Delaware operations to the Commission as the Commission may from time to time request, including any reporting requirements contained herein. Information provided pursuant to this paragraph and designated "proprietary" or "confidential" shall be held in accordance with paragraph 1 in Section X of these Rules, and shall be afforded proprietary treatment subject to the provisions of the Rules, Commission regulations, and Delaware Law.
- 10. Fees and Assessments. ESCs must pay the fees and assessments under 26 <u>Del</u>. <u>C</u>. § 1012 (c) (2). ESCs must also file any reports required under 26 <u>Del</u>. <u>C</u>. § 115 (e). The ESC must also pay the Public Utilities Taxes pursuant to 30 <u>Del</u>. <u>C</u>. Chapter 55.
- 11. Record Retention. All Electric Suppliers will retain customer account records for a period of two (2) years.

Section IV: Billing and Metering

1. Billing Options.

- (a) Each Customer in Delmarva's service territory has the right to choose to receive separate bills from Delmarva Power & Light Company d/b/a Conectiv Power Delivery and from its Electric Supplier (if the ES provides a separate billing), or to receive a combined bill from either Delmarva or its Electric Supplier (if the ES provides a consolidated billing option), for Electric Supply, Transmission, Distribution, Ancillary and other Services, consistent with these Rules. If the Customer does not elect a billing option, Delmarva will be responsible for billing the Customer for Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the Electric Supplier.
- (b) In the Delaware Electric Cooperative's service territory, the Cooperative will bill each Customer for Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the Customer's Electric Supplier.
- 2. Bill Contents. The bill should be easy to understand and must contain the following information:
 - (a) The name, address, and local or toll-free

telephone number of the Electric Supplier;

- (b) If different from the Electric Supplier, the name, address and toll-free telephone number of the Electric Distribution Company;
 - (c) The due date for payment;
- (d) An itemized list of each service or product billed for the current billing period including charges for the Public Purpose Programs and a Competitive Transition Charge (if applicable);
- (e) Electricity consumption including whether the consumption was based on actual recorded usage or estimated usage;
- (f) The actual cents per kWh (or the appropriate block charges or other pricing mechanism) charged to the customer for the customer's actual usage (or estimated usage) of electricity for the current billing period;
 - (g) The total charge for each service or product;
- (h) The amount of payment or other credit applied to customer's outstanding balance during the billing period; and
- (i) The amount still owed by the customer from the previous billing period.

3. Metering.

- (a) During the Transition Period, Delmarva will continue to own all meters and perform all meter reading functions. After the Transition Period, or earlier if requested by Delmarva, the Commission can permit others to provide some or all of the metering functions on a competitive basis.
- (b) The Delaware Electric Cooperative will continue to own and operate all meters and perform meter reading functions.

Section V:Customer Protection

- 1. Procedures to be Followed by the Customer:
- (a) A customer should first notify the Electric Supplier of his/her complaint for resolution of his/her Electric Supply Services. In the event of an electricity-related emergency, such as a power outage, or in the event of problems related to a Customer's EDC, the Customer should contact his/her EDC.
- (b) If the customer and Electric Supplier are not able to come to a resolution, the customer may file a complaint with the Commission as described in Rules 14 and 15 of the Rules of Practice and Procedure of the Commission.
 - 2. Procedures to be Followed by the Electric Supplier:
- (a) If a customer notifies the Electric Supplier that he/she has a complaint, the Electric Supplier shall use good faith efforts to respond to and resolve the complaint.
- (b) An Electric Supplier shall have a sufficient number of customer service representatives to handle its customers' inquiries and complaints.
- (c) If the customer and Electric Supplier are not able to come to a resolution, the Electric Supplier will

inform the customer that he/she may contact the Commission.

- (d) The Electric Supplier shall prepare and maintain a report of these complaints and keep these reports on file for a period of two (2) years. Upon request by the Commission or its Staff, an Electric Supplier shall furnish a copy of such report to the Commission. The report shall contain the following information:
 - (i) Type of complaint;
 - (ii) Date of complaint;
 - (iii) Resolution; and,
 - (iv) Date resolved.
- 3. Slamming. If the Commission determines that an Electric Supplier has slammed a Retail Electric Customer, then that Electric Supplier may be subject to penalties that may be imposed by the Commission through a hearing process. An Electric Supplier that causes a customer to be transferred to the Electric Supplier's electric supply service, without obtaining an executed, unrescinded contract as required in Section III, paragraph 4 of these Rules, shall be deemed in violation of this Slamming Rule. In such a case, the Electric Supplier must void and/or refund any charges it has imposed on the slammed customer. The customer will only be liable to its authorized Electric Supplier for future service at a rate that is no more than the rate the customer paid before the slamming incident occurred.
- 4. Cramming. If the Commission determines that an Electric Supplier has billed unauthorized charges to a Retail Electric Customer, that Electric Supplier may be subject to penalties that may be imposed by the Commission through a hearing process. An Electric Supplier that has imposed unauthorized charges on a Retail Electric Customer must void and/or refund all of those charges to the Retail Electric Customer.

Section VI: Green Power and Renewable Resources

- 1. All Electric Suppliers offering Green Power shall have to meet disclosure of fuel resource mix stated in Section VII of these Rules.
- 2. For the purposes of this Section, a Green Power option is defined as an Electric Supply Service which has a generation resource mix of at least 50% Green Power. An Electric Supplier can provide a Green Power option of any proportion higher than that stated in this paragraph provided it meets the standards in paragraph 3 of this Section.
- 3. When requested by a Customer or providing information regarding Green Power through marketing and advertising material(s) or solicitation(s), an Electric Supplier must label its fuel resource mix in a manner that accurately describes its electric generating resources.
- 4. An Electric Supplier shall not market, advertise, or solicit to Customers on the basis that its product is environmentally beneficial unless it meets the minimum resource mix requirement of paragraph 2 of this Section.

Section VII. Disclosure of Fuel Resource Mix

- 1. Each Electric Supplier shall file a report with the Commission disclosing the aggregate proportions of fuel resource mix for the electricity supplied to its customers in Delaware for each quarter during the year. Such reports shall be filed by last date of the month succeeding each quarter. The reports shall include, but are not limited to:
- (a) The total number of customers by each customer class served during that quarter;
- (b) The total amount of electricity (kWh or MWh) supplied to each customer class; and,
- (c) The fuel resource mix by percentage for the following resources: coal, oil, natural gas, nuclear, hydro, solar, wind, biomass, geothermal, and other.
- 2. The Commission will keep the information reported under paragraphs 1(a) and 1(b) confidential. Information to paragraph 1(c) shall not be held confidential, and the Commission or an Electric Supplier shall disclose such information to any member of the public requesting it. Each Electric Supplier shall also disclose the information under paragraph 1(c) to its Customers no less frequently than on a quarterly basis. Information reported under paragraph 1(c) may be utilized in any consumer education program developed in accordance with 26 <u>Del. C.</u> § 1014(c).
- 3. If an Electric Supplier cannot provide the data in paragraph 1(c) specifically for its customers in Delaware, then the Commission will accept comparable percentages for the load served in the Pennsylvania-Jersey-Maryland (PJM) regional power pool.

Section VIII: Net Energy Metering

- 1. Each Electric Supplier providing Electric Supply Service to residential and small commercial Customers shall offer these Customers the option of net energy metering if a Customer generates electricity at the Customer's premises, subject to all of the following requirements:
- (a) The Customer owns or operates the electric generation facility;
 - (b) The facility uses renewable resources;
- (c) The facility has a capacity of not more than 25 kilowatts;
- (d) The facility is not used by the Customer to supply property other than the Customer's premises.
- 2. Net metering is the interconnection with Distribution Facilities through a single meter that runs forward and backward in order to measure net energy flow during a billing period.
- 3. If, during any billing period, a Customer's facility generates more energy than that consumed by the Customer, the Electric Supplier will credit the Customer such additional power in the following billing period at least at the same price the Electric Supplier charged or would have charged the Customer under the contract.
 - 4. Any requirements necessary to permit

interconnected operations between the customer's generating facility and the EDC, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by the EDC.

- 5. An EDC shall not impose special fees on net energy metering Customers, such as backup charges, additional controls, or liability insurance, as long as the generation facility meets the interconnection standards and all relevant safety and power quality standards.
- 6. Refunds and credits from net energy metering shall not apply to services provided by the EDC other than Electric Supply Service.

Section IX: Customers Returning to Edc or Sos Supplier for Electric Supply Service

The procedures for a Retail Customer's return to an EDC during the Transition Period and to an EDC if it is the SOS Supplier after the Transition Period for Electric Supply Service shall be in accordance with the Commission's order for each EDC's individual electric restructuring plan.

Section X: Other General Rules

- 1. Proprietary Information. Under Delaware's Freedom of Information Act, 29 Del. C. ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 Del. C. §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity which submitted the information with reasonable notice and an opportunity to show why the information should not be released.
- 2. Failure to Comply with These Rules. The failure by any Electric Supplier to comply with these requirements and the requirements in other Sections of these Rules may result in penalties, including monetary assessments, suspension or revocation of the Electric Supplier's ESC, or other sanction as determined by the Commission.

GOVERNOR'S EXECUTIVE ORDERS

STATE OF DELAWARE EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER NUMBER SIXTY-THREE

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES AND AUTHORITIES, AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE STATE OF DELAWARE.

RE: AMENDMENT TO EXECUTIVE ORDER NUMBER SIXTY-TWO REGARDING THE STATE OF EMERGENCY DUE TO DROUGHT EMERGENCY; ISSUING AN EMERGENCY ORDER IMPOSING MANDATORY WATER CONSERVATION MEASURES; AND OTHER RELATED ACTION.

WHEREAS, on August 5, 1999, by Executive Order Number Sixty-Two, I proclaimed a drought emergency for the State of Delaware and urged specific mandatory conservation measures;

WHEREAS, the Governor's Drought Advisory Committee is a significant source of advice to the Governor regarding water conservation measures;

WHEREAS, the Drought Advisory Committee met on August 6, 1999 to discuss Executive Order Number Sixty-Two and the current drought emergency; and

WHEREAS, minor changes to Executive Order Number Sixty-Two are necessary.

NOW, THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, pursuant to 20 <u>Del.C.</u> § 3115 and § 3116 (a) (5), do hereby proclaim as follows:

- 1. Amend Executive Order Number Sixty-Two be striking the text of sub-paragraph 4(b) and inserting in lieu thereof the following:
 - "(b) The use of potable water for watering golf courses, except for syringing of tees and greens during daytime stress periods (not to exceed 70% of the prevailing application rates) and watering tees and greens between the hours of 9:00 p.m. and 6:00 a.m. to the extent minimally necessary for survival;"

- 2. Amend Executive Order Number Sixty-Two by inserting in subparagraph 4(e) after the word "pools" the words "that do not support animals, plants or aquatic life".
- 3. The provisions of this Order shall be effective as of 12:01 p.m., August 7, 1999.
- 4. Copies of this amendment to Executive Order Number Sixty-Two shall be distributed with copies of Executive Order Number Sixty-Two.

Approved this 6th day of August, 1999.

Thomas R. Carper, Governor

Attest:

Edward J. Freel, Secretary of State

STATE OF DELAWARE EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER NUMBER SIXTY-FOUR

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES AND AUTHORITIES, AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE STATE OF DELAWARE.

RE: AMENDMENT TO EXECUTIVE ORDER
NUMBER SIXTY-TWO, AS AMENDED BY
EXECUTIVE ORDER NUMBER SIXTY-THREE,
REGARDING THE STATE OF EMERGENCY
DUE TO DROUGHT EMERGENCY; ISSUING
AN EMERGENCY ORDER IMPOSING
MANDATORY WATER CONSERVATION
MEASURES; AND OTHER RELATED ACTION.

WHEREAS, on August 5, 1999, by Executive Order Number Sixty-Two, I proclaimed a State of Emergency due to drought and imposed certain mandatory conservation measures;

WHEREAS, Delaware and the region continue to experience severe drought conditions, including below normal precipitation and stream flow;

WHEREAS, the demand for fresh water has not diminished to adequate levels since the imposition of mandatory water conservation measures;

GOVERNOR'S EXECUTIVE ORDERS

WHEREAS, the current supply of fresh water in northern New Castle County continues to decrease and is barely meeting current demand;

WHEREAS, the supply of fresh water in northern New Castle County will likely diminish further in the coming days and weeks if drought conditions continue;

WHEREAS, strict enforcement is required in order to ensure compliance with the aggressive mandatory conservation measures contained in Executive Order Number Sixty-Two, as amended by Executive Order Number Sixty-Three;

NOW THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, pursuant to 20 <u>Del.C.</u> §§ 3115, 3116(a)(5), do hereby proclaim as follows:

1. Amend Executive Order Number Sixty-Two, as amended by Executive Order Number Sixty-Three, by adding the following language at the end of Paragraph 6:

"Law enforcement may enforce the provisions provided herein, with or without a warrant, as long as such officer has reasonable grounds to believe that the person has violated the terms of this order, even if such violation has occurred outside of the officer's presence. The Justice of the Peace shall have original Jurisdiction to hear, try and finally determine any violation of the terms of this order."

- 2. The provisions of this Order shall be effective as of 12:01 p.m., August 20, 1999.
- 3. Copies of this amendment to Executive Order Number Sixty-Two, as amended by Executive Order Number Sixty-Three, shall be distributed with copies of Executive Order Number Sixty-Two and Executive Order Number Sixty-Three.

Approved this 19th day of August, 1999.

Thomas R. Carper, Governor

Attest:

Edward J. Freel, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER NUMBER SIXTY-FIVE

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES AND AUTHORITIES, AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE STATE OF DELAWARE.

RE: AMENDMENT TO EXECUTIVE ORDER
NUMBER SIXTY-TWO, AS AMENDED BY
EXECUTIVE ORDER NUMBER SIXTY-THREE
AND EXECUTIVE ORDER NUMBER SIXTYFOUR, REGARDING THE STATE OF
EMERGENCY DUE TO DROUGHT
EMERGENCY; ISSUING AN EMERGENCY
ORDER IMPOSING MANDATORY WATER
CONSERVATION MEASURES; CREATING
THE WATER SUPPLY TASK FORCE; AND
OTHER RELATED ACTION.

WHEREAS, on July 23, 1999, by Executive Order Number Sixty-One, I proclaimed a drought warning for the State of Delaware and urged specific voluntary conservation measures;

WHEREAS, on August 5, 1999, by Executive Order Number Sixty-Two, I proclaimed a state of emergency due to drought and imposed certain mandatory conservation measures;

WHEREAS, on August 6, 1999, by Executive Order Number Sixty-Three, I amended Executive Order number Sixty-Two;

WHEREAS, on August 20, 1999, by Executive Order Number Sixty-Four, I further amended Executive Order number Sixty-Two;

WHEREAS, Delaware and the region continue to experience severe drought conditions, including below normal precipitation and stream flow;

WHEREAS, the need to reduce the demand for fresh water has not diminished:

WHEREAS, the use of non-potable water, such as pool water and treated wastewater, wherever possible will help reduce demand;

WHEREAS, the fall sports season is approaching and the use of potable water for school athletic fields where necessary is appropriate to prevent injuries;

WHEREAS, to help offset use of potable water for athletic fields, restrictions on the use of potable water for recreational swimming pools is necessary and appropriate;

WHEREAS, clarification of Executive Order 62 as amended by Executive Order 63 and Executive Order 64 is necessary;

WHEREAS, the Drought of 1999 has also raised significant issues concerning the long-term water needs of Delawareans:

WHEREAS, the Drought of 1999 has focused attention on the adequacy of current water supplies;

WHEREAS, several water providers, public and private, currently supply Delaware with its water;

WHEREAS, the Drought of 1999 has revealed the need for close coordination among water suppliers and state, local and municipal governments in times of crises;

WHEREAS, it is prudent and timely for the various stakeholders to review the long-term water needs of Delaware and make recommendations to the Governor;

NOW THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, pursuant to 20 <u>Del.C.</u> §§ 3115, 3116(a)(5), do hereby proclaim as follows:

- A. Amend Executive Order Number Sixty-Two, as amended by Executive Order Number Sixty-Three and Executive Order Number Sixty-Four, by striking the text of paragraphs 1 through 9 and inserting in lieu thereof the following language:
- "1. This Executive Order shall constitute a State of Emergency due to drought, limited to northern New Castle County (north of the Chesapeake and Delaware Canal).
- 2. All State facilities in northern New Castle County are banned from all non-essential use of water as more fully set forth in Paragraph 4 of this Order below. Each agency shall also continue to implement best management practices for agency water use as required by previous Executive Orders.
- 3. All municipalities are hereby ordered pursuant to 20 <u>Del.C.</u> § 3116 and § 3122 to issue directives consistent with this Order.
 - 4. Pursuant to 20 <u>Del.C.</u> § 3116(a)(5), the

- following uses of water are immediately prohibited in northern New Castle County, except where specifically indicated to the contrary:
- (a) The use of potable water for non-agricultural irrigation and watering of lawns and outdoor gardens, landscaped areas, trees, shrubs, and outdoor plants with the following exceptions:
- (i) Potable water may be applied between the hours of 5:00 a.m. and 8:00 a.m. for irrigation to domestic vegetable and fruit gardens by hand-held containers or hand-held hoses with manually operated flow control nozzles or by lowpressure perforated hoses with the user in attendance.
- (ii) Potable water may be applied to school athletic fields between the hours of 5:00 a.m. and 8:00 a.m. to the extent non-potable water is not otherwise available and to the extent necessary to prevent injuries;
- (b) The use of surface waters for watering golf courses, except that onsite stormwater or retention ponds or irrigation wells may be used for syringing of tees and greens during daytime stress periods and potable water may be used to water tees and greens between the hours of 5:00 a.m. and 8:00 a.m. to the extent minimally necessary for survival and where non-potable sources are not otherwise available;
- (c) The use of fresh water for watering of nursery trees, shrubs, and other outdoor plants. To the extent that sources of water other than fresh water adequate to supply needs are not available or feasible to use, fresh water may be:
- (i) Used by means of handheld container or handheld hose with manually operated flow control nozzles or by low-pressure perforated hoses with the user in attendance at the minimum rate necessary between the hours of 5 a.m. and 8 a.m. to establish and maintain newly planted gardens, trees, shrubs or other outdoor plants. This includes work in progress at the time of this Order.
- (ii) Used by commercial and retail nurseries in the minimum amount necessary to maintain stock and prevent loss with the application limited to no more than six hours daily which may be divided into no more than two periods of watering. Syringing of drought stressed plants is permitted as required between the hours of 12 Noon and 3 p.m. with no more than 10 minutes of watering allowed in any one area.
- (iii) Used by arboretums and public gardens of National, State, or regional significance at the minimum rate necessary to preserve specimens.
- (iv) Sources of water, other than fresh water, shall be used where available, such as from on-site storm water retention basins or ponds, and must be applied as conservatively as possible to prevent loss of outdoor plants.
- (d) The use of potable water for washing surfaces such as, but not limited to, streets, roads, sidewalks,

driveways, garages, parking areas, tennis courts, decks and building facades;

- (e) The use of potable water for ornamental purposes, including but not limited to, fountains, artificial waterfalls, and reflecting pools that do not support animal, plant or aquatic life;
- (f) The use of potable water for noncommercial washing of automobiles, trucks, and other motor vehicles and trailers:
- (g) The use of water from a fire hydrant for any purpose except fire fighting;
- (h) The use of water for flushing sewers and hydrants except as deemed necessary in the interest of public health and safety;
- (i) The serving of water in restaurants, clubs, and eating places by serving water only at the request of a customer:
- (j) The use of water for dust supression, except for treated wastewater or water withdrawn from stormwater or retention pools;
- (k) The use of potable water to fill or top off swimming pools, except that such water may be used to fill a newly constructed pool only to the extent minimally necessary to prevent structural damage. At the conclusion of the operating season, outdoor public pool owners/operators shall not discard any water from pools until further notice;
- (l) The withdrawal of surface water, other than stormwater retention ponds, for any commercial or personal use, unless specifically authorized by the Department of Natural Resources and Environmental Control (DNREC) or otherwise permitted under this Order.
- 5. Industrial and commercial water users in northern New Castle County are directed to reduce their level of water usage by twenty percent, wherever practical, through the implementation of effective water conservation practices and the use of alternative water supplies which reduce demand on the potable water supplies of water utilities. Upon request by the DNREC, industrial and commercial water users in northern New Castle County shall produce records and reports certifying the water usage reductions achieved.
- 6. Law enforcement authorities of this State and of the political subdivisions of this State shall enforce this Emergency Order and may issue citations for violations thereof pursuant to 20 <u>Del.C.</u> § 3125. Law Enforcement officers may, in addition to issuing a summons for any such violation, provide the violator with a voluntary assessment pursuant to the prescribed procedure under 7 <u>Del.C.</u> § 6061. Law enforcement may enforce the provisions provided herein, with or without a warrant, as long as such officer has reasonable ground to believe that the person has violated the terms of this order, even if such violation has occurred outside of the officer's presence. The justices of the peace shall have original jurisdiction to hear, try and finally

determine any violation of the terms of this order.

- 7. Water allocation permit holders who are providing or who hereafter commit to provide potable water to utilities which provide water for domestic purposes in northern New Castle County shall, on a case-by-case basis as determined by DNREC, have said permit limits suspended for the purpose of maximizing public water supply. Such suspensions shall remain in effect until further Order of the Governor or of the Secretary of DNREC.
- 8. The Drought Advisory Committee shall continue to consult with municipalities and other relevant agencies and organizations, both public and private, in carrying out the above-described activities.
- 9. All citizens of Delaware are urged to follow the conservation practices set forth in Paragraph 4 of this Order in order to avoid shortages similar to those being experienced in northern New Castle County."
- B. The Water Supply Task Force is hereby established:
- 1. The Water Supply Task Force shall consist of members appointed by the Governor representing agencies and entities providing and regulating the water resources of this State:
- 2. The Chairperson shall be appointed by the Governor from any member of the Water Supply Task Force:
- 3. The Water Supply Task Force shall review Delaware's current and projected water supply along with current and projected demand;
- 4. The Water Supply Task Force shall provide recommendations to the Governor concerning long-term solutions to Delaware's water supply needs, both in terms of normal weather conditions and severe drought conditions; and
- 5. The Water Supply Task Force may establish subcommittees under the leadership of the Task Force members to conduct activities of the Task Force.
- C. The provisions of this Order shall be effective as of 12:01 p.m., August 27, 1999.

Approved this 26th day of August, 1999.

Thomas R. Carper, Governor

Attest

Edward J. Freel, Secretary of State

GOVERNOR'S EXECUTIVE ORDERS

STATE OF DELAWARE EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER NUMBER SIXTY-SIX

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES AND AUTHORITIES, AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE STATE OF DELAWARE.

RE: TERMINATION OF STATE OF EMERGENCY
DUE TO DROUGHT; REPEAL OF
MANDATORY WATER CONSERVATION
MEASURES; DECLARATION OF DROUGHT
WARNING; EXTENDING VOLUNTARY
WATER CONSERVATION MEASURES; AND
OTHER RELATED ACTION

WHEREAS, on August 5, 1999, pursuant to 20 <u>Del.C.</u> §3115 and § 3116, I issued Executive Order Sixty-Two proclaiming a state of emergency due to drought and ordered certain mandatory water use restrictions for nor-them New Castle County and urging continued voluntary water conservation by the rest of the State;

WHEREAS, hydrologic conditions have substantially improved with the recent above normal rainfall;

WHEREAS, stream flow levels have increased significantly reducing, but not fully eliminated, the precipitation deficit that has accumulated over the past year;

WHEREAS, the severe drought conditions have been alleviated in large part due to the significant good faith conservation efforts of Delawareans:

WHEREAS, despite the improved in conditions, there remains a precipitation deficiency;

WHEREAS, the Governor's Drought Advisory Committee has consistently recommended a careful, phased approach to addressing drought situations, including the determination of when drought conditions are such that statutory drought alleviation measures are no longer necessary; and

WHEREAS, the residual effects of the drought still require continued cooperation and water conservation by the citizens and businesses.

NOW, THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, pursuant to 20 <u>Del.C.</u> §3115 and §3116(a)(5) do hereby proclaim, declare and order as follows:

- 1. This Executive Order shall terminate the State of Emergency due to Drought declared by Executive Order Sixty-Two as amended by Executive Orders Sixty-Three, Sixty-Four and Sixty-Five and the mandatory water conservation ordered pursuant thereto. In place of the drought emergency, this Order shall further constitute a declaration of a drought warning for the State of Delaware pursuant to 20 <u>Del.C.</u> §3116(a)(5).
- 2. All State facilities are banned from all non-essential use of water as more fully set forth in Paragraph 3 of this Order below. Each agency shall also continue to implement best management practices for agency water use as required by previous Executive Orders.
- 3. Pursuant to 20 <u>Del.C.</u> 3116 (a)(5), all residents are requested to voluntarily restrict the following non-essential uses of water consistent with the following:
- (a) The use of potable water for non-agricultural irrigation and watering of lawns and outdoor gardens, landscaped areas, trees, shrubs, and outdoor plants with the following exceptions:
- (i) Potable water may be applied between the hours of 5:00 a.m. and 8:00 a.m. for irrigation to domestic vegetable and fruit gardens by hand-held containers or handheld hoses with manually operated flow control nozzles or by low-pressure perforated hoses with the user in attendance.
- (ii) Potable water may be applied to school athletic fields between the hours of 5:00 a.m. and 8:00 a.m. to the extent non-potable water is not otherwise available and to the extent necessary to prevent injuries;
- (b) The use potable water to water fairways, tees and greens except between the hours of 5:00 a.m. and 8:00 a.m. to the extent minimally necessary for survival and where non-potable sources are not otherwise available;
- (c) The use of potable water for watering of nursery trees, shrubs, and other outdoor plants. To the extent that sources of water other than fresh water adequate to supply needs are not available or feasible to use, fresh water may be:
- (i) Used by means of handheld container or handheld hose with manually operated flow control nozzles or by low-pressure perforated hoses with the user in attendance at the minimum rate necessary to establish and maintain newly planted gardens, trees, shrubs or other outdoor plants.
- (ii) Used by commercial and retail nurseries in the minimum amount necessary to maintain stock and prevent loss.
 - (iii) Used by arboretums and public gardens of

National, State, or regional significance at the minimum rate necessary to preserve specimens.

- (iv) Sources of water, other than potable water, shall be used where available, such as from on-site storm water retention basins or ponds, and must be applied as conservatively as possible to prevent loss of outdoor plants.
- (d) The use of potable water for washing surfaces such as, but not limited to, streets, roads, sidewalks, driveways, garages, parking areas, tennis courts, decks and building facades;
- (e) The use of potable water for ornamental purposes, including but not limited to, fountains, artificial waterfalls, and reflecting pools that do not support animal, plant or aquatic life;
- (f) The use of potable water for non-commercial washing of automobiles, trucks, and other motor vehicles and trailers:
- (g) The use of water from a fire hydrant for any purpose except fire fighting;
- (h) The use of water for flushing sewers and hydrants except as deemed necessary in the interest of public health and safety;
- (i) The serving of water in restaurants, clubs, and eating places by serving water only at the request of a customer;
- (j) The use of water for dust supression, except for treated wastewater or water withdrawn from stormwater or retention pools; and
- (k) The use of potable water to fill or top off swimming pools, except that such water may be used to fill a newly constructed pool only to the extent minimally necessary to prevent structural damage.
- 4. Industrial and commercial water users in northern New Castle County are encouraged to maintain their current level of water, wherever practical, through the implementation of effective water conservation practices and the use of alternative water supplies which reduce demand on the potable water supplies of water utilities.
- 5. The provisions of this Order shall be effective as of 3:00 p.m. September 8, 1999.

Approved this 8th day of September, 1999.

Thomas R. Carper, Governor

Attest:

Edward J. Freel, Secretary of State

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Audiologists, Speech Pathologists and Hearing Aid Dispensers	Ms. Andrea M. Lipchak Ms. Carmetah Murray	09/08/03 08/05/02
Board of Examiners of Private Investigators and Secuity Agencies	Mr. E. Bradford Bennett Ms. Sandra C. Mifflin	09/03/02 09/02/02
Child Death Review Commission	Dr. Michael L. Spear	07/30/02
Child Protection Accountability Commission	Ms. Janice Mink	Pleasure of the Governor
Council on Game and Fish	Mr. J. Ross Harris Mr. Edward A. Montague Mr. Ted Palmer	09/03/02 07/30/02 09/09/02
Delaware Board of Examiners for Nursing Home Administrators	Ms. Linda M. Jones	11/01/99
Delaware Commission for Women	Ms. Vivian M. Longo	05/27/01
Delaware Emergency Medical Services Oversight Council	Douglas Allen, D. O. David Bailey, M. D. The Honorable Brian J. Bushweller, Chairman Mr. Carleton E. Carey Elsburgh O. Clarke, M. D. Mr. Colin Faulkner Chief Keith I. Faulkner Mr. Joseph Letnaunchyn Mr. Robert L. Stickels The Honorable Gregg C. Sylvester, M. D. Mr. Michael H. Vincent	
Delaware Nutrient Management Commission	Mr. Edwin Brown Mr. David Devine Mr. Jeremy Homer Mr. Dale Ockels Mr. William W. Vanderwende, Chairman	08/04/01 08/04/02 08/04/00 08/04/00 08/21/02
Environmental Appeals Board	Ms. Joan H. Donoho, Chairperson	Pleasure of the Governor
Governor's Council on Agriculture	Mr. Douglas Corey	07/30/02
Justice of the Peace for Sussex County	The Honorable Jeni Coffelt	07/03/05
Organ & Tissue Donor Awareness Board	The Honorable Gerald A. Buckworth Mr. Kevin T. Sparkman Ms. Nancy L. Stanton	08/03/02 09/03/02 09/03/02

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
State Board of Electrical Examiners	Mr. Pravin Dattani	09/03/02
State Board of Pharmacy	Mr. Calvin A. Freedman	09/03/02
Water Supply Task Force	Mr. Robert S. Appleby	Pleasure of the Governor
	The Honorable Nicolas A. DiPasquale	Pleasure of the Governor
	Mr. Joseph A. Dombrowski, Jr.	Pleasure of the Governor
	Mr. Jeffrey Featherstone	Pleasure of the Governor
	Mr. Thomas P. Gordon	Pleasure of the Governor
	Mr. Victor M. Mercado	Pleasure of the Governor
	Dr. Robert R. Jordan	Pleasure of the Governor
	Mr. Kash Srinivasan	Pleasure of the Governor
	Ms. Dian C. Taylor	Pleasure of the Governor
	Dr. Ulder Jane Tillman	Pleasure of the Governor
Workforce Investment Board	Mr. Desmond A. Baker	Pleasure of the Governor
	Mr. Edward J. Capodanno	Pleasure of the Governor
	Ms. Judy Cherry	Pleasure of the Governor
	Ms. Donna Coughey	Pleasure of the Governor
	Mr. Clifford T. Crouch	Pleasure of the Governor
	Mr. Ernest Dianastasis	Pleasure of the Governor
	Mr. Anthony S. Felicia, Jr.	Pleasure of the Governor
	Ms. Linda Graham	Pleasure of the Governor
	Mr. Julio Juan	Pleasure of the Governor
	Mr. Samuel E. Lathem	Pleasure of the Governor
	Mr. Joseph M. Letnaunchyn	Pleasure of the Governor
	Mr. William J. McCloskey	Pleasure of the Governor
Workforce Investment Board	Mr. John P. McMahon	Pleasure of the

554	GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE

APPOINTEE

TERM OF OFFICE

	Governor
Mr. Joseph Masten	Pleasure of the
	Governor
Ms. Suzanne C. Moore	Pleasure of the
	Governor
Mr. Frank J. Mossman	Pleasure of the
	Governor
Mr. Michael Ratchford	Pleasure of the
	Governor
Ms. Janice Rheingold	Pleasure of the
	Governor
Mr. Fred C. Sears, Chairman	Pleasure of the
	Governor
Mr. Jeffrey Swain	Pleasure of the
	Governor
Mr. Duane L. Wayman	Pleasure of the
	Governor

^{*} Please note the following appointment was listed in error in 3 DE Reg. 457 (September 1, 1999)

Delaware Nutrient Management Commission

Mr. Mark Isaacs

7/22/00

GENERAL NOTICES

DEPARTMENT OF FINANCE DIVISION OF REVENUE

AUGUST 26, 1999

TECHNICAL INFORMATION MEMORANDUM 99-4

SUBJECT: Legislation enacted during the First Session of the 140th Delaware General Assembly.

SUMMARY:

During the First Regular Session of the 140th General Assembly, ended June 30, 1999 and the August 3, 1999 Special Session, thirty bills and resolutions were enacted of interest to or with an impact on taxpayers and the Department of Finance.

The subjects range from deregulation of electricity distribution companies, retail auto installment sales and the Delaware Tobacco Settlement Act of 1999 to research and development tax credits and personal income tax reductions; from realty transfer taxes and rules for mailing personal income tax returns to exemptions for charitable trusts and supermarket restaurants.

The bills may be viewed on the Delaware General Assembly web site at http://www.state.de.us/research/dor/lis.htm, by clicking on "140th General Assembly Bill Tracking".

There are four broad categories of legislation which affect taxpayers and the Department of Finance: (1) legislation primarily affecting the Delaware business environment through deregulation, simplification, and reductions in the tax burden; (2) legislation with broad policy impact but only indirect impact on the tax code; (3) legislation affecting individuals and businesses alike; and (4) legislation amending tax practice and procedure.

I. Legislation relating to deregulation, simplification, and reductions in the tax burden affecting the Delaware business environment:

1. Neighborhood Assistance Tax Credits.

S.B. No. 248 replaces the existing Neighborhood Assistance Tax Deduction with Neighborhood Assistance Tax Credits. The new Act allows corporations to offset up to \$100,000 of income tax liability for job training, education, crime prevention, housing, and economic development activities in impoverished areas, and for contributions to neighborhood assistance organizations. (Reference: Title 30 Delaware Code §§ 2001-2006; Effective: on or after January 1, 2000.)

2. Research and Development Tax Credits.

H.B. No. 103 adds a new Subchapter VIII to Chapter 20 providing for up to \$5 million in Delaware Research and Development Tax Credits to all Delaware taxpayers for qualified research and development expenses in a taxable year. The credit is equal to (a) 10% of the excess of the taxpayer's total Delaware qualified research and development expenses over its base amount (as defined by § 41(c) of the Internal Revenue Code, with some modifications), or (b) 50% of Delaware's apportioned share of taxpayer's federal research and development tax credits, with modifications. In no year may the Delaware Research and Development Tax Credits exceed 50% of the taxpayer's qualified tax liability. Provision is made for carry-forward, but not carry-back or assignment of unused credits. (References, Title 30 Delaware Code §§ 2010, 2023, 2024, and addition of §§ 2070-2075; effective for periods after December 31, 1999 and before January 1, 2006.)

3. Gas and Electricity Public Utilities Tax.

H.B. No. 18 amends the Public Utility Tax to provide that gas (as well as electricity) commodities are subject to the tax whether generated or produced within or without this State. (References, Title 30 <u>Delaware Code</u> §§ 5501, 5502, 5503, 5504; effective for delivery of utility services and commodities delivered after October 1, 1999.)

S.B. No. 247 expands the exemption from the public utility tax for certain public utility distributors to their gross receipts from sales of gas and gas services sold for use in any automobile manufacturing process. (Reference, Title 30 <u>Delaware Code</u> § 5506; effective for tax periods commencing after December 31, 1999.)

4. Exemption of electronic pagers service.

H.B. No. 215 distinguishes electronic paging services from cellular telephone services and exempts the former from the Public Utilities Tax. (References, Title 30 <u>Delaware Code</u> §5501; effective retroactively for periods after February 29, 1992.)

5. Manufacturers license tax.

S.B. No. 128 amends the definition of manufacturers for Delaware license and gross receipts tax purposes. For Delaware manufacturers that manufacture goods using materials under bailment for another manufacturer, it is no longer required that the other manufacturer also be licensed as a manufacturer in this State'. (Reference, Title 30 Delaware Code § 2701(5); effective after December 31, 1999.)

S.B. No. 90 reduces the gross receipts tax rate on

manufacturing activities by 25%. (Reference, Title 30 <u>Delaware Code</u> § 2702(b); Effective: after December 31, 1999.)

<u>6. Construction Transportation Contractor licenses.</u>

H.B. No. 335 creates a new class of contractor for business license and gross receipts tax purposes known as a "construction transportation contractor." Whereas all such companies were formerly classed as dray-persons, under this bill a "construction transportation contractor" is allowed to deduct the cost of dray-persons who transport tangible property of other persons as part of a construction project. (Reference, Title 30 <u>Delaware Code</u> § 2501; effective after December 31, 1999.)

7. Delaware Travelink tax credits.

H.B. No. 292 updates the Travelink tax credits program, adding a Welfare to Work component, eliminating the prior certification requirements, and clarifying certain eligible costs. (References, Title 30 <u>Delaware Code</u> §§ 2031, 2032, 2033, 2034, 2035, add § 2037; effective July 20,1999.)

8. Housekeeping; seafood, restaurants, etc.

H.B. No. 216 is a multi-faceted "housekeeping" bill, some provisions of which do not effect a change in substantive law. Substantive changes include: (a) exemption from the necessity for a wholesaler business license for commercial fishers, crabbers, clammers, etc., and (b) exemptions from separate restaurant licensing for grocery stores and supermarkets selling less than 10% of their food for human consumption that is ready to eat. (Reference, Title 30 <u>Delaware Code</u> §§ 2301, 2901, 2906, 1503, 2120; these items effective after December 31, 1999, other housekeeping items do not affect current law, and have no new effective date.)

<u>9. Licensing of sales finance companies, retail installment transactions.</u>

H.B. No. 163 changes the definition of a "retail installment transaction" which affects the requirement of persons engaged in the business of a sales finance company to be licensed by the State Bank Commissioner. A transaction is not a retail installment transaction if the retail seller charges no interest. Where motor vehicle dealers who are not required to provide a surety bond to the Banking Commissioner pursuant to Chapter 29 of Title 5 of the Delaware Code self-finance any sale of a motor vehicle to a retail buyer without charging interest, such dealers shall, before obtaining an annual business license, file an original surety bond in the principal sum of \$25,000 with the

Department of Finance. (References, Title 5 <u>Delaware Code</u> § 2901, Title 30 <u>Delaware Code</u> § 3005; effective July 23, 1999.)

10. Unredeemed restaurant gift certificates.

H.B. No. 54 exempts restaurant retailers from the requirement of reporting to the State Escheator abandoned property in the nature of gift certificates having a face value of \$5.00 or less. (References, Title 12 <u>Delaware Code</u> §1198, 1199; effective for gift certificates issues on or after January 1, 1994.)

II. Legislation affecting individuals and businesses:

1. Personal income tax reductions.

Several reductions in the effective rates of personal income tax and other tax reduction measures were enacted.

S.B No. 243 and H.B. No. 414 reduce income tax rates for individuals. The new rates have been changed on taxable income:

<u>between</u>	<u>and</u>	<u>from</u>	<u>to:</u>
\$2,000	\$5,000	2.60%	2.20%
\$5,000	\$10,000	4.30%	3.90%
\$10,000	\$20,000	5.20%	4.80%
\$20,000	\$25,000	5.60%	5.20%
\$25,000	\$60,000	5.95%	5.55%
\$60,000	UP	6.40%	5.95%

(Reference:Title 30 <u>Delaware Code</u> § 1102(a)(10) and (11); effective after December 31, 1999.)

S.B. No. 244 raises the adjusted gross income thresholds for persons required to file personal income tax returns and increases the personal credit for individuals (and the extra personal credit for persons over 60) from \$100 to \$110. (Reference: Title 30 <u>Delaware Code</u> §§ 1161, 1106; effective after December 31, 1999.)

H.B. No. 411 increases the standard deduction for married persons to equal the standard deduction for two single persons. (Reference: Title 30 <u>Delaware Code</u> § 1108; effective after December 31, 1999.)

S.B. No. 245 increases the tax exclusion of pension and eligible retirement income of taxpayers age 60 and above from \$5,000 to \$12,500. (Reference Title 30 <u>Delaware Code</u> § 1106(b); effective after December 31, 1999.)

H.B. No. 412 adds realized capital gains to the definition of excludable "eligible retirement income" for individuals age 60 or over. (Reference: Title 30 <u>Delaware</u> Code § 1106(b)(3); effective after December 31, 1999.)

H.B. No. 64 increases the personal income tax credit for expenses of volunteer firefighter, ambulance and rescue crew members and members of their auxiliaries from \$150 to

GENERAL NOTICES

\$300 for tax years after 1998. (Reference: Title 30 <u>Delaware Code</u> § 1113; effective December 31, 1998.)

2. Realty Transfer tax exemption, non-profit housing rehabilitation.

H.B. No. 175 exempts conveyances to or from an organization exempt from income tax pursuant to \$501(c)(3) from the Delaware realty transfer tax when the purpose of said conveyance is to provide owner-occupied housing to low and moderate income households by rehabilitating and reselling said properties without profit. (Reference, Title 30 Delaware Code \$ 5401, effective July 23, 1999.)

3. Exotic beer and wine.

S.B. No. 175 permits Delaware consumers to purchase from retailers outside of Delaware beer and wine not currently available in this State. (Reference, Title 4 Delaware Code § 526; effective June 1, 2000.)

4. Mileage reimbursement.

H.B. No. 118 increased the rate of reimbursement to State employees for the use of their personal vehicles for State business from 25 cents to 28 cents per mile and one later to 31 cents per mile. The bill will have an impact on the calculation of a charitable mileage deduction allowed by Title 30 <u>Delaware Code</u> § 1109(a)(2)a. (Reference, Title 29 <u>Delaware Code</u> § 7102; effective July 1, 1999 (28 cents) and July 1, 2000 (31 cents).)

<u>5.</u> <u>Delaware land and historic resource tax credits:</u>

H.B. No. 413 provides tax credits of 40% of the value of Delaware land or interests in land unconditionally conveyed to eligible organizations for open space, natural resource, biodiversity, or historic preservation purposes. The credit is limited to \$50,000 or the amount of personal or corporation income tax in the tax year. (Reference, Title 30 <u>Delaware Code</u> Chapter 18; effective on or after January 1, 2000.)

III. Legislation amending tax practice and procedure:

<u>1.</u> <u>Statutes of limitation for refunds, assessments, accrual of penalty and interest.</u>

S.B. No. 148 amends certain procedural aspects of the Delaware tax code to conform to parallel provisions of the Internal Revenue Code. These include, (a) suspension of the running of the statute of limitations against filing a claim for refund during periods of medically determinable physical or mental impairment without a spouse, guardian, or other person to act on behalf of the individual in financial matters;

(b) tolling the accrual of interest and penalty on income and business license tax during periods for which the Secretary of the United States Treasury has suspended the filing of federal income tax returns for taxpayers located in a federally declared disaster area; and (c) extending the statute of limitations for assessing tax for substantially understated items of income, gross receipts, gifts or estates to six years. (Reference, Title 30 <u>Delaware Code</u> §§ 531, 533, 539; effective July 1, 1999.)

2. Alternatives to taxpayer prepared/paper tax returns.

S.B. No. 149 permits the Director of Revenue to mail to any taxpayer who filed a return during the previous year which was (a) prepared by a paid return preparer or (b) filed electronically or digitally, a notification of the requirement of filing a return and methods of obtaining a blank return, including telephone numbers and internet sites of the Division of Revenue for obtaining down-loadable returns. This notification may be sent in lieu of a blank return the Director is otherwise required to mail. (Reference, Title 30 Delaware Code § 356; effective for tax years after December 31, 1998.)

3. <u>Penalty for failure to obtain or renew business</u> <u>license</u>.

H.B. 231 provides a \$200 penalty for failure to obtain or renew a business license, unless the failure is self-disclosed. Under such circumstances, the Director of Revenue will not be required to issue a business license until the taxpayer has paid the license fee and penalties (or filed a protest of the penalty). (Reference Title 30 <u>Delaware Code</u> §§ 534(l), 523; effective July 1, 1999 or 30 days after its enactment into law, whichever shall be the later.)

IV. Legislation with broad policy impact but only indirect impact on the tax code:

<u>1. Escrow fund for proceeds of Delaware Tobacco Settlement.</u>

H.B. No. 180 enacts a new Chapter 60C of Title 29 of the Delaware Code entitled "Delaware Tobacco Settlement Act of 1999". Under the Act, tobacco manufacturers which are not participants in the Master Settlement Agreement of November, 1998 between this State and leading United States tobacco product manufacturers must place into a qualified escrow fund on April 15 of each year a sum of money per unit of individual cigarettes sold to consumers in this State. The Department of Finance is charged with promulgation of regulations to determine the number of cigarette units sold based on excise taxes collected. The escrow funds will be held for a period of twenty-five years

GENERAL NOTICES

and used to pay judgments or settlements of cigarette smoking related claims by the State against such tobacco products manufacturer. (Reference, Title 29 <u>Delaware Code</u> Chapter 60C; effective July 20, 1999.)

2. Charitable trusts, exemption.

S.B. No. 147 exempts charitable trusts from tax on certain types of income to the same extent as corporations are exempt. (Reference, Title 30 <u>Delaware Code</u> § 1133; effective after December 31, 1998.)

V. Senate Concurrent Resolution

Senate Concurrent Resolution No. 8 calls upon the Delaware Congressional Delegation to support legislation to strengthen certain oversight powers and authority of the United States Postal Rate Commission and upon the Delaware Division of Revenue to analyze and report to the General Assembly the impact of lost taxes and fees as a result of the special status of the United States Postal Service.

William M. Remington Director of Revenue

This memorandum is intended for general notification and explanation of recently enacted Delaware law and should not be relied upon to the exclusion of the text of the legislation or the Delaware Code.

Taxpayers with general questions about the application of Delaware law and procedures may call the Division of Revenue help line at (302) 577-8200, or visit the Division's website at http://www.state.de.us/revenue where information about tax topics and links to phone numbers for other information may be found.

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF NURSING HOME
ADMINISTRATORS

PLEASE TAKE NOTICE, pursuant to 29 <u>Del.C.</u>, Chapter 101 and 24 <u>Del.C.</u>, §2007(a)(1), the Delaware Board of Examiners of Nursing Home Administrators proposes changes to 2(A).

A public hearing will be held on the proposed Rules and Regulations on Tuesday, November 9, 1999 at 1:45 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. The Board will receive and consider input in writing from any person on the addition of Rule 2(A)(8). Written comments should be submitted to the Board in care of Mary Paskey at the above address. Final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should contact Mary Paskey at the above address or by calling (302) 739-4522, ext. 207.

DEPARTMENT OF EDUCATION

The Department of Education will hold its monthly meeting on Thursday, October 21, 1999 at 11:00 a.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

These regulations, "The State of Delaware Food Code," replace by recision the current "State of Delaware Regulations Governing Public Eating Places" previously adopted November 1978, and most recently amended March 15, 1991. The rescinded regulations will be replaced with Chapters 1 – 8 of the 1999 FDA Food Code, and the accompanying addendum, "Part 8-6" which states Delaware specific enforcement procedures, and are to be adopted in accordance with Chapter 1, Section 122 (3) u., Title 16, Delaware Code. "The State of Delaware Food Code" will supersede all previous regulations concerning public eating places adopted by the former Delaware State Board of

Health

The regulations impose requirements that apply to food service operations such as restaurants; retail food operations, i.e., grocery stores; and, vending machine operators that vend potentially hazardous foods. They set forth: operator knowledge expectations; science-based sanitary construction design requirements and operational procedures; plan review requirements; and, enforcement procedures to assist in protecting consumers from food borne illness.

Three public hearings will be held on at the following times, dates and locations: Wednesday, October 27, 1999 at 10:00 a.m., at the Department of Transportation Southern District Office, conference room, located at the corner of U.S. Rt. 113 and County Road 431, Georgetown; Wednesday, October 27, 1999 at 7:00 p.m. at the Department of Transportation Administration Building, South/Central/North Conference Rooms, located at 800 Bay Rd., Dover; and Thursday, October 28, 1999 at 1:00 p.m., at the Carvel State Office Building, Second floor conference room, 820 N. French Street, Wilmington.

Copies of the proposed Code are available for review by appointment at the following locations:

Environmental Health Field Services

Williams State Service Center, 3rd floor 805 River Road Dover, Delaware 19901

Phone: 302-739-5305

Environmental Health Field Services 2055 Limestone Road, Suite 100 Wilmington, DE 19808 Phone: 302-995-8650

Environmental Health Field Services Georgetown State Service Center, Rm. 1000 546 S. Bedford Street Georgetown, Delaware 19947 Phone: 302-856-5496

Anyone wishing to present his or her oral comments at a public hearing should contact Dave Walton at 302-739-4700 by October 22, 1999. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments on or before November 1, 1999 to:

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

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its general policy manual.

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 the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by October 31, 1999.

DIVISION OF SOCIAL SERVICES PUBLIC NOTICE

The Delaware Health and Social Services, Division of Social Services, is proposing to add new policies to existing policies governing Child Care. The Division of Social Services Policy Manual at 11003.7, 11003.7.2, 11004.3 and 11004.11 allows DSS to establish an income limit to determine parent financial eligibility for child care assistance. The Division of Social Services Policy Manual at 11004.7.1 allows DSS to establish the basis upon which it sets parent fees for child care services. The new policy will allow DSS to increase its financial eligibility for child care assistance from 155% to 200% of the Federal Poverty Level. The increase in income limits expands the fee scale used to determine parent co-pays.

The Delaware Health and Social Services, Division of Social Services, is proposing to add new policies to existing policies governing Child Care. The Division of Social Services Policy Manual at 11003.7.7 and 11004.7 allows DSS to consider the possibility of waiving the income limitation for protective child care and to consider waiving parent/caretaker co-payments for protective child care. The new policy will allow DSS to definitively waive the income limitation for protective child care and to waive co-payments unless the Division of Family Services says otherwise.

SUMMARY OF PROPOSED REVISIONS:

Allows the Division of Social Services to increase the income limit by which it establishes parent financial eligibility for child care assistance from 155% to 200% of the Federal Poverty Level.

- Expands the fee scale up to 200% of the Federal Poverty
- Allows the Division of Social Services to definitively waive the income limitation for protective child care.
- Allows DSS to waive co-pays for protective child care unless the Division of Family Services says otherwise.

COMMENT PERIOD:

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 the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by October 31, 1999.

DEPARTMENT OF STATE

OFFICE OF THE STATE BANKING COMMISSIONER

NOTICE OF PROPOSED AMENDMENT OF REGULATIONS OF THE STATE BANK COMMISSIONER

Summary:

The State Bank Commissioner proposes to adopt amended Regulation Nos. 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009. Proposed amended Regulation Nos. 5.1101etal.0002 ("Instructions for Preparation of Franchise Tax"), 5.1101etal.0005 ("Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in this State") and 5.1101etal.0009 ("Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks") are being amended to conform to statutory changes in Senate Bill No. 57, signed by the Governor on April 9, 1999, that reintroduce an exemption for all bank franchise taxpayers from the provisions in §1104(c) of Title 5 of the Delaware Code for additional tax for underpayment of estimated bank franchise tax when total estimated tax payments equal or exceed the amount of actual bank franchise tax owed for the preceding year, and in House Bill 156, signed by the Governor on May 18, 1999, that authorizes a foreign bank that elects Delaware as its home state to establish a branch in Delaware, and to make other technical and conforming changes. Proposed amended Regulation Nos. 5.1101etal.0002, 5.1101etal.0005 and 5.1101etal.0009 would be adopted by the State Bank Commissioner on or after November 2, 1999. Other regulations issued by the State Bank Commissioner are not affected by the proposed amendments. These regulations are issued by the State Bank Commissioner in accordance with

Title 5 of the Delaware Code.

Comments:

Copies of the proposed amended regulations are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware, and will be available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed amended regulations should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address. Comments must be received before the public hearing on November 2, 1999.

Public Hearing:

A public hearing on the proposed revised regulations will be held in Room 114, Tatnall Building, William Penn Street, Dover, Delaware on Tuesday, November 2, 1999 at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

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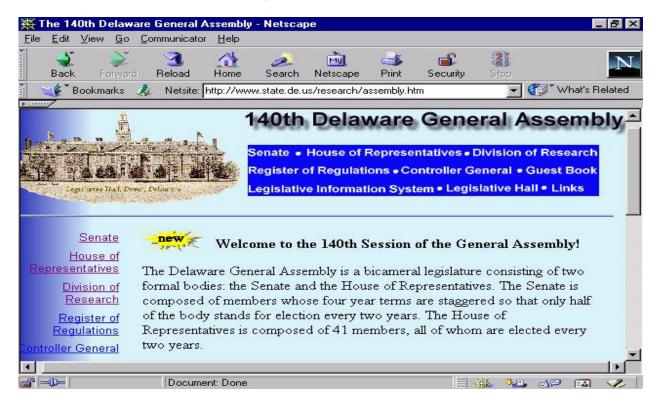
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