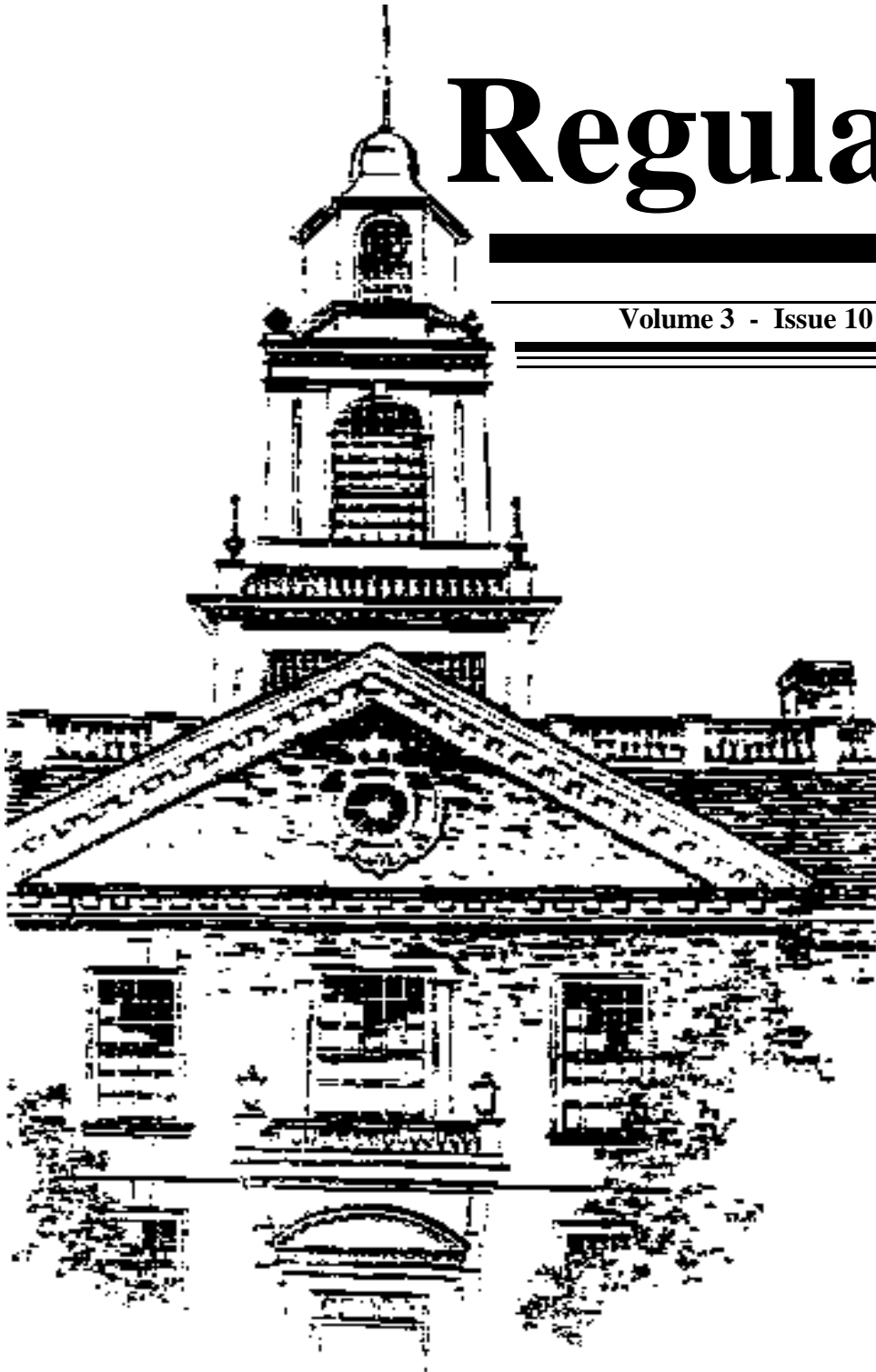


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# Delaware Register of Regulations



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Issue Date: April 1, 2000

Volume 3 - Issue 10

Pages 1279 - 1407

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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 March 15, 2000.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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### CITATION TO THE DELAWARE REGISTER

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

**3 DE Reg. 737 - 742 (12/1/99)**

Refers to Volume 3, pages 737 - 742 of the Delaware Register issued on December 1, 1999.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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

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

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

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

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

Except as provided in the preceding section,

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

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

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ISSUE DATE	CLOSING DATE	CLOSING TIME
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.

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**Symbol Key**

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

**Emergency Regulations**

Under 29 Del.C. §10119, if an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by 29 Del.C. §10115, then the following rules shall apply: (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable; (2) The order adopting, amending or repealing a regulation shall state in writing the reasons for the agency's determination that such emergency action is necessary; (3) the order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days; (4) When such an order is issued without any of the public procedures otherwise required or authorized by Chapter 101 of Title 29, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations.

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**

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

IN THE MATTER OF:

**REVISION OF REGULATIONS  
CONTAINED IN DSSM 4006.1, 8030.1,  
9059, 11003.9.1, and 14710**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services has determined that a threat to the public welfare exists if revision of regulations contained in DSSM Sections 4006.1, 8030.1, 9059, 11003.9.1, and 14710 are not implemented without prior notice or hearing. Failure to do so would jeopardize Delaware's intent to exclude the earnings of temporary census workers in all our assistance programs, which has been recommended by all the federal agencies involved, and to participate in a census demonstration project, which is encouraged by Food and Nutrition Service.

**NATURE OF PROPOSED REVISIONS:**

(revisions underlined):

**FINDING OF FACT**

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, that the proposed

revision to the regulation be adopted on an emergency basis, without prior notice or hearing, and shall become effective immediately.

March 10, 2000

GREGG C. SYLVESTER, MD  
SECRETARY

**DSSM 4006.1 Excluded Income**

The following kinds of income are disregarded in determining financial eligibility and grant amounts in ABC and GA:

- The value of USDA donated foods.
- The value of food stamps.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.

- A one-time bonus payment of \$50.00 will be paid from A BETTER CHANCE funds to teens who graduate from high school by age 19. This bonus will be paid directly to the high school graduate. Disregard as income and resource the bonus payment, for ABC and Food Stamp purposes.
- A cash payment made to the ABC unit responsible for household bills by a non-unit member for his or her share of the common household expenses.

- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:

1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.

2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:

a. Borrower's acknowledgement of obligation to repay; or

b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or

c. A written statement detailing borrower's plans to repay the loan when future anticipated income is received.

- Money received in the form of a non-recurring lump sum payment is to be counted as a resource in the month received unless specifically excluded from consideration as a resource by other Federal law or regulations.
- Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Incentive payments or reimbursement for training-related expenses derived from participation in Institutional and Work Experience Training or special work projects under the Work Incentive Program (First Step).
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.
- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked is equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.
- Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities

to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

- Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I of P.L. 100-383.
- Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100-383.
- Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E. D. N. Y.).
- Payments of supportive services or reimbursement of out-of pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.
- Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203.
- Payments of Experimental Housing Allowance Program made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended.
- Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of P.L. 94-114.
- Housing subsidies provided under Section 8 of the U.S. Housing Act.
- Benefits paid to eligible households under the Home Energy Assistance Act of 1980.
- Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:

Kingswood Community Center  
Peoples' Settlement Association  
Catholic Social Services, Inc.  
Neighborhood House, Inc.  
Community Housing, Inc.

Jewish Family Service of Delaware  
 Salvation Army  
 Community Action (Sussex County)

- Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
- Earned income tax credits (EITC).
- Income received from the Census Bureau April 01, 2000 through December 31, 2000.

### DSSM 8030.1 Excluded Income

The following kinds of income are disregarded in determining financial eligibility and grant amounts in RCA:

- The value of USDA donated foods.
- The value of food stamps.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.

- Earnings received by children under the Summer Youth Program of the Job Training Partnership Act of 1982 for a period not to exceed six (6) months.
- A cash payment made to the RCA unit responsible for household bills by a non-unit member for his or her share of the common household expenses.
- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:
  1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.
  2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:
    - a. Borrower's acknowledgement of obligation to repay; or
    - b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or
    - c. A written statement detailing borrower's plans to repay the loan when future anticipated

income is received.

- Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Incentive payments or reimbursement for training-related expenses derived from participation in Institutional and Work Experience Training or special work projects under the Work Incentive Program (First Step).
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.
- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked is equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.
- Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

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

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

- Payments of supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.
- Housing subsidies provided under Section 8 of the U.S. Housing Act.
- Benefits paid to eligible households under the



- Home Energy Assistance Act of 1980.
- Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:
  - Kingswood Community Center
  - Peoples' Settlement Association
  - Catholic Social Services, Inc.
  - Neighborhood House, Inc.
  - Community Housing, Inc.
  - Jewish Family Service of Delaware
  - Salvation Army
  - Community Action (Sussex County)
- Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
- Earned income tax credits (EITC).
- Income of an individual acting as a refugee's sponsor.
- Income received from the Census Bureau from April 1, 2000 through December 31, 2000.

**DSSM 9059 Income Exclusions**

[273.9(c)]

Only the following items will be excluded from household income and no other income will be excluded:

A. Any gain or benefit which is not in the form of money payable directly to the household.

This includes in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and includes meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household.

Payments made to a third party on behalf of the household are included or excluded as income as follows:

1. Department of Housing and Urban Development (HUD) vendor payments. Rent or mortgage payments made to landlords or mortgages by HUD are excluded.

2. Educational assistance vendor payments. Educational assistance provided to a third party on behalf of the household for living expenses shall be treated the same as educational assistance directly to the household.

3. Vendor payments that are reimbursements. Reimbursements made in the form of vendor payments are

excluded on the same basis as reimbursements paid directly to the household as described in DSSM 9059 E .

4. Other third party payments. Other third party payments shall be handled as follows: Moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If the person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. The following are examples of third party payments:

a) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

b) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

c) A household receives court-ordered monthly support payments in the amount of \$400. Later, \$200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income.

Money deducted or diverted from a court-ordered support or alimony payment to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household.

Examples of court-ordered payments:

a) A court awards support payments in the amount of \$400 a month and in addition orders \$200 to be paid directly to a bank for repayment of a loan. The \$400 payment is counted as income and the \$200 payment is excluded from income.

b) A civil service retiree is entitled to a retirement payment of \$800 a month. However, \$400 is diverted to his ex-wife by court order for child support. This is similar to a wage garnishment. Since the retirement benefits are legally obligated and otherwise payable to the retiree's household, the \$800 is budgeted for food stamp purposes.

Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order

or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

5. Payments made by the Division or by another government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.

6. All or part of a public assistance grant which would normally be provided in a money payment but which is diverted to a protective payee will be considered income to the household.

7. Emergency Assistance payments will be excluded if they are made directly to a third party for a household expense. This rule applies even if the household has the option of receiving a direct cash payment.

8. Under some pay/benefit plans, an employee may choose to have the employer withhold from the employee's earnings money to pay certain expenses such as child care and medical expenses as a vendor payment to a third party when the expenses are incurred. The amount is counted as earned income when withheld because the money is legally obligated and otherwise payable to the employee at that time.

9. Some companies make credits available to employees to use to buy health insurance, annual leave, sick leave or life insurance. The employee cannot elect to receive a cash payment and loses the credits if not used. The amount shows up on the pay stub when used. These flexible benefits are not counted as income because they are not legally obligated and otherwise payable to the employee as earnings.

Some companies give employees "points" as incentive to arrive to work on time, work so many weeks without taking leave, etc. These points have a monetary value that appears on the pay stub and the points are subject to taxes. The employee can only redeem the points for commodities or goods from a catalog provided by the employer; they cannot convert the points to cash. These points are excluded from income because the funds are not otherwise payable to the household.

B. Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30 a quarter.

C. Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits and the like.

To be excluded, the educational assistance listed above must be:

- A. Awarded to a household member enrolled at a:
  1. Recognized institution of post-secondary education,\*
  2. School for the handicapped,
  3. Vocational education program,
  4. Vocational or technical school, or

5. Program that provides for obtaining a secondary school diploma or the equivalent;

\* Means any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance for that State. The institution must be authorized to provide an educational program beyond secondary education or provides a program of training to prepare students for gainful employment, including correspondence schools at that level.

B. Used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

1. Tuition,
2. Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved,
3. Books,
4. Supplies,
5. Transportation,
6. Miscellaneous personal expenses, other than the normal living expenses of room and board, of the student incidental to attending a school, institution, or program,
7. Dependent care (amounts excluded cannot be excluded under the income dependent care deduction under DSSM 9060 ), and
8. Origination fees and insurance premiums on educational loans.

Exclusions based on use for the allowable expenses listed above must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expenses are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income first when possible, and the remainder, if any, shall be excluded from earned educational income.

An individual's total educational income exclusions cannot exceed that individual's total educational income received.

D. All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred. Educational loans on which repayment is deferred shall be excluded according to DSSM 9059 C . A loan on which repayment must begin within 60 days after receipt of the loan shall not be

considered a deferred repayment loan.

E. Reimbursements for past or future expenses, to the extent that they do not exceed actual expenses, and do not represent a gain or benefit to the household.

Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense will be counted as income. However, reimbursements will not be considered to exceed actual expenses, unless the provider or the household indicates that the amount is excessive.

Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

- Reimbursements or flat allowances for job or training related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded, as are maintenance funds provided to VR clients for uniforms, supplies, etc.
- Reimbursement for out-of-pocket expenses of volunteers incurred in the course of their work.
- Medical or dependent care reimbursements.
- Reimbursements received by households to pay for a service provided under Title XX of the Social Security Act.

Do not consider the following as excludable reimbursements:

- No portion of benefits provided under Title IV-A of the Social Security Act, (ABC) to the extent such benefit is attributed to an adjustment for work related or child care expenses, will be considered excludable under this provision.
- No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this section.

F. Monies received and used for the care and maintenance of a third-party beneficiary who is not a household member.

If the intended beneficiaries of a single payment are both household and non-household members, any identifiable portion of the payment intended and used for the care and maintenance of the non-household member will be excluded. If the non-household member's portion cannot be readily identified, the payment must be evenly prorated among intended beneficiaries and the exclusion applied to the non-household member's prorata share or the amount actually used for the non-household member's care and maintenance, whichever is less.

G. The earned income of a student under age 18 who attends elementary or secondary school or classes to obtain a GED at least half-time and lives with a natural, adoptive or step parent, is under the control of a household member other than a parent, or is certified in a separate food stamp household but lives with a natural, adoptive or step parent.

This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, prorate the total earnings equally among the working members. The child's prorata share is excluded.

H. Money received in the form of a non-recurring lump sum payment.

These include, but are not limited to: income tax refunds, rebates or credits; retroactive lump sum Social Security, SSI, public assistance, railroad retirement benefits, or other payments; lump sum insurance settlement; or refunds of security deposits on rental property or utilities. These payments will be counted as resources in the month received unless specifically excluded from consideration as a resource by other federal laws.

Payments of large retroactive SSI benefit amounts are required to be made in installments for SSI recipients. These SSI retroactive lump sum installments are excluded from income.

Earned Income Tax Credit (EITC) payments, whether paid in advance or made as tax refunds, are considered to be non-recurring lump sum payments.

I. The cost of producing self-employment income (See DSSM 9074.4 ).

J. Any income that is specifically excluded by any other Federal law from consideration as income for the purpose of determining eligibility for the Food Stamp Program.

The following laws provide such an exclusion:

#### PART A -- GENERAL

1. P. L. 79-396, Section 12(e) of the National School Lunch Act, as amended by Section 9(d) of P. L. 94-105, provides that,

The value of assistance to children under this Act

shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

This law authorizes the School Lunch Program, the Summer Food Service Program for Children, the Commodity Distribution Program, and the Child and Adult Care Food Program. Note that the exclusion applies to assistance provided to children rather than that paid to providers.

2. P. L. 89-642, the Child Nutrition Act of 1966, Section 11(b), provides in part that,

The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

This law authorizes the Special Milk Program, the School Breakfast Program, and the Special Supplemental Food Program for women, infants, and children (WIC).

3. P. L. 91-646, Section 216, the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. Reimbursements are excluded from income and resources.

4. P. L. 93-113, the Domestic Volunteer Services Act of 1973, Titles I and II, as amended.

Payments under Title I of that Act, including payments from such Title I programs as VISTA, University Year for Action, and Urban Crime Prevention Program, to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the Title I program, except that households which were receiving an income exclusion for a Vista or other Title I Subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contraction in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income.

Payments to volunteers under Title II, including the Retired Senior Volunteer Program (RSVP), Foster Grandparents Program and Senior Companion Program, are excluded from income.

5. P. L. 93-288, Section 312(d), the Disaster Relief Act of 1974, as amended by P. L. 100-707, Section 105(i), the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income or resources for food stamp purposes. This exclusion applies to Federal assistance provided to persons directly affected and to comparable disaster

assistance provided by States, local governments, and disaster assistance organizations.

A major disaster is any natural catastrophe such as a hurricane or drought, or, regardless of cause, any fire, flood, or explosion, which the President determines causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

An emergency is any occasion or instance for which the President determines that Federal assistance is needed to supplant State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

Most, but not all, Federal Emergency Management Assistance (FEMA) funds are excluded. For example, some payments made to homeless people to pay for rent, mortgage, food, and utility assistance when there is no major disaster or emergency is not excluded under this provision.

6. P. L. 97-300, the Job Training Partnership Act (JTPA), 10/13/82. Section 142(b) provides that allowances, earnings and payments to individuals participating in programs under JTPA shall not be considered as income. Subsequently P. L. 99-198, the Food Security Act of 1985, 12/85, amended section 5(1) of the Food Stamp Act to require counting as income on-the-job training payments provided under section 204(5) of Title II of the JTPA except for dependents less than 19 years old. Section 702(b) of P.L. 102-367, the Job Training Reform Amendments of 1992, further amended the Food Stamp Act (by changing the reference) to exclude on-the-job training payments received under the Summer Youth Employment and training Program. This means that currently only on-the-job training payments to (1) youths, other than dependents under 19, in year-round programs and (2) adults can be counted. All other JTPA income is excluded.

7. P. L. 99-425, Section (e), the Low-Income Home Energy Assistance Act, 9/30/86. The amount of any home energy assistance payments or allowances provided directly to, or indirectly on behalf of, a household is excluded from income and resources. In determining any excess shelter expense deduction, the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses.

8. P. L. 99-498, the Higher Education Act Amendments of 1986, Section 479B, as amended by P. L. 100-50, June 3, 1987. Amounts made available for tuition and fees and, for students attending an institution at least half-time, books, supplies, transportation and miscellaneous personal expenses (other than room, board and dependent care) provided under Title IV of the Act and by the Bureau of Indian Affairs were excluded from income and resources.

P. L. 102-325, the Higher Education Amendments

of 1992, dated 7/23/92, contain two separate provisions that affect the treatment of payments made under the Higher Education Act. In regard to Title IV-- Student Assistance, Part F, Section 479B provides that:

Notwithstanding any other provision of law, student financial assistance received under this title, or under Bureau of Indian Affairs student assistance programs, shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal, State, or local program financed in whole or in part with Federal funds.

Student assistance authorized under Title IV includes the following: (State and local agencies select students for some of these programs. In addition, some State and local agencies have separate programs of their own with similar names.)

- Basic Educational Opportunity Grants (BEOG or Federal Pell Grants)
- Presidential Access Scholarships (PAS-Super Pell Grants)
- Federal Supplemental Educational Opportunity Grants (FSEOG)
- State Student Incentives Grants (SSIG)
- Federal Direct Student Loan Programs (FDSLPL) (Formerly GSL and FFELP):
- Federal Direct Supplemental Loan Program (provides loans to students)
- Federal Direct PLUS Program (provides loans to parents)
- Federal Direct Stafford Loan Program
- Federal Direct Unsubsidized Stafford Loan Program, and
- Federal Consolidated Loan Program
- Federal Perkins Loan Program - Direct loans to students in institutions of higher education (Perkins Loans, formerly NDSL)
- Federal Work Study Funds (Note: Not all Federal work study funds come under Title IV of the Higher Education Act.)
- TRIO Grants (Go to organizations or institutions for students from disadvantaged backgrounds):
- Upward Bound (Some stipends go to students)
- Student Support Services
- Robert E. McNair Post-Baccalaureate Achievement
- Robert C. Byrd Honors Scholarship Program
- College Assistance Migrant Program (CAMP) for students whose families are engaged in migrant and seasonal farm work
- High School Equivalency Program (HEP)
- National Early Intervention Scholarship and Partnership Program (NEISP).

There is only one BIA student assistance program per se. It is the Higher Education Grant Program, which is

sometimes called the Scholarship Grant Program. However, education or training assistance received under any BIA program must be excluded. There is an Adult Education Program that provides money to adults to get a GED, attend technical schools, and for job training. There is also an employment assistance program. In addition, education and training may be made available under separate programs like the Indian Child and Family Programs. Each tribe has a BIA agency that may be contacted for more information about education and training assistance.

Section 480(b) provides that:

The changes made in part F of title IV of the Act by the amendment made by this section shall apply with respect to determinations of need under such part F for award years beginning on or after July 1, 1993.

Title XIII, Indian Higher Education Programs, Part E--Tribal Development Student Assistance Revolving Loan Program (Tribal Development Student Assistance Act), Section 1343(c) provides in part that:

. . . for purposes of determining eligibility, loans provided under this program may not be considered in needs analysis under any other Federal law, and may not penalize students in determining eligibility for other funds.

The Part E exclusion was effective October 1, 1992.

P. L. 98-524, the Carl D. Perkins Vocational Education Act, Section 507, as amended by P. L. 101-392, 9/25/90, Sections 501 and 701 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990. Amounts made available for tuition and fees and, for students attending an institution at least half-time, books, supplies, transportation, dependent care, and miscellaneous personal expenses (other than room and board). This provision was effective July 1, 1991. The programs under this Act include the following:

- Indian Vocational Education Program
- Native Hawaiian Vocational Education Program
- State Vocational and Applied Technology Education Program which contains the:
  - State Program and State Leadership Activities
  - Program for Single Parents, Displaced Homemakers, and Single Pregnant Women
  - Sex Equity Program
  - Programs for Criminal Offenders
  - Secondary School Vocational Education Program
  - Postsecondary and Adult Vocational Education Program
  - State Assistance for Vocational Education Support Programs by Community-Based Organizations
  - Consumer and Homemaking Education Program
  - Comprehensive Career Guidance and Counseling Program
  - Business-Labor-Education Partnership for Training Program

- National Tech-Prep Education Program
- State-administered Tech-Prep Education Program
- Supplementary State Grants for Facilities and Equipment and Other Program Improvement Activities
- Community Education Employment Centers Program
- Vocational Education Lighthouse Schools Program
- Tribally Controlled Postsecondary Vocational Institutions Program
- Vocational Education Research Program
- National Network for Curriculum Coordination in Vocational and Technical Education
- National Center or Centers for Research in Vocational Education
- Materials Development in Telecommunications Program
- Demonstration Centers for the Training of Dislocated Workers Program
- Vocational Education Training and Study Grants Program
- Vocational Education Leadership Development Awards Program
- Vocational Educator Training Fellowships Program
- Internships for Gifted and Talented Vocational Education Students Program
- Business and Education Standards Program
- Blue Ribbon Vocational Education Program
- Educational Programs for Federal Correctional Institutions
- Vocational Education Dropout Prevention Program
- Model Programs of Regional Training for Skilled Trades
- Demonstration Projects for the Integration of Vocational and Academic Learning Program
- Cooperative Demonstration Programs
- Bilingual Vocational Training Program
- Bilingual Vocational Instructor Training Program
- Bilingual Materials, Methods, and Techniques Program

(Federal Perkins Loans authorized under Part E of Title IV of the Higher Education Act must be handled in accordance with other Title IV income.)

Section 5(d)(3) of the Food Stamp Act, as amended by P. L. 101-624, Food, Agriculture, Conservation and Trade Act of 1990, Title XVIII, Mickey Leland Memorial Domestic Hunger Relief Act, 11/28/90, and P. L. 102-237, Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Section 903, provides that educational monies are excluded from income:

- when they are awarded to a person enrolled at a recognized institution of post-secondary education,

at a school for the handicapped, in a vocational education program, or in a program that provides for completion of a secondary school diploma or obtaining the equivalent thereof,

- to the extent that they do not exceed the amount used for or made available as an allowance determined by such school, institution, program, or other grantor, for tuition, mandatory fees (including the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course of study involved), books, supplies, transportation, and other miscellaneous personal expenses (other than living expenses), of the student incidental to attending such school, institution, or program, and
- to the extent loans include any origination fees and insurance premiums.)

9. P. L. 99-576, Veterans' Benefits Improvement and Healthcare Authorization Act of 1986, Section 303(a)(1), 8/7/86, which amended Section 1411(b) and 1412(c) of the Veterans' Educational Act of 1984 (GI Bill) provides that any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual. Title 38 of the USC, Chapter 30, Section 1411 refers to basic educational assistance entitlement for service on active duty and Section 1412 refers to basic educational assistance entitlement for service in the Selected Reserve. (Section 216 of P. L. 99-576 authorized stipends for participation in study of Vietnam-era veterans' psychological problems. These payments are not excluded by law.)

10. P. L. 100-175, Section 166, Older Americans Act, 11/29/87. Funds received by persons 55 and older under the Senior Community Service Employment Program under Title V of the Older Americans Act are excluded from income. Each State and eight organizations receive Title V funds. The organizations that receive some Title V funds are as follows:

Green Thumb  
National Council on Aging  
National Council of Senior Citizens  
American Association of Retired Persons  
U.S. Forest Service  
National Association for Spanish Speaking Elderly  
National Urban League  
National Council on Black Aging

11. P. L. 100-242, Section 126(c)(5)(A), 11-6-87, The Housing and Community Development Act of 1987, excludes most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by section 126. Demonstration projects are authorized by this law for Charlotte, North Carolina, and 10 additional locations. The

affected regional offices will be contacted individually regarding these projects.

12. P. L. 100-383, section 105(f)(2), Wartime Relocation of Civilians, 8/10/88 (the Civil Liberties Act of 1988). Payments to U.S. citizens of Japanese ancestry and permanent resident Japanese aliens or their survivors and Aleut residents of the Pribilof Islands and the Aleutian Islands West of Unimak Island are excluded from income and resources.

13. P. L. 100-435, Section 501, 9/19/88, which amended Section 17(m)(7) of the Child Nutrition Act of 1966. Under WIC demonstration project, coupons that may be exchanged for food at farmers' markets are excluded from income and resources.

14. P. L. 101-201, Agent Orange Compensation Exclusion Act, 12/6/89. All payments from the Agent Orange Settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are excluded from income and resources retroactive to January 1, 1989. The disabled veteran will receive yearly payments. Survivors of deceased disabled veterans will receive a lump-sum payment. These payments were disbursed by the AETNA insurance company.

P. L. 101-239, 12/19/89, the Omnibus Budget Reconciliation Act of 1989, Section 10405, also excluded payments made from the Agent Orange settlement fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) from income and resources in determining eligibility for the amount of benefits under the Food Stamp Program.

(Note: P. L. 102-4, Agent Orange Act of 1991, 2/6/91, authorized veterans' benefits to some veterans with service connected disabilities resulting from exposure to agent orange. Most of the eligible veterans received a lump sum payment for retroactive benefits due them, followed by regular monthly payments. The lump sum payment is excluded as income but the subsequent monthly payments are counted as unearned income. These payments from the Department of Veterans Affairs are issued by the U.S. Treasury. These VA payments are not excluded by law.)

15. P. L. 101-426, Section 6(h)(2), the Radiation Exposure Compensation Act, dated October 15, 1990, excludes payments made under this public law from food stamp income and resources.

16. P. L. 101-508, 11/5/90, the Omnibus Budget Reconciliation Act of 1990, Title XI Revenue Provisions, Section 11111, Modifications of Earned Income Tax Credit, subsection (b) provides that any Federal earned income tax credit shall not be treated as income and shall not be taken into account in determining resources for the month of its receipt and the following month. This provision was effective with taxable years beginning after December 31, 1990.

The September 1988 amendments to the Food Stamp Act require the exclusion from income of any payment made to the household under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit). The August 1993 amendments to the Food Stamp Act require the exclusion from resources of any earned income tax credits received by any member of the household for a period of 12 months from receipt if such member was participating in the food stamp program at the time the credits were received and participated in such program continuously during the 12-month period.

17. P. L. 101-610, Section 177(d), 11/16/90, National and Community Service Act (NCSA) of 1990, provides that Section 142(b) of the JTPA applies to projects conducted under Title I of the NCSA as if such projects were conducted under the JTPA. See item 6 above for the JTPA income exclusion. Title I includes three Acts: (1) Serve-America: The Community Service, Schools and Service-Learning Act of 1990, (2) the American Conservation and Youth Service Corps Act of 1990, and (3) the National and Community Service Act. There are about 47 different NCSA programs, and they vary by State. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning program and the AmeriCorps umbrella program come under this Title. The National Civilian Community Corps (NCCC) is a federally managed AmeriCorps program. The Summer for Safety program is an AmeriCorps program under which participants earn a stipend and a \$1000 post-service educational award. The National and Community Service Trust Act of 1993, P.L. 103-82, 9/23/93, amended the National and Community Services Act of 1990 but it did not change the exclusion.

18. P.S. 101-625, section 22(i), Cranston-Gonzales National Affordable Housing Act, dated 11/28/90 (42 USCS 1437t(i)) provides that,

(i) Treatment of Income - No service provided to a public housing resident under this section [Family Investment Centers] may be treated as income for purposes of any other program or provision of State or Federal law.

This exclusion applies to services such as child care, employment training and counseling, literacy training, computer skills training, assistance in the attainment of certificates of high school equivalency and other services. It does not apply to wages or stipends.

This same public law, Section 522(i)(4), excludes most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by this public law. Demonstration projects are authorized by this law for Chicago, Illinois, and 3 other locations. The affected regional offices will be contacted individually regarding these projects.

19. P. L. 102-550, Housing and Community Development Act of 1992, Section 456(e) provides that payments made under the Youthbuild Program are to be

treated like JTPA payments. Therefore they should be excluded from income in accordance with item 6 above.

20. P. L. 102-586, signed 11/4/92, Section 8, amended the Child Care and Development Block Grant Act Amendments of 1992 by adding a new Section 658S to exclude the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter from income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need. (These payments are made under the Social Security Act, as amended.)

21. P. L. 103-286, dated 8/1/94, Section 1 (a) provides in part that:

Payments made to individuals because of their status as victims of Nazi persecution shall be disregarded in determining eligibility for and the amount of benefits or services to be provided under any Federal or federally assisted program which provides benefits or services based, in whole or in part, on need.

22. P. L. 103-322, section 230202, dated 9/13/94, amended Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) to provide in part that:

(e) Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay,

(1) such crime victim compensation program shall not pay that compensation; and

(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.

Based on this language, payments received under this program must be excluded from income and resources for food stamp purposes.

23. P. L. 104-193, section 103(a), dated 8/22/96, amended Section 404(h) of Part A of Title IV of the Social Security Act to provide that for the purpose of determining eligibility to receive, or the amount of, any benefit authorized by the Food Stamp Act, funds (including interest accruing) in an individual development account under the TANF block grant program shall be disregarded with respect to any period during which such individual maintains or makes contributions into such an account.

24. P.L. 104-204, section 1804(d), dated 9/26/96 provides that:

Notwithstanding any other provision of law, the allowance paid to a child under this section shall not be considered income or resources in determining eligibility for or the amount of benefits under any Federal or federally assisted program.

A monthly allowance (from \$200 - \$1200) is paid to a child of a Vietnam veteran for any disability resulting

from spina bifida suffered by such child.

#### Part B - AMERICAN INDIAN OR ALASKA NATIVE

Usually a law will authorize payments to members of a tribe or band, and the law will apply to the members enrolled in the tribe or band wherever they live. However, items 2, 3, and 4 are general laws, and they apply to all tribes. The individuals should have documentation showing the type of payment and where it originated.

1. P. L. 92-203, section 29, dated 1/2/76, the Alaska native Claims Settlement Act, and Section 15 of P. L. 100-241, 2/3/88, the Alaska Native Claims Settlement Act Amendments of 1987 - All compensation (including cash, stock, partnership interest, land, interest in land, and other benefits) received under this Act are excluded from income and resources.

2. 25 USCA 640-d-22 (P.L. 93-531, section 22, dated 12/22/74) provides in part that the availability of financial assistance to any Navajo or Hopi Indian pursuant to 25 USCS § 460d-460d-31 may not be considered as income or resources or otherwise used as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

25 USCS 1407 Judgment Funds (as amended by P. L. 93-134 and P. L. 97-458) provides that:

None of the funds [appropriated in satisfaction of judgements of the Indian Claims and Commission or Claims Court in favor of any Indian tribe, band, etc.] which--

(1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this Act [25 USCS §§ 1401 et seq.], or

(2) on the date of enactment of this Act [enacted Jan. 12, 1983], are to be distributed per capita or are held in trust pursuant to a plan approved by Congress prior to the date of enactment of this Act [enacted Jan. 12, 1983], or

(3) were distributed pursuant to a plan approved by Congress after December 31, 1981 but prior to the date of enactment of this Act [enacted Jan. 12, 1983], and any purchases made with such funds, including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act [42 USCS § 301 et seq.] or, except for per capita shares in excess of \$2,000, any Federal or federally assisted program.

The \$2,000 amount applies to each payment made to each person. Initial purchases made with exempt payments distributed between January 1, 1982 and January 12, 1983, are excluded from resources to the extent that



excluded funds were used.

3. P. L. 98-64, 8/2/83, applied the exclusion in 25 USCS 1407 to per capita payments from funds which are held in trust by the Secretary of Interior (trust fund distributions) for an Indian tribe. (Per capita payments may be authorized for specific tribes under other public laws.)

4. 25 USCS 1408 (as amended by P. L. 93-134, P. L. 97-458, and P. L. 103-66, Section 13736, 10/7/93) provides that interests of individual Indians in trust or restricted lands shall not be considered a resource and up to \$2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income in determining eligibility for assistance under the Social Security Act or any other Federal or federally assisted program. Interests include the Indian's right to or legal share of the trust or restricted land and any income accrued from the funds in trust or the restricted lands. The exclusion applies to each individual Indian than has an interest. The income exclusion applies for both eligibility and benefit level purposes for food stamp purposes. The income exclusion applies to calendar years.

5. P. L. 93-531, section 22 - Relocation assistance payments to members of the Navajo and Hopi Tribes are excluded from income and resources.

6. P. L. 94-114, section 6, 10/17/75 - Income derived from certain submarginal land held in trust for certain Indian tribes is excluded from income and resources. The tribes that may benefit are:

- Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin
- Blackfeet Tribe
- Cherokee Nation of Oklahoma
- Cheyenne River Sioux Tribe
- Crow Creek Sioux Tribe
- Lower Brule Sioux Tribe
- Devils Lake Sioux Tribe
- Fort Belknap Indian Community
- Assiniboine and Sioux Tribes
- Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- Keweenaw Bay Indian Community
- Minnesota Chippewa Tribe
- Navajo Tribe
- Oglala Sioux Tribe
- Rosebud Sioux Tribe
- Shoshone-Bannock Tribes
- Standing Rock Sioux Tribe

7. P. L. 94-189, Section 6, 12/31/75 - Funds distributed per capita to the Sac and Fox Indians or held in trust are excluded from income and resources. The funds are divided between members of the Sac and Fox Tribe of Oklahoma and the Sac and Fox Tribe of the Mississippi in Iowa. The judgments were awarded in Indian Claims Commission dockets numbered 219, 153, 135, 158, 231, 83,

and 95.

8. P. L. 94-540 - Payments from the disposition of funds to the Grand River Band of Ottawa Indians are excluded from income and resources.

9. P. L. 95-433, section 2 - Indian Claims Commission payments made pursuant to this Public Law to the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation are excluded from income and resources.

10. 25 USCS 1931 Indian Child Welfare (P. L. 95-608, 11/8/78), subparagraph (a) provides for child and family service grant programs on or near reservations in the preparation and implementation of child welfare codes. Such programs may include, but are not limited to, family assistance, including homemaker and home counselors, day care, after school care, and employment, recreational activities, and respite care; home improvement; the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters; and education and training of Indians; including tribal court judges and staff, in skills relating to child and family assistance and service programs. Subparagraph (b) provides that assistance under 25 USCS 1901 et seq. shall not be a basis for the denial or reduction of any assistance otherwise authorized under any federally assisted programs. (Similar off-reservation programs are authorized by 25 USCS 1932. We have asked the Office of General Counsel if the exclusion applies to these programs.)

11. P. L. 96-420, section 9(c), 10/10/80, Maine Indian Claims Settlement Act of 1980 - Payments made to the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet are excluded from income and resources.

12. P. L. 97-403 - Payments to the Turtle Mountain Band of Chippewas, Arizona are excluded from income and resources.

13. P. L. 97-408 - Payments to the Blackfeet, Grosventre, and Assiniboine tribes, Montana, and the Papago, Arizona, are excluded from income and resources.

14. P. L. 98-123, Section 3, 10/13/83 - Funds distributed under this Act to members of the Red Lake Band of Chippewa Indians are excluded from income and resources. Funds were awarded in docket number 15-72 of the United States Court of Claims.

15. P. L. 98-124, Section 5 - Per capita and interest payments made to members of the Assiniboine Tribe of the Fort Balknap Indian Community, Montana, and the Assiniboine Tribe of the Fort Peck Indian Reservation, Montana, under this Act are excluded from income and resources. Funds were awarded in docket 10-81L.

16. P. L. 98-500, Section 8, 10/17/84, Old Age Assistance Claims Settlement Act, provides that funds made to heirs of deceased Indians under this Act shall not be considered as income or resources nor otherwise used to

reduce or deny food stamp benefits except for per capita shares in excess of \$2,000.

17. P. L. 99-146, Section 6(b), 11/11/85 - Funds distributed per capita or held in trust for members of the Chippewas of Lake Superior are excluded from income and resources. Judgements were awarded in Dockets Numbered 18-S, 18-U, 18-C, and 18-T.

Dockets 18-S and 18-U are divided among the following reservations.

Wisconsin:

Bad River Reservation  
Lac du Flambeau Reservation  
Lac Courte Oreilles Reservation  
Sokaogon Chippewa Community  
Red Cliff Reservation  
St. Croix Reservation

Michigan:

Keweenaw Bay Indian Community (L'Anse,  
Lac Vieux Desert, and Ontonagon Bands)

Minnesota:

Fond du Lac Reservation  
Grand Portage Reservation  
Nett Lake Reservation (including Vermillion  
Lake and Deer Creek)  
White Earth Reservation

Under dockets 18-C and 18-T funds are given to the Lac Courte Oreilles Band of the Lake Superior Bands of Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin, the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, and the St. Croix Chippewa Indians of Wisconsin.

18. P. L. 99-264, White Earth Reservation Land Settlement Act of 1985, 3/24/86, Section 16 excludes moneys paid under this Act from income and resources. This Act involves members of the White Earth Band of Chippewa Indians in Minnesota.

19. P. L. 99-346, Section 6(b)(2) - Payments to the Saginaw Chippewa Indian Tribe of Michigan are excluded from income and resources.

20. P. L. 99-377 - Section 4(b), 8/8/86, - Funds distributed per capita to the Chippewas of the Mississippi or held in trust under this Act are excluded from income and resources. The judgements were awarded in Docket Number 18-S. The funds are divided by reservation affiliation for the Mille Lac Reservation, Minnesota; White Earth Reservation, Minnesota; and Leech Lake Reservation, Minnesota.

21. P. L. 101-41, 6/21/89, the Puyallup Tribe of Indians Settlement Act of 1989, Section 10(b) provides that nothing in this Act shall affect the eligibility of the Tribe or any of its members for any Federal program. Section 10(c) provides that none of the funds, assets, or income from the trust fund

established in Section 6(b) shall at any time be used as a basis for denying or reducing funds to the Tribe or its members under any Federal, State, or local program. (The Puyallup Tribe is located in the State of Washington.)

22. P. L. 101-277, 4/30/90, funds appropriated in satisfaction of judgements awarded to the Seminole Indians in dockets 73, 151, and 73-A of the Indian Claims Commission are excluded from income and resources except for per capita payments in excess of \$2,000. Payments were allocated to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida.

23. P. L. 101-503, Section 8(b), Seneca Nation Settlement Act of 1990, dated November 3, 1990, provides that none of the payments, funds or distributions authorized, established, or directed from this Act, and none of the income derived therefrom, shall affect the eligibility of the Seneca Nation or its members for, or be used as a basis for denying or reducing funds under, any Federal program.

24. P.L. 103-436, 11/2/94, Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, Section 7(b), provides that payments made pursuant to that Act are totally excluded from income and resources for food stamps purposes.

K. Payments or allowances made for the purpose of providing energy assistance under any Federal Law, (LIHEAP), including HUD and FMHA (Farmers Home Administration) reimbursements, are excluded as income.

Federal or State one-time assistance for weatherization or emergency repair or replacement of heating or cooling devices are also excluded as income.

L. Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations, but not to exceed \$300 in a Federal fiscal year quarter.

M. Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).

N. Any payment made to an E & T participant for costs that are reasonably necessary and directly related to participation in the E & T program. These costs include, but are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home.

O. Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with DSSM 9013.3.

P. Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS). The

income set aside for this special PASS account is excluded for income purposes.

Q. Marines living on base in adequate quarters are not entitled to receive a Basic Allowance for Quarters (BAQ) even though the amount is listed under entitlements and a deduction is shown for the same amount under deductions on the Leave and Earnings Statement (LES). For these cases the BAQ is disregarded under the entitlement and deduction sections when verified. Staff must advise applicants to get a letter from their commanding officer stating that the LES is incorrect, the applicant is not entitled to the BAQ and does not receive it.

R. In HUD's Family Self-Sufficiency (FSS) Program, participants sign a contract to achieve economic independence within five years. As the participant's employment income rises, a portion of the rent increases they would normally be charged would be waived. The amount waived will be credited to an escrow account to be given to the family at the end of the program.

The participating household must fulfill its employment obligation under the contract or HUD may terminate the FSS supportive services. The family will then forfeit any escrow account funds.

While the funds are in the FSS Escrow Account, they are totally unavailable to the household and excluded as a resource. When the household achieves economic independence and is given the escrow account, the money will be excluded as income as a nonrecurring lump-sum payment.

S. The earnings of temporary census workers from the Bureau of the Census is not counted as income for food stamp purposes effective April 1, 2000 through December 31, 2000.

#### **DSSM 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 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 from the following sources are not counted:

1. per capita payments to or funds held in trust for any individual in satisfaction of a judgment of Indian Claims Commissions or 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 (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 food and Food Stamp Act of 1964 as amended;

8. the value of supplemental food assistance under the Child Nutritional 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 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 ABC (such as CWEP) program or other job training programs;

16. all Vista income; and

17. all income derived as a Census taker during the period between April 1, 2000 and December 31, 2000.

**14710 Income**

Income is any payment from any source whether in money, goods or services; whether recurring or on a one-time basis. Gross income, net income, disregarded income, excluded income, earned and unearned income are defined in the policy of each specific program. Income eligibility limits vary from program to program.

For each Medicaid eligibility group and for the Delaware Healthy Children Program, all wages paid by the Census Bureau for temporary employment related to Census 2000 activities are excluded from April 1, 2000 through December 31, 2000.

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

Statutory Authority: 7 Delaware Code,  
Section 903(e)(2)(a) (7 **Del.C.** 903 (e)(2)(a))

**Order No. 2000-F-0017**

**ORDER**

**AUTHORITY**

Pursuant to 29 **Del.C.** §10119, The Department of Natural Resources and Environmental Control is adopting an amendment to Tidal Finfish Regulation No. 7 without prior notice or public hearing to establish new size limits for recreational fishermen on striped bass.

**REASONS FOR EMERGENCY ORDER**

The State of Delaware is required to reduce landings of striped bass that measure 28 inches or greater by 14% in 2000 according to the Fishery Management Plan for striped bass, as amended, approved by the Atlantic States Marine Fisheries Commission.

The Atlantic States Marine Fisheries Commission did not approve Delaware's plan to reduce landings of 28 inch and larger striped bass until February 7, 2000. Delaware and New Jersey, sharing the Delaware Bay, agreed to adopt similar regulations to accommodate recreational fishermen.

The striped bass recreational fishing season will commence on or before April 1, 2000.

Delaying the implementation of recreational fishing restrictions will adversely affect the resource and the public

welfare of Delaware fishermen by confusing them with different regulations than New Jersey fishermen for the same body of water .

**EFFECTIVE DATE OF ORDER**

This order shall take effect at 12:01 AM on April 1, 2000 and shall remain in effect for 120 days.

**PETITIONS FOR RECOMMENDATIONS**

The Department will receive, consider and respond to petitions by any interested person for reconsideration or revision of this order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901.

**ORDER**

It is hereby ordered, the 21st day of March, 2000, that the above referenced amendment to Tidal Finfish Regulation No. 7, a copy of which is attached hereto, is adopted pursuant to 29 **Del.C.** §10119.

Nicholas A. DiPasquale, Secretary  
Department of Natural Resources  
and Environmental Control

**TIDAL FINFISH REGULATION 7. STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS.**

a) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession ~~any more than two (2)~~ two (2) striped bass from the tidal waters of this State ~~that measures less than twenty-eight (28) inches in total length in one day provided one measures no less than twenty-four (24) inches in total length or more than twenty-eight (28) inches in total length and one measures no less than twenty-eight (28) inches in total length.~~

b) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware code or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measure less than twenty (20) inches in total length or more than 32 inches in total length.

c) Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than ~~28~~ 24 inches, total length, unless said striped bass is in one or more of the following categories:

1) It has affixed, a valid strap tag issued by the Department to a commercial food fisherman; or

2) It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or

3) It is packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or

4) It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

5) It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

d) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

e) The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

f) It shall be unlawful for any person, except a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery, to land any striped bass that measures less than twenty ~~eight (28)~~ four (24) inches in total length.

g) It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length or more than 32 inches in total length.

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**Symbol Key**

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

**Proposed Regulations**

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

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF FUNERAL SERVICES**

Statutory Authority: 24 Delaware Code,  
Section 3105(a) (24 **Del.C.** 3105(a))

The Delaware Board of Funeral Services will hold a public hearing prior to its regularly scheduled meeting on May 31, 2000 to hear public comment on proposed changes to its rules and regulations related to the qualifications for licensure including requirements for the equivalent of an Associate Degree in Mortuary Science, the state and national tests, and the internship in 24 Del. C. §3107(a). The public hearing will be held at 9:30 a.m. in conference room A on the second floor of the Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Copies of the proposed regulations can be obtained from Susan Miccio, Division of Professional Regulation (302-739-4522 ext. 206), at the above address. Written comments may be submitted to the Board in care of Susan Miccio at the same address. The final date to submit written comments shall be at the scheduled public hearing.

- 1.0 Duties of the Officers
- 2.0 Licensure Requirements
- 3.0 Federal Trade Commission Regulations
- 4.0 Establishment Permits
- 5.0 Duplicate Certificate
- 6.0 Suspension- Revocation or Lapse of Funeral Director's License

- 7.0 Cash Advance
- 8.0 Code of Ethics
- 9.0 Continuing Education Regulations
- 10.0 Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Duties of the Officers

1.1 The President shall preside at all meetings, call meetings, sign certificates with other Board members or other forms that may be required by him or her by law.

1.2 In the absence of the President, the Secretary shall preside at the meetings and call meetings when the President is absent. However, the signatory duties of the President may not be transferred to the Secretary.

1.3 In accordance with 29 **Del.C.** §8807, the Division of Professional Regulation shall maintain and keep all records of licensed funeral directors in the State of Delaware issuing a number and date to each license.

1.4 The Division shall also cause to be collected all fees including license application fees, renewal fees or any other fee required to be paid in accordance with the provisions of 24 **Del.C.** Ch. 31, et.seq.

1.5 In accordance with the Freedom of Information Act, 29 **Del.C.** §10004(c), the Division of Professional Regulation shall publish an agenda of all meetings which shall include the time, dates and places of said meetings and an agenda. The Board shall also give public notice of the regular meetings and its intent to hold an executive session closed to the public at least seven days in advance. However, the agenda may be subject to change to include additional items not on the agenda including executive

sessions closed to the public which arise at the time of the Board's meeting.

1.6 The Division of Professional Regulation shall insure that accurate and detailed minutes of all business to come before the Board at all Board meetings be transcribed in accordance with 29 **Del.C.** §8807 and 24 **Del.C.** §3103(d).

## 2.0 Licensure Requirements

2.1 Requirements for licensing of those applying for a Funeral Director's license in the State of Delaware. The qualifications of applicants for licensure as funeral director are contained in 24 **Del.C.** §3107(a)(1)-(9) and 24 **Del.C.** §3109.

~~2.2 A year of academic training shall consist of at least thirty (30) semester hours successfully completed by the applicant at an accredited college or university. Two years of academic training shall consist of at least sixty (60) semester hours successfully completed by the applicant at an accredited college or university. The applicant shall request that a copy of an official transcript be sent to the Board.~~

2.3 2.2 An applicant who has attended a school or college fully accredited by the American Board of Funeral Service Education "ABFSE" or its successor and who, after attending such ABFSE accredited school or college, has received an Associate degree or its equivalent in Funeral Services, mortuary science, wherein such "degree" required the successful completion of at least sixty (60) semester credit hours, shall be eligible for licensure as a funeral director in accordance with the educational requirements contained within 24 **Del.C.** §3107. The applicant shall request that a copy of an official transcript be sent to the Board.

2.3 The equivalent of an Associate Degree as that term is used in 24 Del.C. §3107 and herein is a certificate in mortuary science that required a minimum of thirty (30) semester credit hours. In addition to said certificate, sufficient semester credit hours earned from a regionally accredited institution of postsecondary education, so that the applicant has earned a total of at least sixty (60) semester credit hours, are required.

~~2.4 In order for an applicant to apply for an internship of one year's duration under the auspices of a licensed Delaware Funeral Services practitioner pursuant to 24 Del.C. 3107(a)(4), the applicant shall have certified that he or she has graduated from an accredited high school or its equivalent, and has received an Associate Degree in mortuary science, consisting of sixty (60) credit hours, from a school fully accredited by the ABFSE or its successor.~~

2.5 2.4 The Division, upon request of an eligible applicant a registered intern or applicant seeking licensure via reciprocity, shall administer the State examination required by 24 **Del.C.** §3107(a)(3) based solely upon the laws and regulations of Delaware which may govern, impact on, and relate to the profession including preneed funeral

service contracts, consumer protection law and regulations, and laws and regulations governing crematories and cemeteries. An applicant for full licensure, whether via initial or reciprocal licensure, prior to applying for the Division's test based upon the law and regulations of Delaware ("State" examination) shall first sit for and successfully complete the national examination required by 24 Del.C. 3105 (a)(3), the written examination prepared by a national professional organization recognized by the ABFSE by a passing score determined by the organization preparing the test recognized by the ABFSE. shall be deemed to have successfully passed the state examination with a minimum grade of 70%. The national examination required by 24 **Del.C.** §3107(a)(2) may be taken before or during the internship.

2.6 2.5 As required by 24 **Del.C.** §3107(a)(4), an applicant other than one seeking licensure via reciprocity shall satisfactorily complete an internship of one year's duration in a licensed Delaware funeral establishment under the auspices of a licensed Delaware funeral service practitioner. An applicant must successfully complete the required total of sixty (60) semester hours of academic training prior to beginning the internship. An application to sit for the State examination shall be accompanied by a notarized statement from the Funeral Service Practitioner under whom the applicant "intern" as defined by 24 Del.C. 3101(8) served his internship. The notarized statement shall attest that the applicant has concluded his/her internship and submitted to the Board satisfactory evidence of the completion of twenty five (25) embalming reports and four (4) completed quarterly work reports. In order for an applicant to apply for an internship, the applicant shall have certified on a form approved by the Board that he or she has graduated from an accredited high school or its equivalent, and has received an Associate Degree or its equivalent in mortuary science, consisting of sixty (60) credit hours, from a school fully accredited by the ABFSE or its successor. Satisfactory completion of an internship requires a minimum of twenty-five (25) embalming reports and four (4) completed quarterly work reports evidenced by a notarized statement by the sponsor. An intern may be given one extension of his or her internship for an additional year.

2.7 The State examination shall consist of questions pertaining to the law and regulations of the State of Delaware and which may govern, impact on, and relate to the profession including preneed funeral services contracts, consumer protection law and regulations, and laws and regulations governing crematories and cemeteries. An applicant shall be deemed to have successfully passed the "state examination" with a minimum grade of 70%.

## 3.0 Federal Trade Commission Regulations

A licensed funeral director in the State of Delaware shall comply with all Federal Trade Commission

Regulations governing the pricing of funeral services and merchandise and the method of payment for funeral services as defined under 24 **Del.C.** §3101(7). Upon the issuance of a funeral director's license, a licensed funeral director represents that he/she is familiar with all Federal Trade Commission rules and regulations and shall abide by the same. A licensee may be subject to discipline pursuant to 24 **Del.C.** Ch.31, et seq. if these rules or regulations have been violated by the licensee.

#### 4.0 Establishment Permits

4.1 The requirements for the issuance, continuance, and proper maintenance of a funeral establishment permit are contained in 24 **Del.C.** §3117. In accordance with 24 **Del.C.** §3117(a)(2), the funeral establishment shall be conducting funeral services from a building that is appropriate as defined in 24 **Del.C.** §3101(5). All establishments, both newly issued and those grandfathered by 24 **Del.C.** §3117 (a)(1), shall in said building have preparation rooms which shall be locked. Licensed funeral directors shall exercise full control over preparation rooms and supplies.

4.2 All funeral establishments provided a permit in accordance with the requirements of 24 **Del.C.** §3117 shall, in addition to conforming with all safety requirements of the State Department of Health and Social Services, provide the following:

4.2.1 A room for the preparation and embalming of human remains;

4.2.2 Said preparation room shall contain embalming equipment and supplies.

4.3 Funeral Establishment Permit: Circumstances for Termination and Continuation.

4.3.1 The statutory requirements for the issuance of a funeral establishment permit are contained in 24 **Del.C.** §3117.

4.3.2 To be exempt from the provisions of 24 **Del.C.** §3117(a)(2), the funeral establishment shall have been maintained, operated and conducted on a continuous basis prior to September 6, 1972 until the present date. Further, only the record owner of the funeral establishment shall be entitled to obtain said exemption. No assignment of the exemption rights contained in 24 **Del.C.** §3121 (a)(2) is permitted and no other licensed funeral director may apply for or be assigned said rights.

4.3.3 If a licensed funeral director relocates or otherwise moves a funeral establishment that has been granted an exemption pursuant to the provision of 24 **Del.C.** §3117(a)(2) from its original location, the exemption allowed under 24 **Del.C.** §3117(a)(2) shall immediately become null and void. For purposes of this section the term "move" or "relocate" is defined as to place such establishment outside the original building's location at its exact address of record unless the building where the funeral establishment permit is contained is renovated.

#### 5.0 Duplicate Certificate

Any licensed funeral director may obtain a duplicate funeral director's certificate upon proof of satisfactory evidence to the Board that the original has been lost or destroyed and a payment of a fee as set by the Division of Professional Regulation.

#### 6.0 Suspension- Revocation or Lapse of Funeral Director's License

During any period a licensed funeral director's license has lapsed, been revoked or suspended by the Board in accordance with 24 **Del.C.** §§3111 or 3114, no other licensed funeral director in the State of Delaware may register death certificates or secure burial permits for the licensee whose license has been revoked, suspended or has lapsed. Nor shall the licensee whose license has lapsed, been revoked or suspended by the Board, be able to register death certificates or secure burial permits. The Board may notify the Division of Public Health, the Department of Health and Social Services, the Medical Examiner's Office or other appropriate state or federal agency that said funeral director is prohibited from practicing funeral services as defined by 24 **Del.C.** Ch. 31.

#### 7.0 Cash Advance

7.1 A licensed funeral director in the State of Delaware is prohibited from billing or causing to be billed any item that is referred to as a "cash advance" item unless the net amount paid for such item is for funeral services in the same amount as is billed by the funeral director. A cash advance item is payment made by the funeral director for the consumer to a third party including but not limited to cemetery fees, crematory fees, death certificates and florists.

7.2 The effective date of these regulations is the 6th day of December, 1989 in accordance with 29 **Del.C.** §10118 (b).

7.3 The following rules are adopted by the board as a supplement to the Rules and Regulations governing the State Board of Funeral Services, previously adopted and promulgated on the 6th day of December, 1989 pursuant to 24 **Del.C.** §3105 (a)(1) and the Administrative Procedures Act, 29 **Del.C.** §10115.

#### 8.0 Code of Ethics

8.1 The following is adopted as the code of ethics for all funeral service licensees in the State of Delaware.

8.1.1 As funeral directors, we herewith fully acknowledge our individual and collective obligation to the public, especially to those we serve, our mutual responsibilities for the proper welfare of the funeral services profession.

8.1.2 To the public we pledge: vigilant support of public health laws; proper legal regulations for the members of our profession; devotion to high moral and



service standards; conduct befitting good citizens, honesty in all offerings of service and merchandise to the public and all business transactions.

8.1.3 To those we serve we pledge: confidential business and professional relationships; cooperation with the customs, laws, religions and creeds; observance of all respect due to the deceased; high standards of confidence and dignity in conduct of all services; truthful representation of all services and merchandise.

8.1.4 To our profession we pledge: support of high educational standards and proper licensing law; encouragement of scientific research; adherence to sound business practices; adoption of improved technique; observance of all the rules of fair competition and maintenance of favorable personnel relations.

## 9.0 Continuing Education Regulations

### 9.1 Board Authority

9.1.1 This rule is promulgated under the authority of 24 **Del.C.** §3105 which grants the Board of Funeral Services (hereinafter "the Board") authority to provide for rules for continuing funeral services education as a prerequisite for license renewal.

### 9.2 Requirements

9.2.1 Every licensed funeral director in active practice shall complete at least 10 hours/credits of approved continuing education (hereinafter "CE") during the two year licensure period prior to the time of license renewal. Licensees who earn more than the required amount of CE credit hours during a given licensure period may carry over no more than 50% of the total CE credit hours required for the next licensure period.

9.2.2 When a Delaware licensee on inactive status files a written application to return to active practice with the Board, the licensee shall submit proof of having completed the required CE credit hours for the period just prior to the request to return to active practice.

9.2.3 Upon application for renewal of a license, a funeral director licensee shall submit to the Board proof of completing the required number of CE credit hours.

### 9.3. Waiver of the CE Requirement

9.3.1 The Board has the power to waive any part of the entire CE requirement for good cause if the licensee files a written request with the Board. For example, exemptions to the CE requirement may be granted due to health or military service. Application for exemption shall be made in writing to the Board by the applicant for renewal. The Board shall decide the merits of each individual case at a regularly scheduled meeting.

9.3.2 Newly licensed funeral directors, including those newly licensed by reciprocity, are exempt during the time from initial licensure until the commencement of the first full licensure period.

### 9.4. Continuing Education Program Approval

9.4.1 Each contact hour (at least fifty minutes) is equivalent to 1.0 CE credit hour. One college credit hour is equivalent to 5 CE credit hours.

9.4.2 Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms.

9.4.3 Sources of CE credits include but are not limited to the following:

- Programs sponsored by national funeral service organizations.
- Programs sponsored by state associations.
- Program provided by local associations.
- Programs provided by suppliers.
- Independent study courses for which there is an assessment of knowledge.
- College courses.

9.4.4 The recommended areas include but are not limited to the following:

- Grief counseling
- Professional conduct, business ethics or legal aspects relating to practice in the profession.
- Business management concepts relating to delivery of goods and services.
- Technical aspects of the profession.
- Public relations.
- After care counseling.

9.4.5 Application for CE program approval shall include the following:

9.4.5.1 Date and location.

9.4.5.2 Description of program subject, material and content.

9.4.5.3 Program schedule to time segments in subject content areas for which approval of, and determination of credit is required.

9.4.5.4 Name of instructor(s), background, expertise.

9.4.5.5 Name and position of person making request for program approval.

9.4.6 Requests for CE program approval shall be submitted to the Board on the application provided by the Board. Application for approval may be made after the program; however, if the program is not approved, the applicant will be notified and no credit given.

9.4.7 Approval of CE credits and program formats by the Committee shall be valid for a period of two years from the date of approval. Changes in any aspect of the approved program shall render the approval invalid and the presenter will be responsible for making reapplication to the Committee.

9.4.8 Upon request, the Board shall mail a current list of all previously approved programs.

## 9.5. Continuing Education Committee

9.5.1 The Board of Funeral Services shall

appoint a committee known as the Continuing Education Committee. The Committee shall consist of the following who shall elect a chairperson:

9.5.1.1 One (1) Board member (non-licensed).

9.5.1.2 One (1) non-Board member who shall be a licensed funeral director who is owner/operator of a funeral establishment.

9.5.1.3 One (1) non-Board member who shall be a licensed funeral director who does not own or operate a funeral establishment.

9.5.2 Membership on this Committee shall be on a rotating basis, with each member serving a three year term and may be eligible for reappointment. The Committee members shall continue to serve until a new member is appointed.

9.5.3 The Continuing Education Committee shall oversee matters pertaining to continuing education and make recommendations to the Board with regard to approval of submitted programs for CE by licensees and with regard to the Board's review of audited licensees. The Board shall have final approval on all matters.

9.6 Certification of Continuing Education - Verification and Reporting

9.6.1 The program provider/sponsor has sole responsibility for the accurate monitoring of program attendance. Certificates of attendance shall be supplied by the program provider/sponsor and be distributed only at the completion of the program.

9.6.2 Verification of completion of an independent study program will be made with a student transcript.

9.6.3 The funeral director licensee shall maintain all original certificates of attendance for CE programs for the entire licensure period. Proof shall consist of completed CE form provided by the Board and shall be filed with the Board on or before thirty (30) days prior to the expiration date of the biennial renewal period.

9.6.4 Applications for renewal may be audited by the Board to determine whether or not the recommended requirements of continuing education have been met by the licensee.

9.6.5 If a licensee is found to be non-compliant in continuing education, the licensee's license shall lapse at the expiration of the present licensing period. The Board shall reinstate such license within twelve (12) months of such lapse upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due.

9.6.6 Programs approved for continuing education credit by another state funeral board other than Delaware shall be automatically approved for all Delaware licensees upon written application and verification of CE credits by the applicable state board.

10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

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

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

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

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

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

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

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

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

10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public

records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

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

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

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

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

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

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**DIVISION OF PROFESSIONAL REGULATION****BOARD OF LICENSED  
PROFESSIONAL GEOLOGISTS**

Statutory Authority: 24 Delaware Code,  
Section 3604 (24 **Del.C.** 3604)

**PLEASE TAKE NOTICE**, pursuant to 29 **Del.C.**, Chapter 101 and 24 **Del.C.** §3606(a)(1), the Delaware Board of Licensed Professional Geologists proposes to revise its rules and regulations. Please note that the following Rules and Regulations are a total rewriting and reordering of existing regulations, and will supersede and replace any previously adopted rules and regulations of the Board

A public hearing will be held on the proposed Rules and Regulations on Friday, May 5, 2000 at 10:00 a.m., in the Second Floor Conference Room B of the Cannon Building,

861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey at the above address. The 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 notify Mary Paskey at the above address or by calling (302) 739-4522, extension 207.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

#### 1.0 Definitions

"Geology" is the science which encompasses the study of the earth's crust; its history; its constituent minerals, liquids, gases and consolidated and unconsolidated rock materials; the natural processes that cause change within the earth; and the utilization of this knowledge.

"Practice of Geology" is the application of the principles, theories, laws and body of knowledge encompassed in the science of geology. Such application may take the form of, but is not limited to, consultation, research, investigation, evaluation, mapping, sampling, planning of geological projects, works and systems such as public or private utilities, dams, roads, buildings, processes, works or projects such as predicting, locating, evaluation, and exploitation of the occurrence of petroleum, natural gas, energy sources, coal, metallic and non-metallic minerals, water, rocks, and other natural resources. A person shall be construed to practice who by verbal claim, sign advertisement or in any other way represents himself to be a geologist, or holds himself out as able to perform or who does perform geologic services or work.

"Geologist" is a person qualified by education and experience to practice geology including specialists in its various subdisciplines.

"Registered Geologist" (or "Registrant") is a person who possesses all the qualifications specified under 24 Del.C. sec. 3605 for registration and who has been issued a certificate of registration by the Board.

"Responsible Charge" means the individual control and direction of the practice of geology by the use of initiative, skill and individual judgment.

"Board" is the Delaware Board of Registration of Geologists.

#### 2.0 Code of Ethics

##### 2.1 General Provisions:

2.1.1 A geologist shall be guided by the highest standards of ethics, honesty, integrity, fairness, personal honor, and professional conduct.

2.1.2 A geologist shall not knowingly permit the

publication or use of his work or name in association with any unsound or illegitimate venture.

2.1.3 A geologist shall not give a professional opinion or make a report without being as completely informed as might be reasonably expected considering the purpose for which the opinion or report is desired. All assumptions on which the results of the report or opinion are based shall be set forth in the report or opinion.

2.1.4 A geologist shall be as objective as possible in any opinion, report or other communication he makes which will be used to induce participation in a venture. He shall not make sensational, exaggerated, or unwarranted statements. He shall not misrepresent data, omit relevant data, or fail to mention the lack of data that might affect the results or conclusions of such opinion, report or communication.

2.1.5 A geologist shall not falsely or maliciously attempt to injure the reputation or business of another geologist.

2.1.6 A geologist shall freely give credit for work done by others. A geologist shall not knowingly accept credit rightfully due to others or otherwise indulge in plagiarism in oral and written communications.

2.1.7 A geologist having knowledge of the unethical or incompetent practice of another geologist shall avoid association with that geologist in professional work. If a geologist acquires tangible evidence of the unethical or incompetent practice of another geologist, he shall submit the evidence to the Board.

2.1.8 A geologist shall not use the provisions of 24 Del.C. ch. 36 or the Board's regulations to maliciously prosecute, harass or otherwise burden another geologist with unfounded or false charges.

2.1.9 A geologist shall endeavor to cooperate with others in the profession in encouraging the ethical dissemination of geological knowledge especially when it is in the public interest.

2.1.10 A geologist shall not engage in conduct that involves fraud, dishonesty, deceit or misrepresentation either directly or through the actions of others.

2.1.11 A geologist shall not discriminate against any person on the basis of race, creed, sex or national origin.

2.1.12 A geologist shall not aid any person in the unauthorized practice of geology.

2.1.13 A geologist shall not practice geology in a jurisdiction where that practice would violate the standards applicable to geologists in the jurisdiction.

##### 2.2 Provisions Concerning Monetary Matters:

2.2.1 A geologist having, or expecting to have, any interest in a project or property on which he performs work, must make full disclosure of the interest to all parties concerned with the project or property.

2.2.2 A geologist's fee shall be reasonable. The factors to be considered in determining the reasonableness of

a fee include the following:

~~2.2.2.1 the time and labor required, the novelty and difficulty of the work involved, and the skill requisite to perform the service properly;~~

~~2.2.2.2 the likelihood, if apparent to the client or employer, that the acceptance of the particular employment will preclude other employment of the geologist;~~

~~2.2.2.3 the fee customarily charged in the area for similar geological services;~~

~~2.2.2.4 the total value of the project and the results obtained;~~

~~2.2.2.5 the time limitations imposed by the client or by the circumstances;~~

~~2.2.2.6 the nature and length of the professional relationship with the client;~~

~~2.2.2.7 the experience, reputation, and ability of the geologist or geologists performing the service; and~~

~~2.2.2.8 whether the fee is fixed or contingent.~~

~~2.2.3 When the geologist has not regularly performed services for the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing services.~~

~~2.2.4 A fee may be contingent on the outcome of a project for which geological services are rendered, except for a project where a contingent fee is prohibited by law or professional ethics. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined.~~

~~2.2.5 A division of fee between geologists or other professionals who are not associated may be made only if:~~

~~2.2.5.1 the division is in proportion to the services performed by each geologist or professional or, by written agreement with the client, each geologist or professional assumes joint responsibility for the services performed;~~

~~2.2.5.2 the client is advised of and does not object to the participation of all the geologists and/or other professionals involved; and~~

~~2.2.5.3 the total fee is reasonable.~~

~~2.2.6 A geologist shall not accept a concealed fee for referring an employer or client to a specialist or for recommending geological services other than his own. A geologist who engages or advises a client or employer to engage collateral services shall use his best judgment to insure the collateral services are used prudently and economically.~~

~~2.3 Provisions Concerning the Relationship with the Client:~~

~~2.3.1 A geologist shall not undertake, or offer to undertake, any type of work with which he is not familiar or competent by reason of a lack of training or experience~~

~~unless he makes full disclosure of his lack of training or experience to the appropriate parties prior to undertaking the work.~~

~~2.3.2 A geologist shall protect to the fullest extent the employer's or client's interest so far as is consistent with the public welfare and professional obligations and ethics.~~

~~2.3.3 A geologist who finds that an obligation to an employer or client conflicts with professional obligations or ethics should have the objectionable conditions changed or terminate the services.~~

~~2.3.4 A geologist shall not use either directly or indirectly any proprietary information which is developed or acquired as a result of working for an employer or client in any way that conflicts with the employer's or client's interest and without the consent of the employer or client.~~

~~2.3.5 A geologist who has worked or performed a service for any employer or client shall not use the information peculiar to that employment and which is gained in such employment for his own personal profit unless he is given written permission to do so or until the employer, client, or their successor's interest in such information has changed in such a way that the information is valueless to him or of no further interest to him.~~

~~2.3.6 A geologist shall not divulge confidential information. This does not relieve a registered geologist from the duty to report conditions required by law or regulation.~~

~~2.3.7 A geologist retained by a client shall not accept, without the client's consent, an engagement by another if there is a possibility of a conflict between the interest of the two clients.~~

~~2.3.8 A geologist shall advise an employer or client to retain, and cooperate with, other experts and specialists whenever the employer's or client's interests are best served by such services.~~

~~2.3.9 A geologist shall not terminate services to an employer or client when it will cause immediate jeopardy to the employer's or client's interests. The geologist shall attempt to give due notice of termination. However, the geologist may terminate services under any of the following circumstances:~~

~~2.3.9.1 failure to receive compensation or good evidence indicating compensation will not be received for services performed;~~

~~2.3.9.2 when continued employment will result in a violation of 24 Del.C. ch. 36 or other illegality;~~

~~2.3.9.3 when continued employment will result in sickness or injury to the geologist or his dependents.~~

~~3.0~~

~~3.1 No registrant or applicant for registration shall violate the provisions of the Board's regulations adopted pursuant to 24 Del.C. sec. 3604(e).~~

3.2 The Board may revoke or suspend the certificate of any registrant who has violated any provision of the Board's regulations adopted pursuant to 24 Del.C. sec. 3604(e).

3.3 No registrant shall attempt or commit fraud, deceit or misrepresentation in the process of obtaining registration for an applicant.

3.4 The Board may suspend or revoke the certificate of any registrant who has committed fraud, deception or misrepresentation in applying for registration, or in assisting another in the process of obtaining registration, under the provisions of 24 Del.C. ch. 36.

3.5 Any applicant for registration who misrepresents any qualification or other pertinent information on an application for registration, or in any other manner misleads the Board to support an application for registration, shall not be permitted to apply for registration until a period of one year has passed from the discovery by the Board of the misrepresentation.

#### 4.0

4.1 The stamp and seal authorized by the Delaware State Board of Registration of Geologists shall be of the design shown here and shall not be less than one and one-half (1-1/2) inches in diameter. It may be purchased by the registrant from any convenient source.

4.2 All reports, drawings, maps or documents involving the practice of geology that have been prepared, or reviewed and approved, by a registered geologist and that will become a matter of public record, or relied upon by any person, within this state for geological purposes, shall be impressed with the stamp or seal. The stamp or seal will indicate that the registrant has accepted responsibility for the work.

4.3 Any registrant who affixes, or allows to be affixed, his seal or name to a document or report is responsible for all work contained therein regardless of whether such work has been performed by the geologist or a subordinate.

4.4 No person shall stamp or seal any Plans, reports, specifications, plats, or other documents with the stamp or seal of a geologist, or in any manner use the title "geologist", unless such person is duly registered in compliance with 24 Del.C. ch. 36.

4.5 No person shall stamp or seal any plans, specifications, plats, reports, or other documents with the stamp or seal of a registered geologist or place his or her name thereon as a registered geologist if his registration has been suspended, revoke or has expired.

#### 5.0

5.1 Any person who claims exemption from the provisions of 24 Del.C. ch. 36 under section 3602(l), shall be entitled to such exemption so long as his remuneration from the practice of geology is solely related to the teaching function. If such remuneration is processed through his academic unit, it shall be considered prima facie evidence of

the fact that such work is related to his teaching. Any person claiming such exemption shall, in a conspicuous manner at the conclusion of any report or study bearing his name, include the statement:

I hereby claim exemption from the requirements of 24 Del.C. ch. 36 (Delaware Geologist Registration Act) and am not subject to the provisions of that Act and the standards and regulations adopted pursuant thereto.

Such disclaimer shall not be required on reports or studies submitted solely to refereed professional journals for publication.

#### 6.0

6.1 In order to enable the Board to prepare and maintain a list of persons qualified to practice geology in this State, the Board shall issue a certificate of registration to any person whose application for registration has been approved by the Board under the provisions of 24 Del.C. ch. 36 on or after February 5, 1975.

6.2 Certificates of registration shall be valid for a period of two (2) years whereupon they shall become invalid unless renewed.

6.3 The Board will notify every person registered as a geologist in the State of the expiration date of his certificate. Such notice shall be mailed at least thirty (30) days prior to the expiration date. The failure of the Board to notify a registrant of his expiration date does not in any way relieve the registrant of the requirement to renew his certificate pursuant to the Board's regulations and 24 Del.C. ch. 36.

6.4 Renewal may be effected by:

6.4.1 filing with the Board, on a form prescribed and provided by the Board, an application for renewal;

6.4.2 providing such other information as may be required by the Board to ascertain the registrant's good standing; and

6.4.3 payment of such fees as may be authorized.

6.5 The failure of a registrant to renew his certificate of registration shall cause his registration with the Board to lapse. A geologist whose registration has lapsed may renew his certificate within one year after the expiration date upon payment of the renewal fee and a late fee which shall be 50% of the renewal fee. No geologist will be permitted to renew his certificate once the one year period has expired unless the former registrant re-applies under the same conditions which govern applicants for registration under 24 Del.C. ch. 36.

6.6 No geologist shall practice geology during the period of time his registration has lapsed.

#### 7.0

7.1 In accordance with 24 Del.C. sec. 3604(g), a non-resident geologist who is not registered in Delaware may

practice in this State provided the following requirements have been met to the satisfaction of the Board:

7.1.1 The non-resident geologist must:

7.1.1.1 provide evidence from a state recognized by the Board indicating that he is registered and in good standing in that state;

7.1.1.2 have no place of business in Delaware and must not be a resident of the State of Delaware; and

7.1.1.3 not practice in the State of Delaware under the terms of this registration for more than thirty (30) days in any one (1) calendar year.

7.1.2 The non-resident geologist who is not registered in Delaware shall notify the Delaware State Board of Registration of Geologists in writing at the beginning and end of each term of practice in Delaware. For purposes of this Regulation, thirty (30) days shall be defined as thirty (30) consecutive calendar days. REV. 1/10/90

8.0 Procedures for Practice by Registrants of Other States

8.1 24 Del.C. 3604 (g) and Regulation No. 7 of the Delaware State Board of Registration of Geologists, allow one (1) application per year to practice in Delaware for up to 30 consecutive days in a calendar year by registrants of another State without being registered in Delaware provided the practitioner is not a resident, does not maintain a place of business in Delaware, and that the State issuing the registration has requirements similar to those of Delaware. Section 3604 (g) and Regulation No. 7 provide the basis for the Board's procedures.

8.2 A geologist wishing to practice in Delaware under the provisions of Section 3604(g) and Regulation No. 7 shall submit a request to practice on a form provided by the Board. That form shall request identifying information, the type and location of the project involved, the starting date and projected completion date, and the State, title, and identifying number of the certificate or license tendered in support of the application. Evidence of registration or licensure in good standing shall accompany the application.

8.3 The application may be reviewed by the Administrative Assistant to the Delaware State Board of Registration of Geologists who, upon finding the criteria set forth in the Board's statute and regulation appear to be satisfied, shall issue a letter form to the applicant informing the applicant that the Board grants the applicant permission and, that the conditions of the statute and regulation must be observed, and recording the start and latest allowable end dates (no extensions are permissible), and notifying the applicant of the requirement to report the date of completion of work performed.

8.4 Upon completion of the specified work in Delaware, the short-term practitioner shall be responsible for notifying the Delaware State Board of Registration of Geologists that the work permitted under the short-term recognition provisions has been completed.

8.5 The Delaware State Board of Registration of Geologists will keep a roster of those States having substantially similar requirements for registration and review it periodically. Any short-term permits issued shall be presented in a list for the Board at each Delaware State Board of Registration of Geologists meeting.

8.6 Failure to properly apply for short-term recognition, apparent falsification of any information provided the Board, and exceeding the time limits specified, in addition to questions raised by the public served, governmental agencies, or the standards set forth in the Delaware Geologist Registration Act shall be bases for filing a complaint by the Delaware State Board of Registration of Geologists with the Director of the Division of Professional Regulation and if the Delaware State Board of Registration of Geologists finds that the aforementioned conditions apply, the Board will file a complaint with the Director.

8.7 The form provided by the Board shall also include a certification by the registrant that he/she will consent to the appointment of the chairperson of the Board of Registration of Geologists as agent upon whom service may be made for all actions including disciplinary actions that may arise out of the practice of geology under this rule, and be bound by the Delaware law and the Board of Registration of Geologists' regulations and the Code of Ethics for the professional practice of geology for any activity pursuant to this rule.

1.0 Definitions

2.0 Code of Ethics

3.0 Stamp/Seal Requirements

4.0 Licensing Exemptions

5.0 Issuing & Renewal of License

6.0 Continuing Education

7.0 ASBOG Examination

8.0 Reciprocity

1.0 Definitions

"Board" shall mean the State Board of Geologists established in 24 Del. C., Ch. 36, §3603.

"Continuing Education Unit" shall mean one contact hour (60 minutes), subject to the Board's review.

"Five Years of Experience" shall mean:

Experience acquired in geological work as described in the 24 Del. C., Ch. 36, §3602 (5) and (6) and after completion of academic requirements as stated in §3608(a)(1). The Board may discount experience obtained more than ten (10) years prior to the submission of an application. Part-time experience will be granted proportional to full-time credit. Three of the five years of experience must be in a position of responsible charge as defined in Rule 1(C).

Experience references must be provided by a

person knowledgeable and having a background of geological work.

The Board will only consider years of experience documented by references.

“Geologist” shall mean a person who is qualified to practice professional geology including specialists in its various subdisciplines.

“Practice of Geology” shall mean any service or creative work, the adequate performance of which requires geologic education, training and experience in the application of the principles, theories, laws and body of knowledge encompassed in the science of geology. This may take the form of, but is not limited to, consultation, research, investigation, evaluation, mapping, sampling, planning of geologic projects and embracing such geological services or work in connection with any public or private utilities, structures, roads, buildings, processes, works or projects. A person shall be construed to practice geology, who by verbal claim, sign, advertisement or in any other way represents himself or herself to be a geologist, or who holds himself or herself out able to perform or who does perform geologic services or work.

“Responsible Charge” shall mean the individual control and direction, by the use of initiative, skill and individual judgment, of the practice of geology.

## 2.0 Code of Ethics

### 2.1 General Provisions:

2.1.1 A geologist shall be guided by the highest standards of ethics, honesty, integrity, fairness, personal honor, and professional conduct.

2.1.2 A geologist shall not knowingly permit the publication or use of his/her work or name in association with any unsound or illegitimate venture.

2.1.3 A geologist shall not give a professional opinion or make a report without being as completely informed as might be reasonably expected considering the purpose for which the opinion or report is desired. All assumptions on which the results of the report or opinion are based shall be set forth in the report or opinion.

2.1.4 A geologist shall be as objective as possible in any opinion, report or other communication he/she makes which will be used to induce participation in a venture. He/she shall not make sensational, exaggerated, or unwarranted statements. He/she shall not misrepresent data, omit relevant data, or fail to mention the lack of data that might affect the results or conclusions of such opinion, report or communication.

2.1.5 A geologist shall not falsely or maliciously attempt to injure the reputation or business of another geologist.

2.1.6 A geologist shall freely give credit for work done by others. A geologist shall not knowingly accept credit rightfully due to others or otherwise indulge in

plagiarism in oral and written communications.

2.1.7 A geologist, having knowledge of the unethical or incompetent practice of another geologist, shall avoid association with that geologist in professional work. If a geologist acquires tangible evidence of the unethical or incompetent practice of another geologist, he/she shall submit the evidence to the Board.

2.1.8 A geologist shall not use the provisions of 24 Del. C., Ch. 36 or the Board’s regulations to maliciously prosecute, harass or otherwise burden another geologist with unfounded or false charges.

2.1.9 A geologist shall endeavor to cooperate with others in the profession in encouraging the ethical dissemination of geological knowledge—especially when it is in the public interest.

2.1.10 A geologist shall not engage in conduct that involves fraud, dishonesty, deceit or misrepresentation either directly or through the action of others.

2.1.11 A geologist shall not discriminate against any person on the basis of race, creed, sex or national origin.

2.1.12 A geologist shall not aid any person in the unauthorized practice of geology.

2.1.13 A geologist shall not practice geology in a jurisdiction where that practice would violate the standards applicable to geologists in the jurisdiction.

### 2.2 Provisions Concerning Monetary Matters

2.2.1 A geologist having, or expecting to have, any interest in a project or property on which he/she performs work, must make full disclosure of the interest to all parties concerned with the project or property.

2.2.2 A geologist’s fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

2.2.2.1 the time and labor required, the novelty and difficulty of the work involved, and the skill requisite to perform the service properly;

2.2.2.2 the likelihood, if apparent to the client or employer, that the acceptance of the particular employment will preclude other employment of the geologist;

2.2.2.3 the fee customarily charged in the area for similar geological services;

2.2.2.4 the total value of the project and the results obtained;

2.2.2.5 the time limitations imposed by the client or by the circumstances;

2.2.2.6 the nature and length of the professional relationship with the client;

2.2.2.7 the experience, reputation, and ability of the geologist or geologists performing the service; and

2.2.2.8 whether the fee is fixed or contingent.

2.2.3 When the geologist has not regularly performed services for the client, the basis or rate of the fee shall be communicated to the client, preferably in



writing, before or within a reasonable time after commencing services.

2.2.4 A fee may be contingent on the outcome of a project for which geological services are rendered, except for a project where a contingent fee is prohibited by law or professional ethics. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined.

2.2.5 A division of fee between geologist and other professionals who are not associated may be made only if:

2.2.5.1 the division is in proportion to the services performed by each geologist or professional or, by written agreement with the client. Each geologist or professional assumes joint responsibility for the services performed;

2.2.5.2 the client is advised of and does not object to the participation of the geologist and/or other professionals involved; and

2.2.5.3 the total fee is reasonable.

2.2.6 A geologist shall not accept a concealed fee for referring an employer or client to a specialist or for recommending geological services other than his/her own. A geologist who engages or advises a client or employer to engage collateral services shall use his/her best judgement to ensure the collateral services are used prudently and economically.

2.3 Provisions Concerning The Relationship With The Client

2.3.1 A geologist shall not undertake, or offer to undertake, any type of work with which he/she is not familiar or competent by reason of lack of training or experience unless he/she makes full disclosure of his/her lack of training or experience to the appropriate parties prior to undertaking the work.

2.3.2 A geologist shall protect to the fullest extent the employer or client's interest, so far, as is consistent with the public welfare and professional obligations and ethics.

2.3.3 A geologist who finds that an obligation to an employer or client conflicts with professional obligations or ethics should have the objectionable conditions changed or terminate the services.

2.3.4 A geologist shall not use either directly or indirectly any proprietary information which is developed or acquired as a result of working for an employer or client in any way that conflicts with the employer's or client's interest and without the consent of the employer or client.

2.3.5 A geologist who has worked or performed a service for any employer or client shall not use the information peculiar to that employment and which is gained in such employment for his/her own personal profit unless he/she is given written permission to do so or until the employer, client, or their successor's interest in such

information has changed in such a way that the information is valueless to him/her or of no further interest to him/her.

2.3.6 A geologist shall not divulge confidential information. This does not relieve a licensed geologist from the duty to report conditions required by law or regulation.

2.3.7 A geologist retained by a client shall not accept, without the client's consent, an engagement by another if there is a possibility of a conflict between the interest of the two clients.

2.3.8 A geologist shall advise an employer or client to retain, and cooperate with, other experts and specialists whenever the employer's or client's interests are best served by such services.

2.3.9 A geologist shall not terminate services to an employer or client when it will cause immediate jeopardy to the employer's or client's interests. The geologist shall attempt to give due notice of termination; however, the geologist may terminate services under any of the following circumstances:

2.3.9.1 failure to receive compensation or good evidence indicating compensation will not be received for services performed;

2.3.9.2 when continued employment will result in a violation of 24 Del. C., Ch. 36 or other illegality;

2.3.9.3 when continued employment will result in sickness or injury to the geologist or his/her dependents.

2.3.10 A geologist shall not use or abuse drugs, narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician. A geologist shall also not abuse alcoholic beverages such that it impairs his/her ability to perform his/her work

### 3.0 Stamp/Seal Requirements

3.1 The stamp or seal authorized by the Delaware State Board of Geologists shall be of the design shown here and shall not be less than one and one-half (1 ½) inches in diameter. It may be purchased by the licensee from any convenient source.



3.2 All reports, drawings, maps, or similar technical submissions involving the practice of geology that have been prepared, or reviewed and approved, by a licensed geologist and that will become a matter of public record, or relied upon by any person, within this state for geological purposes, shall be impressed with the stamp or seal. The stamp or seal will indicate that the licensee has accepted responsibility for the work.

3.3 Any licensee who affixes, or allows to be affixed, his/her seal or name to a document or report is responsible for all work contained therein regardless of whether such work has been performed by the geologist or a subordinate.

3.4 No person shall stamp or seal any plans, reports, specifications, plats or similar technical submissions with the stamp or seal of a geologist or in any manner use the title "geologist," unless such person is duly licensed in compliance with 24 Del. C., Ch. 36.

3.5 No person shall stamp or seal any plans, specifications, plats, reports, or a similar document with the stamp or seal of a licensed geologist if his/her license has been suspended, revoked or has expired.

3.6 Computer files of reports, drawings or similar technical work involving the practice of geology and that will become a matter of public record or relied upon by any person shall include the following statement:

This submission is made in compliance with 24 Del. C., Ch. 36 by (name) \_\_\_\_\_, P.G., DE license number \_\_\_\_\_ on this date \_\_\_\_\_.

#### 4.0 Licensing Exemption

4.1 Any person who claims exemption from the provisions of 24 Del. C., Ch. 36 under §3617(a), shall be entitled to such exemption so long as his/her remuneration from the practice of geology is solely related to a teaching function. If such remuneration is processed through his/her academic unit, it shall be considered prima facie evidence of the fact that such work is related to his/her teaching. Any person claiming such exemption shall, in a conspicuous manner at the conclusion of any report or study bearing his/her name, include the statement:

"I hereby claim exemption from the requirements of 24 Del. C., Ch. 36 (Delaware Professional Geologist Act) and am not subject to the provisions of that Act and the standards and regulations adopted pursuant thereto."

Such a disclaimer shall not be required on reports or studies submitted solely to refereed professional journals for publications.

Any other geologic work, including consulting, not directly related to educational activities, shall not be

considered exempt.

#### 5.0 Issuance and Renewal of License

5.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 Del. C., Ch. 36.

##### 5.2 Renewal may be effected by:

5.2.1 filing a renewal form prescribed by the Board and provided by the Division of Professional Regulation;

5.2.3 providing other information as may be required by the Board to ascertain the licensee's good standing;

5.2.4 submission of evidence of continuing education on a form prescribed by the Board and provided by the Division of Professional Regulation as described in regulation five;

5.2.5 payment of fees as determined by the Division of Professional Regulation.

5.3 Failure of a licensee to renew his/her license shall cause his/her license to expire. A geologist whose license has expired may renew his/her license within one year after the expiration date upon fulfilling items (B) (1-4) above, certifying that he/she has not practiced geology in Delaware while his/her license has expired, and paying the renewal fee and a late fee which shall be 50% of the renewal fee.

5.4 No geologist will be permitted to renew his/her license once the one-year period has expired.

5.5 The former licensee may re-apply under the same conditions that govern applicants for licensure under 24 Del. C., Ch. 36.

5.6 No geologist shall practice geology in the State of Delaware during the period of time that his/her Delaware license has expired.

#### 6.0 Continuing Education

6.1 The Board will require continuing education as a condition of license renewal. Continuing education shall be waived for the first licensure renewal following the effective date of the Board's Rules and Regulations.

6.2 The continuing education period will be from August 1<sup>st</sup> to July 31<sup>st</sup> of each biennial licensing period.

6.3 Each licensed geologist shall complete, biennially, 24 units of continuing education as a condition of license renewal. The licensee is responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the Board for random audit and verification purposes 60 days prior to renewal. A continuing education unit is equivalent to one contact hour (60 minutes), subject to the Board's review.

The preparing of original lectures, seminars, or workshops in geology or related subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

6.4 A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. "Hardship" may include, but is not limited to, disability; illness; extended absence from the jurisdiction; or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.

6.5 Continuing education shall be prorated for new licensees in the following manner:

6.5.1 If at the time of renewal, a licensee has been licensed for less than one year, no continuing education is required; if he/she has been licensed for more than one year, but less than two years, twelve of the twenty-four hours will be required; if he/she has been licensed for two years or more the full twenty-four hours is required.

6.6 In his/her personal records, each licensee must keep proof of attendance for each activity listed on the CE log form. If the Board conducts an audit of a licensee's CE records, the Board will request the licensee's documentation of attendance to the CE event listed on the form. Failure to submit proof of attendance during an audit will result in loss of CE credit for that event.

6.7 Continuing education must be in a field related to Geology. Approval will be at the discretion of the Board. CEUs earned in excess of the required credits for the two- (2) year period may not be carried over to the next biennial period.

6.8 Categories of Continuing Education & Maximum Credit Allowed:

6.8.1 Courses – 24 CEUs

6.8.2 Professional Meetings & Activities/Field Trips – 12 CEUs

6.8.3 Peer Reviewed Publications – 12 CEUs

6.8.4 Presentations – 12 CEUs

6.8.5 Research/Grants – 12 CEUs

6.8.6 Specialty Certifications – 12 CEUs

6.8.7 Home Study Courses – 12 CEUs

6.8.8 Teaching – 12 CEUs

6.8.9 Service on a Geological Professional Society, Geological Institution Board/Committee or Geological State Board – 6 CEUs

6.8.10 For any of the above activities, when it is possible to claim credit in more than one category, the licensee may claim credit for the same time period in only one category.

6.9 Automatic Approval for course work sponsored by the following Professional Societies:

6.9.1 American Association of Petroleum

Geologists (AAPG)

6.9.2 American Association of Stratigraphic

Palynologists (AASP)

6.9.3 American Geological Institute (AGI)

6.9.4 American Geophysical Union (AGU)

6.9.5 American Institute of Hydrology (AIH)

6.9.6 American Institute of Professional

Geologists (AIPG)

6.9.7 Association of American State Geologists

(AASG)

6.9.8 Association of Earth Science Editors

(AESE)

6.9.9 Association of Engineering Geologists

(AEG)

6.9.10 Association of Ground Water Scientists &

Engineers (AGWSE)

6.9.11 Association of Women Geoscientists

(AWG)

6.9.12 Clay Mineral Society (CMS)

6.9.13 Council for Undergraduate Research-

Geology Div. (CUR)

6.9.14 Geologic Society of America (GSA)

6.9.15 Geoscience Information Society (GIS)

6.9.16 International Association of

Hydrogeologists/US National Committee (IAH)

6.9.17 Mineralogical Society of America (MSA)

6.9.18 National Association of Black Geologists

and Geophysicists (NABGG)

6.9.19 National Association of Geoscience

Teachers (NAGT)

6.9.20 National Association of State Boards of

Geology (ASBOG)

6.9.21 National Earth Science Teachers

Association (NESTA)

6.9.22 National Speleological Society (NSS)

6.9.23 Paleontological Research Institution (PRI)

6.9.24 Paleontological Society (PS)

6.9.25 Seismological Society of America (SSA)

6.9.26 Society of Economic Geologists (SEG)

6.9.27 Society of Exploration Geophysicists

(SEG)

6.9.28 Society of Independent Professional Earth

Scientists (SIPES)

6.9.29 Society for Mining, Metallurgy, and

Exploration, Inc. (SME)

6.9.30 Society for Organic Petrology (TSOP)

6.9.31 Society for Sedimentary Geology (SEPM)

6.9.32 Society of Vertebrate Paleontology (SVP)

6.9.33 Soil Science Society of America (SSSA)

6.9.34 Other professional or educational

organizations as approved periodically by the Board.

6.10 Courses not pre-approved by the Board may be submitted for review and approval throughout the biennial licensing period.

## 7.0 ASBOG Examination

7.1 An applicant for examination and qualification for a license as a Geologist 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 24 Del. C., Ch. 36, §3608.

7.2 An applicant for licensure must have satisfactorily passed each part of the ASBOG examination with a scaled score of not less than 70%.

7.3 An applicant's approval to sit for the ASBOG exam shall be valid for a period not to exceed two years.

## 8.0 Reciprocity

8.1 Applicants applying for licensure by reciprocity must submit the state law and rules and regulations from at least one state in which they have been licensed. The Board will review these documents for substantial similarity to Delaware's state law and rules and regulations.

8.2 Applicants, who were originally licensed in another jurisdiction after June 17, 1998, will be required to have a passing score (70%) on each part of the ASBOG examination.

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## DEPARTMENT OF AGRICULTURE

### PESTICIDES SECTION

Statutory Authority, 3 Delaware Code,  
Section 1237 (3 Del.C. 1237)

The Delaware Department of Agriculture, Pesticides Section, is proposing to amend the **Delaware Pesticide Rules and Regulations**, ("Rule") Revised, February 10, 1999, and originally proposed in the February 2000 issue of the **Delaware Register of Regulations** beginning at page 1037. The amendments are being proposed under legal authority of 3 Del.C. Chapter 12, §1237. Persons may present their views in writing to H. Grier Stayton, Pesticides Administrator, Delaware Dept. of Agriculture, 2320 S. duPont Hwy., Dover, DE 19901. A Public Hearing is also scheduled to receive verbal or written comments and will be held on April 25, 2000, at 7 p.m., at the Delaware Department of Agriculture Building, 2320 S. DuPont Hwy., Dover, DE.

The proposed revisions of Sections 4, **Registration**, and Section 5, **Licensing** are the consequence of changes to 3 Del.C. Chapter 12, **Pesticide Law**, made during the 140<sup>th</sup> General Assembly session. Amendments to Section 4 **Registration** will provide for a biennial pesticide product

registration period and a fee increase. Amendments to Section 5, **Licensing**, will require a pesticide business license applicant or holder of the license to employ a certified applicator with a minimum of two years practical experience pursuant to §1207(c)(1) of the Law. Section 5 amendments also provide for the option of a one or two year license period.

The proposed revision of Section 22, **Restrictions on the Use of Pesticides for the Control of Subterranean Termites**, will clarify disclosure requirements and prescribe a disclosure form for applicators of termiticides.

Copies of the proposed **Rules** may be obtained by calling the Department's Pesticides Section at 1-800-282-8685. The comment period for the proposed **Rules** will remain open until May 1, 2000.

## SECTION 1 GENERAL

### 1.01 Scope

These regulations establish general operating rules and procedures for the enforcement of the Delaware Pesticide Law, including but not limited to the certification of users of restricted and general use pesticides.

### 1.02 Authority

These regulations are issued under the authority of TITLE 3 PART II CHAPTER 12 of the Annotated Code of Delaware.

### 1.03 Effective Date

These regulations were amended on February 10, 1999, in accordance with Title 29, Chapter 101, Annotated Code of Delaware

### 1.04 Filing Date

These regulations were filed in the Office of the Secretary of State on February 10, 1999.

## SECTION 2 DECLARATION OF POLICY

3 Del.C. Part II, Chapter 12, Section 1237, places the enforcement of the Delaware Pesticide Law with the Department of Agriculture and empowers the Department to establish regulations.

By virtue of the authority vested in me as Secretary of Agriculture by 3 Del.C. Part II, Chapter 12, I, John F. Tarburton, Secretary of Agriculture, do hereby promulgate the following rules and regulations governing the sale, use and application of pesticides in Delaware.

## SECTION 3 DEFINITIONS

The following words and terms, when used in these regulations, shall have the following meanings, unless the

context clearly indicates otherwise. All terms defined by the Delaware Pesticides Law (3 Del.C., Part II, Chapter 12) are hereby incorporated by reference in this regulation.

“Accident” means an unexpected, undesirable event resulting in the presence of a pesticide that adversely affects man or the environment.

“Brand” means any word, name, symbol, device, or any combination thereof, which serves to distinguish a pesticide product manufactured, distributed, sold, or offered for sale by one person from that manufactured, distributed, sold, or offered for sale by any other person.

“Certification” means the recognition by the Department that a person has met the qualification standards established under Section 8 or Section 9 of these regulations and has been issued a written certificate from the Department authorizing them to use pesticides for the specified type(s) of pest control.

“Competent” means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and associated responsibility.

“Fumigant” means a gaseous or readily volatilizable chemical (such as hydrogen cyanide or methyl bromide) used as a pesticide.

“Fumigation” means the application of a fumigant to one or more rooms in a structure, or to the entire structure, or to a localized space within a structure or outside a structure, such as a box car, aircraft, truck, ship or any object sealed or covered. Excluded is the use of a fumigant in or on the soil.

“Grade” means a formulation of a pesticide, except that the addition of pigments solely for coloration shall not constitute a change in formulation such as to constitute a new grade requiring registration.

“Handle pesticides” means to mix, load, apply, or dispose of pesticides.

“Hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating, irreversible illness or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes listed in Section 261.31, 261.32 and 261.33 of the State of Delaware Hazardous Waste Regulations and those solid wastes which otherwise exhibit the characteristics of a hazardous waste as defined in Part 261 of the State of Delaware Hazardous Waste Regulations.

“LAW” means the Delaware Pesticide Law, 3 Del.C., Part II, Chapter 12.

“Regulated pest” means a specific organism considered by the state or by a Federal Agency to be a pest requiring

regulatory restrictions, regulations or control procedures in order to protect man or the environment.

“Service vehicle” means any vehicle used by a licensee to transport pesticides for the purpose of their application.

## SECTION 4 REGISTRATION

### 4.01 PRODUCT REGISTRATION

(a) Every pesticide which is distributed within the State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered with the Secretary subject to the provisions of this law. ~~Such registration shall be renewed annually prior to July 1; provided, that R~~ registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part ~~to make of~~ of a pesticide which is registered under the provision of an experimental use permit issued by the U.S. Environmental Protection Agency.

(b) ~~The An~~ applicant for registration for a pesticide which is federally registered shall file a statement with the Secretary which shall include:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's.

(2) The name of the pesticide.

(3) Other necessary information required for completion of the Department's application for registration form.

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use.

(5) The use classification as provided in the "Federal Insecticide, Fungicide and Rodenticide Act", as amended.

(6) The EPA product registration number.

(c) The applicant desiring to register a pesticide shall pay ~~an annual registration fee of twenty five dollars (\$25.00)~~ a biennial registration fee of seventy dollars (\$70.00) to the Delaware Department of Agriculture for each brand or grade of pesticide to be registered for such applicant. All ~~such~~ registrations shall ~~expire on June 30 of any one year~~ continue in effect until June 30 of the year in which they expire. Applications received between January 1 and June 30 shall be registered for the upcoming two year period. Applications received between July 1 and December 31 will be registered for a two year period beginning July 1 of the year in which the application was received.

(d) Any registration approved by the Secretary and in effect on June 30, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until suspended, or otherwise denied in accordance with the provisions of Section 1205 of ~~this law~~ the LAW.

Forms for registration shall be mailed to registrants at least forty-five days prior to the due date.

(e) If it appears to the Secretary that the composition of the pesticide is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of ~~this law~~ these regulations, he shall register the pesticide.

(f) Pesticide products that are discontinued by a registrant shall be registered for a period of two years. Said two year limit covers the year in which the item is declared to be discontinued by the registrant and an additional year to permit time to dispose of shelf stock. Should the registrant provide the Department with written notification that shelf stocks of the product are depleted, the products shall be exempt from the two year continued registration period.

#### 4.02 EMPLOYEE REGISTRATION

(a) Every licensee shall register with the Department all employees who handle pesticides. Registration shall be made when making an application for a license or within 30 days after employment. The fee for registering each employee shall be \$25.00. However, the fee shall be waived for any employee registration if that employee is certified under the LAW.

(b) Each licensee shall be responsible for insuring that all employees handling pesticides (other than a certified applicator) have successfully completed a training program approved by the Department. Such training shall be completed within 30 days of employment and before the employee is registered with the Department.

1. The Department will not approve any training program that does not include the following subjects:

- (i) Pesticide Law and Regulations;
- (ii) Label comprehension;
- (iii) Safety and emergency procedures;
- (iv) Proper pesticide handling, storage and disposal;
- (v) Pest identification and control procedures;
- (vi) Pesticide application techniques;
- (vii) Environmental and health concerns; and
- (viii) Integrated pest management principles

2. Upon request by the Department, each licensee shall provide written verification that an employee has completed an approved training program.

(c) The name and address of each such employee shall be provided to the Department by the licensee. The Department shall issue a registration card to those registered. This registration card shall bear the name and license number of the employee and shall become null and void upon termination of employment with the licensee. This card is to be carried by the employee during working hours and is to be displayed upon request.

(d) Written notification of employment termination of this registered employee with the licensee shall be made to

the Department within 30 days subsequent to termination.

(e) The Department, after due notice, and opportunity for a hearing may deny, suspend or revoke an employee registration, if the Department finds the registered employee has committed any violations of the LAW.

(f) The Department, after due notice and opportunity for a hearing, may deny an application for employee registration, if the applicant has committed any violations under the LAW.

#### SECTION 5 LICENSING

~~5.01 All business licensee applicants shall pay an annual fee of \$50.00.~~

Applicants for a business license shall complete a signed and notarized application form prescribed by the Department.

~~5.02 All pest control business license numbers shall appear on all service vehicles used by persons holding a commercial pesticide applicators license excluding: 7.01 (a) Agriculture Plant Pest Control; 7.01 (b) Agriculture Animal Pest Control; 7.02 Forest Pest Control; 7.04 Seed Treatment; 7.05 Aquatic Pest Control; 7.08 Public Health Pest Control; 7.09 Regulatory Pest Control; 7.10 Demonstration and Research Pest Control. The license number shall be in bold readable numbers not less than 2 inches or more than 6 inches high. The full name of the business licensee shall be displayed on the vehicle.~~

All business license applicants shall pay an annual fee of \$50.00, or a biennial fee of \$100.00.

5.03 No license shall be issued to any person, nor shall it remain valid, unless such person is certified or has a certified applicator in his employ at all times.

5.04 For applicants or holders of a license in categories 7.01(a), 7.02, or 7.07(a-c), at least one person designated as a certified applicator under the license shall meet the experience requirement of §1207(c)(1) of the LAW.

5.05 All pest control business license numbers shall appear on all service vehicles used by persons holding a commercial pesticide applicators license ~~excluding with the exception of categories:~~ 7.01(a) Agriculture Plant Pest Control; 7.01(b) Agriculture Animal Pest Control; 7.02 Forest Pest Control; 7.04 Seed Treatment; 7.05 Aquatic Pest Control; 7.08 Public Health Pest Control; 7.09 Regulatory Pest Control; 7.10 Demonstration and Research Pest Control. The license number shall be in bold readable numbers not less than 2 inches or more than 6 inches high. The full name of the business licensee shall be displayed on the vehicle.

**SECTION 6 RESTRICTED USE PESTICIDES CLASSIFICATION**

6.01 Restricted use pesticides shall be classified in the State of Delaware to conform to the current listing of pesticides classified by the EPA as Federally registered use products.

**SECTION 7 CATEGORIZATION OF COMMERCIAL APPLICATORS**

Categories and subcategories of applicators (other than private applicators) who use or supervise the use of pesticides are identified below.

**7.01 AGRICULTURAL PEST CONTROL CATEGORY**

(a) **AGRICULTURAL PLANT** - This subcategory includes commercial applicators using or supervising the use of pesticides in the production of agricultural crops, including without limiting the following: feed grains, soybeans, forage, vegetables, small fruits and tree fruits; as well as on grasslands and non-crop agricultural lands.

(b) **AGRICULTURAL ANIMAL** - This subcategory includes commercial applicators using or supervising the use of pesticides on swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, or publicly holding themselves out as pesticide applicators or engaged in large scale use are included in this category.

(c) **FUMIGATION OF SOIL AND AGRICULTURAL PRODUCTS** - This subcategory includes commercial applicators using or supervising the use of pesticides for soil fumigation in the production of an agricultural commodity and/or for fumigation of agricultural products in storage or transit.

**7.02 FOREST PEST CONTROL CATEGORY**

This category includes commercial applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed producing areas.

**7.03 ORNAMENTAL AND TURF PEST CONTROL CATEGORY**

This category includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

**7.04 SEED TREATMENT CATEGORY**

This category includes commercial applicators using or supervising use of pesticides on seeds.

**7.05 AQUATIC PEST CONTROL CATEGORY**

(a) **AQUATIC WEED** - This subcategory includes commercial applicators using or supervising the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities.

(b) **ANTIFOULING PAINT** - This subcategory includes commercial applicators using or supervising the use of any anti-fouling paints for the protection of boat hulls. This subcategory also includes applicators using or supervising the use of anti-fouling paints on containers which they sell, lease, or use for the purpose of harvesting shellfish.

(c) **MOSQUITO CONTROL** - This subcategory includes applicators using or supervising the use of pesticides for the management and control of mosquitoes.

**7.06 RIGHT-OF-WAY PEST CONTROL CATEGORY**

This category includes commercial applicators using or supervising the use of pesticides in the maintenance of roads, electric power lines, pipelines, railway rights-of-way or similar areas.

**7.07 INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED PEST CONTROL CATEGORY**

This category includes commercial applicators using or supervising the use of pesticides in, on, or around food handling establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; human dwellings, institutions, such as schools and hospitals, industrial establishments; and for the protection of stored, processed or manufactured products. This category contains the following subcategories:

(a) **GENERAL PEST CONTROL** - This subcategory includes commercial applicators who use or supervise the use of pesticides to control household pests, including pests that infest structures, stored products, and residential food preparation areas, and pests that infest or contaminate food and any stage of processing in food processing facilities. This includes treatment of food processing areas and control of vertebrate structural invaders. This category does not include control of wood-destroying pests, or the use of fumigants.

(b) **WOOD DESTROYING PEST CONTROL** - This subcategory includes commercial applicators using or supervising the use of pesticides, other than fumigants, in or around structures for the prevention, suppression, or control of wood destroying organisms.

(c) **FUMIGATION PEST CONTROL (non-agricultural)** - This subcategory includes commercial applicators using or supervising the use of fumigant pesticides to control pests in structures other than soils and agricultural products/commodities.

(d) **WOOD PRESERVATIVES** - This subcategory includes commercial applicators using or supervising the use of pesticides for the preservation of wood or wood products. This would include, but not be limited to, the pressure treatments, non-pressure treatments, or brush-on applications with wood preservatives. Commercial applicators certified in another category of pest control and who use or supervise the use of wood preservatives on an incidental basis may apply these products under their current certification. Private applicators using wood preservative products for purposes related to agricultural production may also apply wood preservatives under their current certification.

(e) **INSTITUTIONAL AND MAINTENANCE PEST CONTROL** - Except as otherwise provided in these regulations, this subcategory includes any individual using pesticides on a property they own, or are employed or otherwise engaged to maintain, including but not limited to janitors, general maintenance personnel, sanitation personnel, and grounds maintenance personnel. This subcategory does not include private applicators as defined in Section 9 below, individuals who use anti-microbial pesticides, or individuals who use pesticides which are not classified as "restricted use pesticides" in or around their dwelling.

(f) **COOLING TOWER PEST CONTROL** - This subcategory includes commercial applicators using or supervising the use of pesticides to control microbial and other pests in cooling towers or related areas.

(g) **MISCELLANEOUS PEST CONTROL** - This subcategory includes commercial applicators using or supervising the use of pesticides in a category not previously covered in these regulations.

#### 7.08 PUBLIC HEALTH PEST CONTROL CATEGORY

This category includes, but is not limited to, State, Federal and other governmental employees who use or supervise the use of pesticides in public health programs for the management and control of pests having medical or public health importance.

#### 7.09 REGULATORY PEST CONTROL CATEGORY

This category includes State, Federal and other governmental employees who use or supervise the use of restricted use pesticides in the control of regulated pests.

#### 7.10 DEMONSTRATION AND RESEARCH PEST CONTROL CATEGORY

This category includes:

(a) Individuals who demonstrate to the public the proper use and technique of application of a restricted use pesticide or supervises such demonstrations, and/or

(b) Persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use

pesticides. Included in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes State, Federal, commercial and other persons conducting field research when utilizing pesticides.

### SECTION 8 STANDARDS FOR CERTIFICATION OF COMMERCIAL APPLICATORS

#### 8.01 DETERMINATION OF COMPETENCY

(a) Competence in the use and handling of pesticides shall be determined on the basis of written examinations, and, as appropriate, performance testing, based upon standards set forth below and which are approved by the Secretary. Such examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory (if any) in which an applicator is to be certified. All examinations shall be administered as closed book examinations.

(b) Applicants for examination shall register at least one (1) week before the scheduled examination date.

(c) Exams shall be scheduled quarterly during the calendar year and shall be given at such times and places as the Secretary may direct.

(d) Correctly answering 70% or more of the questions shall be considered to be satisfactory evidence of competence.

(e) Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. Applicant may apply for one (1) reexamination scheduled at least thirty (30) days after their initial examination. No person shall be permitted to be examined in the same category or subcategory more than twice in any twelve (12) month period.

#### 8.02 GENERAL STANDARDS FOR ALL CATEGORIES OF CERTIFIED COMMERCIAL APPLICATORS

All commercial applicators shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's certification and the following areas of competency:

##### (a) LABEL & LABELING COMPREHENSION

(1) The general format and terminology of pesticide labels and labeling;

(2) The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;

(3) Classification of the product, general or



restricted; and the necessity for use consistent with the label.

(b) SAFETY

(1) Pesticides toxicity and hazard to man and common exposure routes;

(2) Common types and causes of pesticides accidents;

(3) Precautions necessary to guard against injury to applicators and other individuals in or near treated area;

(4) Need for and use of protective clothing and equipment;

(5) Symptoms of pesticide poisoning;

(6) First aid and other procedures to be followed in case of a pesticide accident; and

(7) Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(c) ENVIRONMENT

The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

(1) Weather and other climatic conditions;

(2) Types of terrain, soil or other substrate;

(3) Presence of fish, wildlife and other non-target organisms; and

(4) Drainage patterns.

(d) PESTS

Factors such as:

(1) Common features of pest organism and characteristics of damage needed for pest recognition;

(2) Recognition of relevant pests; and

(3) Pest development and biology as it may be relevant to problem identification and control.

(e) PESTICIDES

Factors such as:

(1) Types of pesticides;

(2) Types of formulations;

(3) Compatibility, synergism, persistence and animal and plant toxicity of the formulations;

(4) Hazards and residues associated with use;

(5) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and,

(6) Dilution procedures.

(f) EQUIPMENT

Factors including:

(1) Types of equipment and advantages and limitations of each type; and

(2) Uses, maintenance and calibration.

(g) APPLICATION TECHNIQUES

Factors including:

(1) Methods or procedures used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in

a given situation;

(2) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(3) Prevention of drift and pesticide loss into the environment.

(h) LAWS AND REGULATIONS

Factors including:

Applicable State and Federal laws and regulations.

### 8.03 SPECIFIC STANDARDS FOR COMPETENCY FOR EACH CATEGORY OF COMMERCIAL APPLICATORS

Some of the factors referenced in this section are of particular importance because of the different types of activities carried out by the applicators in each category. For example, practical knowledge of drift problems should be required of agricultural applicators but not seed treatment applicators. The latter, however, should be particularly knowledgeable of the hazards of the misuse of treated seed and the necessary precautionary techniques. Commercial applicators in each category shall be particularly qualified with respect to the practical knowledge standards elaborated below.

#### (a) AGRICULTURAL PEST CONTROL CATEGORY

##### (1) AGRICULTURAL PLANT PEST CONTROL SUBCATEGORY

Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

##### (2) AGRICULTURAL ANIMAL PEST CONTROL SUBCATEGORY

Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

##### (3) FUMIGATION OF SOIL AND AGRICULTURAL PRODUCTS SUBCATEGORY

Applicators must demonstrate knowledge of application techniques appropriate to soil fumigation and

agricultural product fumigation. This includes the use of personal protective clothing and equipment, and general safety procedures such as posting, reentry, aeration, and accident procedures.

(b) **FOREST PEST CONTROL CATEGORY**

Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and forest seed production in Delaware and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must, therefore, demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

(c) **ORNAMENTAL AND TURF PEST CONTROL CATEGORY**

Applicators shall demonstrate knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(d) **SEED TREATMENT CATEGORY**

Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

(e) **AQUATIC PEST CONTROL CATEGORY**

(1) **AQUATIC WEED** - Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this subcategory. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall also demonstrate practical knowledge of the principles of limited area application.

(2) **ANTI FOULING PAINT** - Applicators in this subcategory shall demonstrate practical knowledge of the labeling instructions, safety precautions and environmental concerns associated with the use of marine anti-fouling paints. They shall demonstrate practical knowledge of the term "acceptable release rate" as it applies to organotin paints; knowledge of the types of paints approved for specific hull types; knowledge of the types of anti-fouling paints approved for use on equipment or containers used for the harvesting of shellfish; knowledge of potential environmental consequences from the use/misuse or improper disposal of pesticides; safety precautions necessary to avoid exposure of workers to anti-fouling paints; proper storage, handling, and disposal methods of paint chips and dusts suspected of containing organotin compounds; marine pests and relevant life cycles which are controlled through the application of anti-fouling paints; methods, procedures, and equipment used in applying organotin and anti-fouling paints; applicable State and Federal laws and regulations; and recordkeeping requirements under the Delaware Pesticide Law.

(3) **Mosquito Control** - Applicators shall demonstrate a practical knowledge of the principles associated with the management of mosquitoes, including all of the following: their life cycle; types of formulations appropriate for their management; methods of application; possible effects on water quality; and, the potential health effects on humans in the target area.

(f) **RIGHT-OF-WAY PEST CONTROL CATEGORY**

Applicators shall demonstrate a practical knowledge of a wide variety of environments, since right-of-ways can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.

(g) **INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED PEST CONTROL CATEGORY**

Applicators in this category must demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulation appropriate for their control, and methods of application that avoid contamination of food, contamination of habitat, and the exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition including continuous exposure. Because health related pest control may involve outdoor applications, applicators must also demonstrate practical

knowledge of environmental conditions particularly related to this activity.

(1) GENERAL PEST CONTROL  
SUBCATEGORY

Applicators must demonstrate knowledge of household pests including but not limited to: pests that invade or infest structures, stored products, and residential food preparation areas; pests that infest or contaminate foods and foodstuffs at any stage of processing in the food manufacturing and processing areas of operation including but not limited to: flour mills, bakeries, bottling plants, dairies, canneries, meat packing plants, supermarkets, convenience stores, rest homes, hospitals, ships, vehicles, restaurants, cafeterias, and snack bars; conditions conducive to infestations and selection of appropriate control procedures, other than fumigation for each situation; and hazards associated with pesticides in food manufacturing and processing.

(2) WOOD DESTROYING PEST CONTROL  
SUBCATEGORY

Applicators must demonstrate knowledge of organisms that destroy structures made of wood including but not limited to beetles, termites and fungi, and conditions conducive to infestation; selection, calibration, and use of appropriate control procedures and their related equipment including: rodding and trenching, topical application of pesticides and local injection of specially labeled liquid or pressurized aerosol pesticides into infested wood; hazards involved in the handling and use of these pesticides.

(3) FUMIGATION (NON-AGRICULTURAL)  
SUBCATEGORY

Applicators must demonstrate a practical knowledge of the conditions requiring the application of fumigants, and the selection of the most appropriate fumigation methods to use; equipment used in fumigation including but not limited to application, monitoring, testing, calculating, and personal protective devices; release, distribution, and maintenance of the correct fumigant concentrations for the product being used and the structure being fumigated under differing conditions; and hazards involved in the use of fumigants.

(4) WOOD PRESERVATIVE SUBCATEGORY

Applicators must demonstrate a practical knowledge of the pests involved with wood products, including their life cycles, wood degradation, the pesticides available for controlling such problems, and methods of application including pressure, non-pressure and brush-on treatments. Since there is concern regarding the potential for environmental contamination as well as acute and chronic health problems from applicator exposure when using certain woodtreating pesticides, specific emphasis will be placed upon demonstrating a practical knowledge of the product use, precautions which are required and found on the labels and labeling of these pesticides and include

protective clothing and equipment, sanitation procedures, disposal procedures and environmental precautions. Since treated wood products present potential environmental problems and acute and chronic exposure problems to the users and the general public, whether or not they come into direct contact with the treated wood, applicators must demonstrate a practical knowledge of the consumer information covering use, site, and handling precautions which are found in the Consumer Information Sheets of products registered for pressure treatment and in the labeling for products registered for sap and stain control, ground line treatment of utility poles, and home and farm use (including railroad tie repair).

(5) INSTITUTIONAL AND MAINTENANCE  
SUBCATEGORY

Applicators in this subcategory must demonstrate a practical knowledge of a wide variety of pests for the purpose of providing structural pest control or lawn pest control in and around schools, hospitals, nursing homes, child day-care centers, and apartment buildings. Since children and elderly people have a potentially higher sensitivity to pesticides, applicators in this subcategory should be particularly knowledgeable in avoiding applications which may lead to a hazardous condition, including continuous exposure.

(6) COOLING TOWER SUBCATEGORY

Applicators shall demonstrate a practical knowledge of the labeling instructions, safety precautions and environmental concerns associated with the use of pesticides to treat the waters of cooling towers. They must demonstrate an understanding of the following: the effects of tower operation upon cooling water composition; the importance and potential harm of discharge of exhaust water into environment waters, the steps that can be taken to minimize water-caused problems, the importance of diligence and control in the execution of cooling water treatment programs.

(7) MISCELLANEOUS SUBCATEGORY

Applicator must demonstrate knowledge appropriate to their specific field of pest control.

(h) PUBLIC HEALTH PEST CONTROL  
CATEGORY

Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests are involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

(i) REGULATORY PEST CONTROL CATEGORY

Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use of pesticides used in suppression and eradication programs.

They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

(j) **DEMONSTRATION AND RESEARCH PEST CONTROL CATEGORY**

Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide - organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in section 8.02 above. In addition, they shall meet the specific standards required for categories (1) through (7) of this section as may be applicable to their particular activity.

Persons conducting field research or method improvement work with restricted use pesticides should be expected to know the general standards detailed in 8.02 above. In addition, they shall be expected to know the specific standards required for paragraph 8.03 (1) through (9) of this section, applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration".

**8.04 CERTIFICATION FEES AND RENEWAL**

(a) **CERTIFICATION FEES**

(1) Commercial applicators shall pay an annual certification fee of \$20.00. All certifications shall continue in full force until December 31st of each year whereupon they shall become invalid unless renewed, except that a certification for which a renewal application has been submitted to the Department by November 30th, shall remain in full force and effect until such time as the Department gives notice to the applicant of renewal or denial. Applications for renewal shall be mailed to all certified applicators by the Department before October 1st of each year.

(2) Federal, State or Local government employees who are certified under this law are exempt from this fee.

This exemption shall remain valid only when applying or supervising the application of pesticides for such governmental agencies.

(b) **CERTIFICATION RENEWAL**

(1) **Commercial Applicators**

(i) Commercial applicators shall be required to be reexamined through a written test prior to their annual certification renewal.

(ii) The reexamination requirement may be satisfied without taking a test, if the commercial applicator provides the Department with evidence that he has completed a specified minimum number of hours attending approved education courses, seminars or programs during the three calendar years preceding certification renewal. The specified number of hours for each category are listed in paragraph 8.04 (b)(1)(iv) below. This exemption from reexamination does not apply to a person holding a lapsed certificate, as described in paragraph 8.04 (b)(3) below.

(iii) A commercial applicator shall be exempt from the reexamination requirement for the first two certification renewals following his original certification in Delaware.

(iv) The number of hours of training required to fulfill paragraph 8.04 (b)(1)(ii) are specified as follows:

<u>Category of Pest Control</u>	<u>Hours</u>
Agricultural Plant (1A)	8
Agricultural Animal (1B)	4
Fumigation of Soils and Agricultural Commodities (1C)	4
Forest (02)	4
Ornamental & Turf (03)	8
Seed Treatment (04)	2
Aquatic (5A)	4
Antifouling Paint (5B)	2
Mosquito (5C)	4
Right-of-Way (06)	4
Industrial, Institutional, Structural & Health Related (07)	
General Pest Control (7A)	18
Wood Destroying Pest Control (7B)	18
Fumigation Pest Control (non-agricultural) (7C)	4
Wood Preservatives (7D)	4
Institutional and Maintenance (7E)	18
Cooling Towers (7F)	4
Miscellaneous (7G)	4
Public Health (08)	4
Regulatory (09)	4
Demonstration & Research (10)	8

(2) **Private Applicators**

(i) A private applicator's certification shall continue in full force until December 31st of the third year following his original certification.

(ii) A private applicator shall be required to be reexamined prior to certification renewal.

(iii) The reexamination requirement may be satisfied without taking a test, if the applicator provides the Department with evidence that he has attended a minimum of three (3) hours of approved education courses, seminars or programs during the three (3) calendar years preceding certification renewal.

(3) Expiration

(i) A certificate shall have a ninety (90) day grace period after the date of expiration. When the grace period expires, the certificate shall be considered to have lapsed.

(ii) A person holding a lapsed certificate must be examined as described by paragraph 8.01, in order to receive a new certificate.

(iii) An applicator is not imparted the right to purchase, use or supervise the use of a restricted use pesticide during the ninety (90) day grace period following the expiration date on his certificate.

#### 8.05 EXEMPTIONS

The above standards do not apply to the following persons for the purposes of these regulations:

(a) Persons conducting laboratory type research involving restricted use pesticides; and

(b) Doctors of Medicine, Doctors of Osteopathy, and Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice.

(c) Owners and employees of any child day-care center which is operated within a private home.

### SECTION 9 STANDARDS FOR CERTIFICATION OF PRIVATE APPLICATORS

9.01 As a minimum requirement for certification, a private applicator must show that he possesses a practical knowledge of the pest problem and pest control practices associated with his agricultural operations and his related legal responsibility. This practical knowledge includes ability to:

(a) Recognize common pests to be controlled and damage caused by them.

(b) Read and understand the label and labeling information - including the common name of pesticides he applies; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and specific disposal procedures.

(c) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period

of operation.

(d) Recognize local environmental situations that must be considered during application to avoid contamination.

(e) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

9.02 Such competence of each private applicator shall be verified through the administration of a private applicator certification system here described which ensures that the private applicator is competent, based upon the standards set forth above, to use the restricted use pesticides under limitations of applicable State and Federal laws and regulations. One or more of the following options will be employed to certify private applicators:

(a) GENERAL CERTIFICATION

This option certifies the private applicator as competent to apply any restricted use pesticide which he would normally expect to use in his particular agricultural operations. Competency determination shall reflect all aspects of the private applicator standards and shall be broad enough to test the private applicator's ability to apply general principles to specific problems associated with the restricted use pesticides required for the production and protection of his crops.

(b) PESTICIDE CLASS CERTIFICATION

This option certifies the private applicator as competent to apply any restricted use pesticide products and all different formulations of a pesticide used for the same purpose, use, or application. Examples include, but are not limited to, preemergence herbicides for vegetable crops, foliar insecticides on corn, rodenticides in fruit orchards, nematicides in fields prior to planting, ground application of fungicides on vegetables, seed treatments for plant diseases, and livestock dips for insect control.

Competency determination shall reflect the full range of the private applicator standards, but with special emphasis placed on the particular characteristics of the pesticide class, as well as the nature of the application or use.

(c) COMMODITY/CROP/SITE CERTIFICATION

This option certifies the private applicator as competent to apply any restricted use pesticide needed for specific crops or sites which the applicator would be expected to deal with in his agricultural operations. This would include any pesticide products (different pesticide classes, active ingredients, and formulations) used on a specific line or class designation. Examples include: single crop such as corn, apples, or wheat; single site class such as poultry houses or dairy barns; single livestock line, such as beef cattle, swine, or turkeys; crop classes such as forage crops or small fruits, site class such as barns or greenhouses; and livestock class such as poultry.

Competency determination shall reflect the full

range of the private applicator standards, with emphasis placed on the particular characteristics of the specific crop or site, or crop/site class concerned and the pests involved.

A private applicator may wish to be certified for a specific crop or site (such as corn or beef cattle) or for a crop or site class (such as forage crops, livestock, small grain crops).

(d) **SINGLE PRODUCT CERTIFICATION**

This option certifies as competent the private applicator for one or more uses of a single product or related products with the same active ingredient and with a similar formulation and uses. Competency determination shall reflect all appropriate uses of these products for the agricultural area where he will be expected to make pesticide application.

(e) **SINGLE PRODUCTS/SINGLE USE AUTHORIZATION (EMERGENCY PROGRAM)**

This option would authorize the private applicator to make single use application(s) of a restricted use product (or other products of the same formulation). This option will be used only as an emergency provision to accommodate situations such as an unexpected pest problem that requires immediate certification of a previously uncertified private applicator or one whose particular type of certification would not cover the product needed to deal with the problem.

**9.03 DETERMINATION OF COMPETENCY FOR PRIVATE APPLICATORS**

(a) Competence in the use and handling of pesticides by private applicators shall be determined by written examinations with questions based upon study materials made available by the Department. Correctly answering 70% or more of the questions shall be considered to be satisfactory evidence of competence.

(b) Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. The applicant may apply for reexamination, which shall be scheduled by the Department at least 30 days after the applicant's initial examination.

(c) Upon showing of hardship, an applicant for private applicator certification may appeal to the Secretary for an exception to paragraphs 9.03 (a) and (b). At his discretion, the Secretary may provide for an alternative means of examination, to include but not be limited to oral examination. Oral examinations shall cover the same material included in the written examination.

**SECTION 10 STANDARDS FOR SUPERVISION OF NON-CERTIFIED APPLICATORS BY CERTIFIED PRIVATE AND COMMERCIAL APPLICATORS**

10.01 Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of

federal and state supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

10.02 The availability of the certified applicator must be directly related to the hazard of the situation, the complexity of the application or the ability to readily communicate with the non-certified applicator. In many situations, where the certified applicator is not required to be physically present, "direct supervision" shall include verifiable instructions to the competent person, as follows:

(a) Detailed guidance for applying the pesticide properly, and

(b) Provisions for contacting the certified applicator in the event he is needed. In other situations, and as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

**SECTION 11 FEDERAL AGENCY PESTICIDE APPLICATORS**

11.01 When an employee of any agency of the United States Government has been qualified in any category as competent to apply restricted use pesticides under the Government Agency Plan (GAP) or under other plans judged by the Secretary to be at least equal to the Delaware Plan, such employee will be certified by the Secretary in the same category without the need for a written examination nor for the payment of any fee.

11.02 Federal employees qualified under an acceptable Federal Plan to apply restricted use pesticides and who intend to apply restricted use pesticides in Delaware as a part of their agency work shall present their qualifying documents to the Secretary and, if acceptable, these documents will be endorsed or a state document will be issued which will permit the federal employee to use restricted use pesticides in Delaware.

11.03 If, in an emergency situation, federal employees are brought into Delaware to control or eradicate pests and when these employees have been properly qualified to use restricted use pesticides under the plan of another state or under an acceptable federal government agency plan, such employee shall be considered to be certified in Delaware and he or his agency must, within 10 days, present qualifying credentials to the Secretary. At this time state credentials will be issued if the employee is to remain in Delaware as an applicator of restricted use pesticides.

11.04 The provisions of this section do not apply to non-federal employees contracted to perform pesticide application for the federal government. In an emergency,

however, and with the concurrence of the Secretary, a non-certified person may apply pesticides under the direct supervision of a properly certified federal applicator. Within 10 days such person working within the state boundaries must apply for Delaware certification in the normal manner.

## **SECTION 12 RECIPROCITY**

12.01 When a commercial applicator is certified under the state plan of another state and desires to operate as a commercial applicator in Delaware he shall make application to the Secretary and shall include, along with the proper fee and other details required by the LAW, a true copy of his credentials certifying him as an applicator of restricted use pesticides in another state. The Secretary then may, if he approves the credentials, issue a Delaware certification to the applicator in the appropriate classification and/or category(ies) for which he is certified in another state without a written examination. The original certification must be made in the state where the commercial applicator resides or where he has his principle place of business.

## **SECTION 13 REVOCATION**

13.01 The Department, after due notice and opportunity for a hearing, may deny, suspend, revoke or modify any application for or provision of any certification, including reciprocal certification, under the LAW if the Department finds that the Certified Applicator or the applicant for Certification has committed any act or acts declared by the Law or these regulations to be unlawful.

## **SECTION 14 RECORDS**

### **14.01 COMMERCIAL APPLICATORS**

Commercial applicators shall, for a period of two years from the date of application, keep records detailing the application of any pesticides to include:

(a) The brand name of the pesticide used. In the case of a Restricted Use Pesticide or a pesticide which is used under the provisions of 40 **Code of Federal Regulations**, Part 170, Worker Protection Standards, the EPA Registration Number shall also be recorded at or before the time of application.

(b) When applicable, the dilution rate of the pesticide and the amount of diluted material applied per unit (i.e. gallons/acre, lbs./acre, etc.)

(c) The date and specific area treated.

(d) The pest against which the pesticide was used.

(e) The applicator's name, and when applicable, the name of the certified applicator responsible for his supervision.

(f) When label directions advise precaution in regard to drift, on-site weather conditions to include:

(i) Wind velocity and direction

(ii) Temperature

(iii) Relative humidity

(g) In addition to the above record keeping requirements, the applicator shall have available at the site of application, a copy of the label of the pesticide being used. Upon request, the applicator shall provide any interested person at or adjacent to the application site, with any information contained on the pesticide label.

### **14.02 RESTRICTED USE PESTICIDES DEALERS**

Restricted use pesticide dealers shall keep and maintain for a period of two years, records on the sale or other disposition of restricted use pesticides to include the following:

(a) The name and address of the residence or principal place of business of the certified applicator to whom the pesticide is made available for use.

(b) The certification identification number of the purchaser or receiver of the pesticide on the document.

(c) The product name and E.P.A. registration number on the label of the pesticide.

(d) The quantity of the pesticide made available for use in the transaction.

(e) Date of the sale or transaction.

## **SECTION 15 FINANCIAL SECURITY REQUIRED OF LICENSEE**

15.01 The Secretary shall not issue a license until the applicant has filed evidence of financial security with the Secretary. Such evidence shall consist of a general liability insurance policy with completed operation coverage or certification thereof from an insurance company, person, or risk retention group formed under the Federal Risk Act of 1986, authorized to do business in Delaware.

### **(a) AGRICULTURE**

#### **(1) PLANT PEST CONTROL**

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

#### **(2) AGRICULTURE ANIMAL PEST CONTROL**

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

### **(b) FOREST PEST CONTROL**

An applicant for certification in this category shall file evidence of financial security in the minimum amount of

Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(c) **ORNAMENTAL AND TURF PEST CONTROL**

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(d) **SEED TREATMENT**

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(e) **AQUATIC PEST CONTROL**

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(f) **RIGHT-OF-WAY PEST CONTROL**

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(g) **INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED PEST CONTROL**

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

**15.02 AERIAL APPLICATORS**

Aerial applicators applying for a license in any of the above categories or subcategories shall show evidence of financial security in the minimum of One Hundred Thousand Dollars (\$100,000) for each individual damage and Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

**15.03** Nothing to these regulations shall be construed in any way to relieve any person from liability for any damage to the person or lands of another caused by the use of

pesticides even though such use conforms to the rules and regulations of the Secretary.

**SECTION 16 STORING AND DISPOSAL OF PESTICIDES AND PESTICIDE CONTAINERS**

**16.01 PROHIBITED ACTS**

No person shall dispose of or store (or receive for disposal or storage) any pesticide, pesticide container or pesticide container residue:

(a) In a manner inconsistent with its label or labeling;

(b) So as to cause or allow the open dumping of pesticides or pesticide containers;

(c) So as to cause or allow open burning of pesticide or pesticide containers, except; the open burning by the user of small quantities of combustible containers (but not to exceed 50 lbs.) containing pesticides other than those containing organic mercury, chlorates, lead, cadmium, or arsenic compounds, is acceptable when allowed by state or local regulations and when due regard is given to wind direction in relation to the protection of crops, animals and people from the pesticide vapors created through burning;

(d) So as to cause or allow dumping of pesticides in any stream, river, pond, sewer or lake, except in conformance with permits issued by the Delaware Department of Agriculture or other state agency having jurisdiction regarding water pollution;

(e) So as to violate any applicable state or federal pollution control standard.

**16.02 PESTICIDE AND PESTICIDE CONTAINER DISPOSAL**

Pesticide containers shall, upon completion of use, be triple rinsed immediately by the applicator or someone under his direct supervision or cleaned by another method or procedure equivalent in residue removal effectiveness.

(a) The standard triple rinse procedure is as follows:

(1) The emptied container shall be drained for at least thirty (30) seconds after steady flow of pesticide formulation has ceased and after individual drops are evident. Any pesticide formulation drained shall be added to the spray tank mix and shall be applied in accordance with label instructions.

(2) A solvent, usually water, specified by the manufacturer and capable of removing the pesticide residue shall be added to the drained container in an amount equal to ten percent (10%) of its capacity. The container then shall be shaken, agitated, or rolled vigorously in such fashion as to dislodge residues from the top, bottom and sides. The liquid residues (rinsate) shall be added as make-up to the spray tank mix, and the container shall be allowed to drain for at least thirty (30) seconds after steady flow has ceased and after individual drops are evident.

(3) The above procedure shall be performed two



more times, each time allowing the container to drain at least thirty (30) seconds and adding all rinsate to the spray tank mix to be applied in accordance with label instructions.

(b) In cases where undiluted formulations are used and rinsate cannot be added to the spray tank, the residue must be disposed of in accordance with applicable Department of Natural Resources and Environmental Control (DNREC) regulations.

(c) Methods of rinsing or cleaning containers, other than the standard triple rinsing procedure described above, may be used provided they are shown to remove equivalent amounts of pesticide residues which can be disposed of in an environmentally safe manner.

(d) In the case of containers with removable inner liners that prevent contact between the pesticide and the container, removal of the liner shall be considered the equivalent of triple rinsing. The removed liners must be disposed of in a sanitary landfill or by incineration if allowed by State and local authorities. Liners removed from pesticide containers containing pesticides listed as hazardous waste are also considered hazardous waste unless the liners are triple rinsed with an applicable solvent or other method approved as equivalent, prior to their removal from the container. These liners must be handled and disposed of in accordance with applicable DNREC regulations.

(e) Following the rinsing, cleaning or liner removal procedure, plastic or metal containers not destined for return to manufacturers or shipment to reconditioners shall be punctured prior to disposal to insure they are empty and to prevent re-use. Glass containers are exempt from this puncture requirement. Plastic containers may be burned if allowed by State and local authorities.

(f) Pesticide containers labeled for commercial or farm use, which have been triple rinsed and handled in accordance with 16.02 (a) through 16.02 (e), shall be disposed of at a Solid Waste Facility.

(g) Unused or unwanted farm or commercial use pesticides which qualify as hazardous waste shall be disposed of in accordance with 7 DEL C., Chapter 63 and the Delaware Regulations Governing Hazardous Waste.

(h) Pesticides and/or pesticide containers which are not subject to these regulations are as follows:

(1) Paper, cardboard and fiberboard containers. Storage, handling and disposal must, however, be in accordance with label directions and any applicable DNREC regulations and/or local ordinances. This waiver applies only if all the pesticide contents have been removed from the container using practical methods.

(2) Aerosol containers and compressed gas cylinders, provided that aerosol containers are disposed of according to the product labeling and the empty compressed gas cylinders are returned for re-use.

(3) Pesticide containers labeled as returnable, and which are returned to the manufacturer for refill.

(4) Pesticides and pesticide containers which are intended solely for home and garden use, provided they are securely wrapped in several layers of paper and disposed of singly during routine municipal solid waste disposal.

#### 16.03 PESTICIDE STORAGE

(a) Pesticides shall be stored in such a manner so as to prevent the contamination of food, feed and/or water.

(b) Pesticides shall be stored out of the reach of children and so as not to present a public nuisance.

(c) Until such time as the Secretary shall, along with the Pesticide Advisory Committee and any other person as the Secretary may consult, promulgate more specific rules and regulations covering the storage of pesticides and pesticide containers not provided in 16.01 and 16.03 of this Section, the recommended procedures for the storage of pesticides and containers detailed in Regulations promulgated by the Administrator, United States Environmental Protection Agency shall be the recommended procedures for Delaware. The Secretary shall make copies of these procedures available to any person needing guidance for proper storage of pesticides or pesticide containers.

### SECTION 17 PESTICIDE ADVISORY COMMITTEE

#### 17.01 EXPENSES OF MEMBERS NOT FROM GOVERNMENT DEPARTMENTS

Pesticide Advisory Committee members not from governmental departments shall submit expense accounts to the Secretary. Reimbursements made to members not from governmental departments shall be made for the actual cost of lodging and meals (out of state) and for transportation according to the regulations applicable to Department employees.

### SECTION 18 APPLICATION AND EQUIPMENT

18.01 No person shall apply, dispense or use any pesticide in or through any equipment or application apparatus unless such equipment or application apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material; all pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall not leak pesticide; all spray distribution systems shall not leak pesticides and any pumps which such systems may have shall not leak pesticides and any pumps which such systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of discharge; and all pesticide application equipment shall be equipped with whatever cut-off valves and discharge orifices may be necessary to enable the operator to pass over non-target areas without

contaminating them.

18.02 All hoses, pumps or other equipment used to fill pesticide handling, storage or application equipment shall be fitted with an effective valve or device to prevent backflow of pesticides or pesticide use-dilutions into water supply systems, streams, lakes, other sources of water or other materials. Provided, however, such backflow devices or valves are not required for separate water storage tanks used to fill agricultural pesticide application equipment by gravity systems when the fill spout, tube or pipe is not allowed to contact or fall below the water level of the application equipment being filled and no other possible means of establishing a backsiphon or backflow exists.

### **SECTION 19 ANTIFOULING PAINT RESTRICTIONS**

19.01 For the purposes of this section, the following definitions shall apply:

(a) The term "acceptable release rate" means a measured release rate not to exceed 4.0 micrograms per square centimeter per day and as further defined in the Organotin Anti-fouling Paint Control Act of 1988, (Pub. L. - 100-333).

(b) The term "antifouling paint" means a coating, paint, or treatment that is applied to a vessel or any fishing gear used to catch shellfish or finfish to control fresh water or marine fouling organisms.

(c) The term "vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.

(d) The term "commercial boat yard" means any facility which engages for hire in the construction, storage, maintenance, repair, or refurbishing of vessels or any licensed independent marine maintenance contractor who engages in such activities.

(e) The term "organotin" means any compound of tin used as a biocide in an anti-fouling paint.

(f) The term "retail" means the transfer of title to tangible personal property other than for resale, after manufacturing or processing.

19.02 Except as otherwise provided in this Section, no person shall distribute, possess, sell, or offer for sale, apply or offer for use or application any marine anti-fouling paint containing organotin.

19.03 No person may sell or deliver to, or purchase or receive from, another person at retail any substance containing organotin for the purpose of adding such substances to paint to create an anti-fouling paint.

19.04 A person may distribute or sell a marine anti-fouling paint containing organotin with an acceptable release rate to the owner or agent of a commercial boat yard. The owner or agent of a commercial boat yard may possess and apply or purchase for application an anti-fouling paint containing organotin with an acceptable release rate, however, such paint may be applied only within a commercial boat yard and only to vessels which exceed twenty-five meters (82.02 feet) in length or which have aluminum hulls.

19.05 A person may distribute, sell, or apply a marine anti-fouling paint containing organotin having an acceptable release rate, if the paint is distributed or sold in a spray can in a quantity of sixteen ounces avoirdupois or less and is commonly referred to as outboard or lower unit paint.

### **SECTION 20 RESTRICTED USE PESTICIDE DEALER PERMITS**

20.01 For the purposes of these regulations the following definitions shall apply:

(a) The term "restricted use pesticide dealer" means any person who makes available for use any restricted use pesticide, or who offers to make available for use any such pesticide. The term excludes any person who sells or distributes pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used during a pesticide application.

(b) The term "make available for use" means to distribute, sell, ship, deliver for shipment, or receive, and (having so received) deliver, for use by any person. However, the term excludes transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail dealers, acting only in those capacities.

(c) The term "dealership" means any site owned or operated by a restricted use pesticide dealer where any restricted use pesticide is made available for use, or where the dealer offers to make available for use any such pesticide.

20.02 Effective December 31, 1990, no person shall make available for use any restricted use pesticide unless that person has a valid Dealer Permit issued by the Department.

20.03 A separate Dealer Permit shall be required for each dealership owned or operated by the restricted use pesticide dealer.

20.04 Issuance of a Dealer Permit:

(a) Application for a Dealer Permit shall be made in writing to the Department on a designated form obtained from the Department.

(b) The Department shall issue a Dealer Permit to an

applicant upon payment of a fee of \$25.00 for a calendar year or any part of a calendar year.

(c) All permits shall remain in full force and effect until December 31st of each year whereupon they shall become invalid unless renewed, except that a permit for which a renewal application has been submitted to the Department by November 30th shall remain in full force and effect until such time as the Department gives written notice to the permit holder of renewal or denial.

20.05 A restricted use pesticide dealer is responsible for the acts of his employees in the solicitation and sale of all pesticides and all claims and recommendations for the use of pesticides.

20.06 A dealer permit is not transferable.

20.07 The Department, in addition to any penalties authorized by the LAW, may deny, suspend, or revoke the application or permit of a restricted use pesticide dealer if he has failed to comply with any provisions of the LAW or any rules and regulations promulgated thereunder.

## **SECTION 21 INSTITUTIONAL AND MAINTENANCE PESTICIDE USE RESTRICTIONS**

21.01 For the purposes of these regulations, the following definitions shall apply:

(a) The term "general use pesticide" shall include all pesticides as defined by 3 **Del.C.**, **DELAWARE PESTICIDE LAW**, §1202 (27), with the following exceptions:

(1) Any Restricted Use Pesticides, as defined by 3 **Del.C.** §1202 (30);

(2) Any State Restricted Use Pesticide, as defined by 3 **Del.C.**, §1202 (31);

(3) Any anti-microbial pesticide used for controlling bacteria, viruses, or other microorganisms.

(b) The term "school" shall mean a completed structure utilized as a public or private school, grades kindergarten through post graduate.

(c) The term "apartment building" shall mean a building that contains four or more dwelling units that are rented primarily for nontransient, permanent dwelling purposes, with rental paid by intervals of one week or longer.

(d) The term "nursing home" shall have the same meaning assigned by 16 **Del.C.**, Chapter 11, §1101.

(e) The term "hospital" shall have the same meaning assigned by 16 **Del.C.**, Chapter 10, §1001 (1).

(f) The term "child day-care center" shall mean a facility, other than a school as defined elsewhere herein, which provides care, education, protection, supervision and guidance on a regular basis for children. Services are provided for part of the 24 hour day, unattended by parent or

guardian, and for compensation. Provided, nevertheless, that "child day-care center" shall not include any such facility which is operated within a private home.

(g) The term "private home" shall mean a non-public residence such as a house, duplex, townhouse, apartment, or mobile home where the provider of child day-care services lives and has control over the furnishings and use of space. An individual unit in public housing and university housing complexes is considered a private home.

(h) The term "Institutional and Maintenance applicator" means any person who:

(1) Owns, operates or maintains a school, apartment building, nursing home, hospital or child day-care center, or is an employee of a school, apartment building, nursing home, hospital, or child day-care center; and who

(2) Applies general use pesticides inside the school, apartment building, nursing home, hospital, or child day-care center.

21.02 A general use pesticide applicator must be certified pursuant to Section 8 of these regulations, unless, such person possesses a valid certification in subcategory 7.07 (e), Institutional and Maintenance Pest Control.

21.03 A person certified as a general maintenance applicator may not engage in the business of pest control outside the scope of the employment for which they have been certified, unless the person becomes certified as otherwise provided by the LAW.

21.04 An owner or manager of a building that is a school, apartment building, nursing home, hospital, or child day-care center may obtain general maintenance pest control services for the building from a person only by:

(a) Contracting with a business licensed pursuant to 3 **Del.C.**, Chapter 12, §1206;

(b) Having the services performed by a general maintenance applicator with a valid certification in Section 7.07(a) or 7.07(e) of these regulations.

21.05 Records of "general use pesticide" applications made in a school, apartment building, nursing home, hospital, or child day-care center shall be kept in accordance with Section 14.01.

## **SECTION 22 RESTRICTIONS ON THE USE OF PESTICIDES FOR THE CONTROL OF SUBTERRANEAN TERMITES**

22.01 This section applies to commercial pesticide applications for the control of subterranean termites. It is directed primarily towards soil treatment and does not include other treatments applied as dusts, aerosols or fumigants, n Nor does it address application technology such

as biological control agents or baits.

22.02 For the purpose of this section, the following definition shall apply:

(a) "Termiticide" shall mean a pesticide registered pursuant to the LAW and which is intended for preventing, destroying, repelling or mitigating termites.

(b) "Continuous chemical barrier" shall mean the application of a termiticide such that the resultant soil residue meets or exceeds the soil residue requirements currently recommended by the Association of Structural Pest Control Regulatory Officials (ASPCRO) and as those requirements may be amended in the future. Soil residue sampling shall be conducted in conformity with the current ASPCRO soil sampling protocol and as it may be amended in the future.

22.03 Termiticides shall be used to establish a continuous chemical barrier in all applicable areas prescribed by the label. However, where the termiticide is applied such that a continuous barrier is not achieved, or where the termiticide is not applied to all applicable areas prescribed by the termiticide label, the conditions outlined in both (a) and (b) below must be satisfied:

(a) One or more of the following situations is present:

(1) Specific environmental conditions are such that application of the termiticide at the full labeled concentration and volume may result in adverse environmental impact. Examples may include the presence of a well, a footing drain that empties into a water body, a high water table, etc.;

(2) Structural barriers or soil conditions or types exist that prohibit application of the labeled volume or limit access to applicable soil treatment areas;

(3) ~~Construction elements are present that would or could encourage a reduced volume, e.g., poured walls vs. hollow block walls;~~

Specific customer request, or ~~at~~ the recommendation of the certified applicator.

(b) Within fourteen (14) days following the termiticide application, the following information ~~shall be~~ is furnished in writing to the customer or ~~to the appropriate person~~ customer's agent:

(1) A full disclosure explaining the difference between full and partial applications. The disclosure shall include the termite control strategies being utilized and the reasons for those alternatives;

(2) The pesticide used, including brand name and EPA registration number;

(3) The actual volume of the termiticide applied;

(4) Specific information of sufficient detail to distinguish where treatment actually occurred, including a diagram of the structure identifying treated areas, ~~well locations~~ known well heads, and sites of visible termite activity;

(5) A clear, concise statement indicating whether the application has any guarantee or warranty, and the terms of the guarantee or warranty, e.g., retreatment (full or partial), damage repair and retreatment, or no warranty.

This information shall be furnished to the customer or customer's agent on a form approved by the Department. The applicator shall for a period of two years from the date of application, keep and maintain all completed copies of disclosure documents. Such records shall be made available to authorized employees of the Department upon request.

22.04 Any application of termiticides, pursuant to this section, must be conducted with a commercial applicator at the site of application. This commercial applicator must be certified in category 7.07(b), Wood Destroying Pest Control.

22.05 The disclosure information and written notification specified in paragraph 22.03(b) are not required of termiticide treatments to utility poles, fence posts or tree stumps.

22.06 Any pre-construction termiticide application shall be applied in accordance with the termiticide product labeling and the U.S. Environmental Protection Agency, Pesticide Regulations (PR) Notice 96-7. For pre-construction treatments, PR Notice 96-7 supercedes this Section, and no pre-construction treatment shall be applied at a lower dosage and/or concentration than specified on the label, for applications prior to installation of the finished grade.

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## DEPARTMENT OF EDUCATION

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

**\* PLEASE NOTE: THE FOLLOWING PROPOSED REGULATORY CHANGES WILL BE CONSIDERED AT THE MONTHLY MEETING OF THE STATE BOARD OF EDUCATION ON THURSDAY, APRIL 21, 2000 AT 2:00 P.M.**

### EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

#### SUPPORTIVE INSTRUCTION (HOMEBOUND)

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 Supportive Instruction (Homebound) pages A-11 to A-13 in the *Handbook for K-12 Education*. The regulation has been amended to update the language and to clarify when services can begin for pregnant students who qualify. Items (3) through (7) have been removed because (3), (4) and (5) are local district decisions and (6) and (7) are in the *Del. C.*

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

The amended regulation will provide additional academic support to homebound students.

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

The amended regulation addresses supportive instructional services, which could be interpreted as a type of equity issue.

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

The amended regulation addresses supportive instruction, not health and safety issues.

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

The amended regulation addresses supportive instruction, not student's rights.

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

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

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

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

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

The amended regulation will be consistent with and not an impediment to the implementation of other state

educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

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

The regulation is needed to insure that these services are available and amending the regulation is needed for clarity and focus.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

There is no additional cost to the state or to the local school boards for compliance with this amended regulation.

**I. E. 2. SUPPORTIVE INSTRUCTION (HOMEBOUND)****a. Definition**

~~Supportive instruction is an alternative educational program provided at home, hospital or related site. For non-handicapped students hospitalized or at home for a sudden illness or accident considered to be of a temporary nature, procedures for eligibility shall be limited to medical certification that the student cannot attend school. For handicapped students, services shall be provided according to the Administrative Manual: Programs for Exceptional Children, and shall be processed under the district's special education authority.~~

**b. Eligibility**

~~To be eligible for supportive instruction as a non-handicapped student, the student shall be enrolled in the local school district and:~~

~~(1) if absence is due to a medical condition, be certified by a physician's statement where absence will be for two weeks or longer; or~~

~~(2) if absence is necessary due to severe adjustment problems, be certified by a staff conference, including a psychologist or psychiatrist; or~~

~~(3) if for transitional in-school program, be certified by staff conference.~~

~~e. Pregnancy complicated by illness or other abnormal conditions as certified by a physician may be considered a valid reason for supportive instruction; however, a normal pregnancy is considered a condition for which other State supported instructional programs administered by local districts should be adequate.~~

**d. Implementation**

~~Supportive instruction for non-handicapped students will begin as soon as administratively feasible and may continue upon return to school only in those exceptional cases where it is determined that the student needs a transitional program to guarantee a successful return to the school program. Such unusual cases shall be referred to the Department of Public Instruction, for approval.~~

~~(1) The following weekly schedule of hours of instruction will be supported by State funds to the extent that~~

appropriations allow:

Out of School

Grades K-5 Minimum 3 hours Maximum 5

hours

Grades 6-8 Minimum 5 hours Maximum 7

hours

Grades 9-12 Minimum 5 hours Maximum 10

hours

In School

Grades K-12 No minimum Maximum 3

hours

(2) State funded instruction shall not exceed three visits per week. Summer instruction is permitted for a student who, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school program the following September.

(3) A home-to-school telephone instructional system may be provided when economically feasible and educationally advisable as determined by the local district administration. Negotiations for installation, removal, and costs shall be between the telephone company and the local school district. (Payable from allocations for homebound instruction.) When a home-to-school telephone instructional system is provided, the coordinating teacher at the elementary level, or, in the case of departmentalized instruction, the teacher of each basic subject area may be authorized to visit the home for one hour per week to give assistance.

(4) The student's curriculum shall be followed to the maximum extent possible.

(5) When a student is in a departmentalized program, more than one teacher may be assigned.

(6) Teachers providing home, hospital, and/or supportive instruction for a student shall be paid no less than the minimum hourly rate as set by the Department of Public Instruction.

(7) A specific amount is allocated to each district for operation of this program, but nothing in these regulations shall be construed to prevent a local school district from providing additional hours of instruction, or paying a higher hourly rate for teachers' services so long as the extension of services is supported by local or Division III funds. Summer instruction may be provided with State funds, subject to the availability of funds and approval by the Department of Public Instruction. Funds for teacher travel in the provision of home, hospital, or supportive instruction are to be provided by the local school district subject to reimbursement annually upon request to the Department of Public Instruction.

#### SUPPORTIVE INSTRUCTION (HOMEBOUND)

1.0 Definition: Supportive instruction is an alternative educational program provided at home, in a hospital or at a related site for students hospitalized or at home for a sudden illness or accident considered to be of a temporary nature.

1.1 Procedures for eligibility shall be limited to medical certification that the student cannot attend school.

1.2 For students with disabilities, services shall be provided according to the *Administrative Manual: Programs for Special Education Services*, and shall be processed under the district's special education authority.

2.0 Eligibility: To be eligible for supportive instruction as a non-handicapped student, the student shall be enrolled in the local school district and shall be:

2.1 Certified by a physician's statement if the absence is due to a medical condition and will be for two weeks or longer.

2.2 Certified through a staff conference that includes a psychologist or psychiatrist if the absence is due to severe adjustment problems.

2.3 Certified through a staff conference if the absence is for transitional in-school programs.

2.4 Pregnancy complicated by illness or other abnormal conditions as certified by a physician may be considered a valid reason for supportive instruction; however, a normal pregnancy is considered a condition for which other State supported instructional programs administered by local districts should be adequate.

2.4.1 Students who remain in the school and have a physician's note on file may be eligible for homebound during the required post partum period.

2.4.1.1 Homebound instruction may begin as soon as the physician's statement is received.

3.0 Implementation: Supportive instruction for students will begin as soon as administratively feasible and may continue upon return to school only in those exceptional cases where it is determined that the student needs a transitional program to guarantee a successful return to the school program.

3.1 The following weekly schedule of hours of instruction will be supported by state funds to the extent the appropriations allow.

3.1.1 Out of School: Grades K-5 minimum 3 hours, maximum 5, Grades 6-8 minimum 5 hours, maximum 7, Grades 9-12 minimum 5 hours, maximum 10.

3.1.2 In School: Grades K-12 maximum 3 hours.

3.2 Summer instruction is permitted for a student who, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school program

the following September.

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**EDUCATIONAL IMPACT ANALYSIS PURSUANT  
TO 14 DEL.C., SECTION 122(d)**

**EDUCATIONAL PROGRAMS FOR STUDENTS  
WITH LIMITED ENGLISH PROFICIENCY**

**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 regulations Educational Programs for Students with Limited English Proficiency, Pages A-16 – A-18 in the *Handbook for K-12 Education*. The amended regulations are substantially changed and provide specific directions to local school districts as to the services that they must provide to students with limited English proficiency. The regulations define a student with limited English proficiency, provide an identification procedure, define a program for these students and set forth a reclassification procedure. The regulations also provide directions for monitoring student progress, program evaluation, reports for DOE and communication with language minority parents or guardians. Finally the regulations state that language minority students are to be a part of the Delaware Student Testing Program (DSTP).

**C. IMPACT CRITERIA**

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

The amended regulations are designed to assist limited English proficient students in improving their English skills and improving their achievement in all content areas.

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

The amended regulations are designed to provide limited English proficient students with an equal opportunity to an education.

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

The amended regulations address educational opportunity, not health and safety issues.

4. Will the amended regulations help to ensure that limited English proficient students' legal rights are respected?

The amended regulations will insure that legal rights of students with limited English proficiency are protected.

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

The amended regulations set the parameters around required services for limited English proficient students and still preserve the necessary authority and flexibility at the local board and school level.

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

The amended regulations do not require additional reporting but may require additional administrative decisions at the local board and school levels pertaining to instruction for students with limited English proficiency.

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 amended regulations 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 regulations 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 regulations?

The Office of Civil Rights requires that the Department of Education make such regulations.

10. What is the cost to the state and to the local school boards of compliance with the regulations?

There is an additional cost to local school boards for compliance with the regulations and funds are made available through the Academic Excellence Units and Extra Time for Students grants. The statewide English language proficiency assessment will be purchased by the Department of Education.

**I.F.3. LIMITED ENGLISH PROFICIENCY PROGRAMS  
(BILINGUAL EDUCATION)**

~~a. The State Board of Education believes in the following program goals for students of limited English proficiency (LEP):~~

~~(1) the ensurance of equal educational opportunity to every eligible student of limited English proficiency;~~

~~(2) the enabling of limited English proficient~~

students to continue to develop academically while achieving competence in the English language in order to facilitate their successful integration into regular classrooms and to allow them to meet grade promotion and graduation standards.

b. Eligibility

Eligibility for instructional programs designed for limited English proficient students should be based on the following criteria:

(1) A student who by reason of foreign birth or ancestry speaks a language other than English, or who has been identified by a valid English language assessment instrument as a pupil of limited English proficiency, is eligible to receive a program of bilingual education or English as a Second Language.

(2) The parents or legal guardians of limited English proficient children identified for enrollment in such programs should be informed of the reasons for their child's selection, the native language used in the program, and the alternative educational programs in the local district.

(3) Parental involvement in their children's instructional program should be encouraged, including the option of deciding whether or not to enroll their children in such programs.

e. Instructional Programs

(1) Instructional programs for pupils of limited English proficiency should not exceed three years, which period may be extended by the State Superintendent with respect to individual pupils, upon application by the appropriate school authorities.

(2) Where appropriate and practicable, transitional bilingual education programs may be provided to meet the needs of qualified pupils in order to facilitate their future integration into the regular school curriculum. Where feasible, the bilingual education program may be provided on a cooperative, multi-school, multi-district or regional basis.

(3) Limited English Proficiency students bring to their schools and communities languages and cultural heritages that enrich the curriculum and school setting. Therefore, it is important to provide all children with opportunities for gaining an understanding of their own culture as well as the cultures of others.

(4) Bilingual programs should be designed to:

(a) provide content instruction for children of limited English proficiency using the child's native language and English;

(b) provide native language instruction; and

(c) provide English as a Second Language (ESL) instruction.

(5) The State Board of Education recognizes ESL-only programs as currently the best solution in answering the needs of school districts with small numbers

of children from nations with uncommon languages or with small numbers of children speaking the same non-English language. ESL instruction should include the four language skills areas: listening/comprehension, speaking, reading, and writing and assist in the learning of content areas through structured monolingual instruction in English.

(6) Instruction in content area subjects (mathematics, science, and social studies) should be equivalent in scope to the curriculum required by the Department of Public Instruction and the local school district. Pupils taught in their native language are expected to progress in the content areas taught at the same rate as their English-speaking peers are expected to progress when taught in English.

(State Board Approved February 1987)

### Educational Programs for Students with Limited English Proficiency

1.0 General. Each district shall identify upon enrollment every student with limited English proficiency, and each district shall make available to every student who has been determined to be eligible for limited English proficiency services a program of instruction until such time as the student becomes fully proficient in English in accordance with 5.0 below.

2.0 Student with Limited English Proficiency Defined. For the purpose of this section, a student with limited English proficiency is one who, by reason of foreign birth or ancestry, speaks a language other than English, and either comprehends, speaks, reads or writes little or no English, or who has been identified as a pupil of limited English proficiency by a valid English language proficiency assessment approved by the Department of Education for use statewide.

3.0 Determination of Eligibility for Limited English Proficiency Programs. Each school district shall implement a system for the timely and reliable identification of students with limited English proficiency and determination of such students' eligibility for limited English proficiency programs. This system shall include a home language survey and an assessment of English language proficiency.

3.1 A home language survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent or guardian the student's first acquired language and the language(s) spoken in the student's home.

3.2 Any student for whom a language other than English is reported on the home language survey as the student's first acquired language or as a language used in the student's home shall be administered an English language proficiency assessment. Such assessment shall be conducted



in conformance with the following standards:

3.2.1 the assessment shall be based on a standardized instrument, validated for this purpose and approved by the Department of Education for use statewide;

3.2.2 the assessment shall measure English proficiency in reading, writing, speaking and oral comprehension, except that reading and writing proficiency will generally not be assessed for students below grade 2;

3.2.3 the assessment shall be conducted by qualified personnel trained in the administration of the assessment instrument;

3.2.4 the assessment shall be conducted as soon as practicable, but not later than 25 school days after enrollment.

3.3 Any student who achieves a score on the English language proficiency assessment that is lower than the eligibility cut-off score in reading, writing, or oral English established by the Department of Education shall be entitled to a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

3.4 For each student enrolled in the 2000-2001 school year, each district shall conduct a home language survey, to the extent practicable, of every enrolled student as in 3.1 and, as applicable pursuant to 3.2, an English language proficiency assessment in accordance with 3.2.1 through 3.2.3. Beginning with the 2000-2001 school year, each district shall conduct such a home language survey, and as appropriate, an English language proficiency assessment of every new student at the time of enrollment in a school.

4.0 Specially Designed Program. Each enrolled student who is eligible for services pursuant to 3.3 above, shall be provided with a program of instruction for students with limited English proficiency.

4.1 A program of instruction for students with limited English proficiency shall include: formal instruction in English language development; and instruction in academic subjects which is designed to provide students with limited English proficiency with access to the District's curriculum in a manner comparable to that provided to other students.

4.2 In selecting program(s), each district may choose from a variety of programs that are research-based and best practice in the education of limited English proficient students. Beginning with the 2001-2002 school year, programs of instruction for students with limited English proficiency are to be approved by the Department of Education. Such programs include bilingual programs as well as programs that are delivered exclusively in English.

4.2.1 Bilingual programs shall be designed to include:

4.2.1.1 standards-based instruction for students with limited English proficiency, using the student's native language and English;

4.2.1.2 instruction in reading and writing in the student's native language; and

4.2.1.3 English as a second language instruction.

4.2.2 Programs delivered exclusively in English shall be designed to include:

4.2.2.1 standards-based instruction for students with limited English proficiency, using English in a manner that takes into account the student's level of English proficiency;

4.2.2.2 instruction which builds on the language skills and academic subject knowledge the student has acquired in his or her native language; and

4.2.2.3 English as a second language instruction.

4.2.3 Programs shall be implemented consistent with the goals of prompt acquisition of full English proficiency and progress in academic subject areas that is at a rate comparable to that of students who are not students with limited English proficiency.

4.2.4 Programs shall include instruction in academic subjects which is equivalent in scope to the instruction that is provided to students who are not limited in English proficiency.

4.2.5 Instruction shall be delivered by teachers who meet Department of Education certification requirements and who are trained in the delivery of instruction to students with limited English proficiency.

4.2.6 Where a bilingual program is offered, the parent or guardian of an eligible student may opt for the eligible student to be served in a program for students with limited English proficiency carried out exclusively in English.

5.0 Reclassification Procedures. At least once each school year, each eligible student shall be considered for reclassification as a fully English proficient student who no longer needs a program for students with limited English proficiency.

5.1 Reclassification shall include an assessment of English proficiency in accordance with the standards in 3.2.1 -3.2.4 above.

5.2 Any student who achieves a score on the English language proficiency assessment which is lower than the eligibility cut-off score in reading, writing, or oral English established by the Department of Education shall be regarded as a student with limited English proficiency and shall continue to be eligible for a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

5.3 Any student who achieves a score on the English language proficiency assessment at or above the eligibility cut-off score in reading, writing, and oral English established

by the Department of Education shall be reclassified as fully English proficient and considered ineligible for a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

5.4 Before removing any student from a program for students with limited English proficiency, the district shall assess the student's level of performance in academic subject areas. Any reclassified student found to have incurred academic deficits while in the program for students with limited English proficiency shall be provided with supplemental instructional services in the relevant subject areas.

6.0 Monitoring Performance of Ineligible and Reclassified Students. For at least two school years following the determination of ineligibility or reclassification, a district shall monitor the academic performance of each student who has been: assessed pursuant to 3.2 above and found ineligible for a program; or reclassified as fully English proficient pursuant to 5.3 above. Students who experience academic performance problems during this period shall, based on further assessment, be considered for entry/reentry into a program of instruction for students with limited English proficiency and shall be provided with supplemental instructional services as necessary and appropriate.

7.0 Program Evaluation. Each district shall prepare an annual evaluation of its program(s) for students with limited English proficiency. Such evaluation shall be available for review upon request and shall be submitted to the Department of Education beginning with the 2001-2002 school year. At a minimum, this program evaluation shall:

7.1 consider the validity of the assessment processes carried out pursuant to 3.2 and 3.3, and 5.1, 5.2, 5.3, and 5.4 above, in terms of predicting student success in the regular instructional program;

7.2 consider the effectiveness of each program of instruction for students with limited English proficiency in achieving the goals and standards in 4.2. above; and

7.3 describe any modifications that have been proposed or implemented, based on the evaluation data.

8.0 Student Information Reports. Each district shall provide the Department of Education annually with the language background, the current English proficiency level of each LEP student enrolled in the district, and the type of program in which the LEP student receives services, and related information. Such reporting shall take place in a manner prescribed by the Department of Education. A district shall provide such other information as the Department of Education may request, in order to assure adherence to this regulation.

9.0 Communications with Language Minority Parents/Guardians. Each district shall ensure that communications with parents/guardians, including notices of eligibility for a program for students with limited English proficiency, notices about the student's educational performance and progress in such programs, and school information that is made available to other parents/guardians, are provided to each language minority parent/guardian in a language the parent/guardian can understand to the extent practicable.

10.0 Accountability. Students with limited English proficiency and students reclassified as fully English proficient shall be included in the Delaware Student Testing Program (DSTP). Alternative assessment measures may be used as provided in Department of Education guidelines, including the *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*, as the same may, from time to time, be amended hereafter.

10.1 Differential analysis of the results of the DSTP and any alternative assessment measures shall be conducted on the performance of students with limited English proficiency and students reclassified as fully English proficient. Such data shall be made available with other accountability data for each district and the state as a whole.

10.2 The Department of Education and each district shall ensure that consequences and benefits under Delaware's system of statewide accountability are dispensed in a manner that is equitable to students with limited English proficiency and students reclassified as fully English proficient, based on assessments which accurately measure the student's performance in the area being assessed and are reflective of the curriculum which was delivered to the student.

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#### EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

#### **CERTIFICATION FOR SPEECH LANGUAGE PATHOLOGIST**

A. TYPE OF REGULATORY ACTION REQUESTED  
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary seeks the consent of the State Board of Education to amend the regulation Certification for Speech Language Pathologist, page 23, Section 5 of Specific Requirements in the *Manual for Certification of Professional Public School Personnel*. The amendment would remove the requirement of nine (9) credit hours of course work presently required. The content of this course work is covered in the content of the Master's Degree

program that a Speech Language Pathologist is required to complete in order to obtain a state license. The nine hours have been an impediment for districts in the hiring process and the state license requirements already assure that the person has the required knowledge.

### C. IMPACT CRITERIA

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

The amended regulation addresses certification requirements, not student achievement.

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

The amended regulation addresses certification requirements, not equity issues.

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

The amended regulation addresses certification requirements, not health and safety issues.

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

The amended regulation addresses certification requirements, not student's legal rights.

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

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

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

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

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

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

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

There is no less burdensome method for addressing the purpose of the regulation?

10. What is the cost to the state and to the local school boards of compliance with the regulation?

There is no additional cost to the state or to the local school boards for compliance with this amended regulation.

~~DELAWARE STATE DEPARTMENT OF PUBLIC  
INSTRUCTION CERTIFICATION OF PROFESSIONAL  
PUBLIC SCHOOL PERSONNEL~~

~~SPEECH LANGUAGE PATHOLOGIST~~

~~I. Requirements for the Standard Certificate~~

~~A. Licensed Speech/Hearing Pathologist in the State of Delaware; and~~

~~B. Completion of a Master's degree program in the area of speech and hearing pathology; and~~

~~C. Nine semester hours covering the following areas:~~

~~1. Introduction/Survey of Exceptional Children~~

~~2. Assessment/Prescription/IEP Development~~

~~3. Applied Behavior Analysis~~

~~II. Requirements for the Limited Standard Certificate~~

~~Issued for a period of three years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as a Speech Language Pathologist, to allow for the completion of the requirements for the Standard certificate under Section I. Above.~~

~~A. Requirements as listed in I. A. and B.~~

~~CERTIFICATES ISSUED FOR THIS POSITION~~

~~Standard See above~~

~~Limited Standard See above~~

~~Temporary None~~

~~Speech Language Pathologist~~

~~1.0 Requirements for the Standard Certificate~~

~~1.1 Licensed Speech/Hearing Pathologist in the State of Delaware; and~~

~~1.2 Completion of a Master's degree program in the area of speech and hearing pathology.~~

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

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

IN THE MATTER OF:

REVISION OF REGULATIONS  
CONTAINED IN DSSM 4006.1, 8030.1,  
9059, 11003.9.1, and 14710

#### PUBLIC NOTICE

Delaware Health and Social Services is proposing changes to regulations contained in the Division of Social Services Manual Sections 4006.1, 8030.1, 9059, 11003.9.1, and 14710. These changes are initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512. These changes are initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

Written materials and suggestions by interested persons for related to this proposal must be forwarded by April 30, 2000, to the Director, Division of Social Services, P. O. Box 906, New Castle, DE 19720.

#### SUMMARY OF REGULATIONS:

Excludes the earnings of temporary census workers during the period of April 1, 2000 through December 31, 2000 ofr DABC (TANF), General Assistance, Refugee Assistance, Food Stamps, Child Care and Medicaid.

#### NATURE OF PROPOSED REVISIONS:

(revisions underlined):

#### DSSM 4006.1 Excluded Income

The following kinds of income are disregarded in determining financial eligibility and grant amounts in ABC and GA:

- The value of USDA donated foods.
- The value of food stamps.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.

- A one-time bonus payment of \$50.00 will be paid from A BETTER CHANCE funds to teens who graduate from high school by age 19. This bonus will be paid directly to the high school graduate. Disregard as income and resource the bonus payment, for ABC and Food Stamp purposes.
- A cash payment made to the ABC unit responsible for household bills by a non-unit member for his or her share of the common household expenses.
- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:
  1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.
  2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:
    - a. Borrower's acknowledgement of obligation to repay; or
    - b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or
    - c. A written statement detailing borrower's plans to repay the loan when future anticipated income is received.
- Money received in the form of a non-recurring lump sum payment is to be counted as a resource in the month received unless specifically excluded from consideration as a resource by other Federal law or regulations.
- Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Incentive payments or reimbursement for training-related expenses derived from participation in Institutional and Work Experience Training or special work projects under the Work Incentive Program (First Step).
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.
- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked is equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.

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

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

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

- Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I. of P.L. 100-383.
- Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100-383.
- Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E. D. N. Y.).
- Payments of supportive services or reimbursement of out-of pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.
- Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203.
- Payments of Experimental Housing Allowance Program made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended.
- Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of P.L. 94-114.
- Housing subsidies provided under Section 8 of the U.S. Housing Act.
- Benefits paid to eligible households under the

Home Energy Assistance Act of 1980.

- Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:
  - Kingswood Community Center
  - Peoples' Settlement Association
  - Catholic Social Services, Inc.
  - Neighborhood House, Inc.
  - Community Housing, Inc.
  - Jewish Family Service of Delaware
  - Salvation Army
  - Community Action (Sussex County)
- Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
- Earned income tax credits (EITC).
- Income received from the Census Bureau April 01, 2000 through December 31, 2000.

#### **DSSM 8030.1 Excluded Income**

The following kinds of income are disregarded in determining financial eligibility and grant amounts in RCA:

- The value of USDA donated foods.
- The value of food stamps.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.

- Earnings received by children under the Summer Youth Program of the Job Training Partnership Act of 1982 for a period not to exceed six (6) months.
- A cash payment made to the RCA unit responsible for household bills by a non-unit member for his or her share of the common household expenses.
- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:
  1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.
  2. If the loan is obtained from an individual

or establishment not normally engaged in the business of making loans, obtain one of the following:

a. Borrower's acknowledgement of obligation to repay; or

b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or

c. A written statement detailing borrower's plans to repay the loan when future anticipated income is received.

- Income received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Incentive payments or reimbursement for training-related expenses derived from participation in Institutional and Work Experience Training or special work projects under the Work Incentive Program (First Step).
- Benefits received under the nutrition program for the elderly or the Women, Infants, and Children Nutritional Program.
- All payments received under the VISTA program unless the value of the payment when adjusted to reflect the number of hours worked is equal to or greater than the minimum wage currently in effect under the Fair Labor Standards Act of 1938. In that case the income is treated as earned income and disregards applicable to the category of assistance are deducted from it.
- Payments distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, P.L. 93-134, or P.L. 94-540.
- Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100-707.

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

"Major Disaster" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

- Payments of supportive services or reimbursement of out-of pocket expenses made to individual

volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in services corps of retired executives and active corps of executives, and any other program under Title II and III pursuant to Section 418 of P.L. 93-113.

- Housing subsidies provided under Section 8 of the U.S. Housing Act.
- Benefits paid to eligible households under the Home Energy Assistance Act of 1980.
- Home energy assistance based on need, such as, but not limited to home energy assistance from the following agencies:
  - Kingswood Community Center
  - Peoples' Settlement Association
  - Catholic Social Services, Inc.
  - Neighborhood House, Inc.
  - Community Housing, Inc.
  - Jewish Family Service of Delaware
  - Salvation Army
  - Community Action (Sussex County)
- Assistance from other agencies and organizations provided that no duplication exists between such other agency and that provided by DSS. To assure that non-duplication exists, determine that the aid granted by another agency is for a different purpose. For example, vocational rehabilitation provides cash allowances (usually \$25 per week) to reimburse clients for costs such as transportation related to their participation in a training program.
- Earned income tax credits (EITC).
- Income of an individual acting as a refugee's sponsor.
- Income received from the Census Bureau from April 1, 2000 through December 31, 2000.

### DSSM 9059 Income Exclusions

[273.9(c)]

Only the following items will be excluded from household income and no other income will be excluded:

A. Any gain or benefit which is not in the form of money payable directly to the household.

This includes in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and includes meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household.

Payments made to a third party on behalf of the household are included or excluded as income as follows:

1. Department of Housing and Urban

Development (HUD) vendor payments. Rent or mortgage payments made to landlords or mortgages by HUD are excluded.

2. Educational assistance vendor payments. Educational assistance provided to a third party on behalf of the household for living expenses shall be treated the same as educational assistance directly to the household.

3. Vendor payments that are reimbursements. Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household as described in DSSM 9059 E .

4. Other third party payments. Other third party payments shall be handled as follows: Moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If the person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. The following are examples of third party payments:

a) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

b) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

c) A household receives court-ordered monthly support payments in the amount of \$400. Later, \$200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income.

Money deducted or diverted from a court-ordered support or alimony payment to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household.

Examples of court-ordered payments:

a) A court awards support payments in the amount of \$400 a month and in addition orders \$200 to be paid directly to a bank for repayment of a loan. The \$400 payment is counted as income and the \$200 payment is excluded from income.

b) A civil service retiree is entitled to a

retirement payment of \$800 a month. However, \$400 is diverted to his ex-wife by court order for child support. This is similar to a wage garnishment. Since the retirement benefits are legally obligated and otherwise payable to the retiree's household, the \$800 is budgeted for food stamp purposes.

Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

5. Payments made by the Division or by another government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.

6. All or part of a public assistance grant which would normally be provided in a money payment but which is diverted to a protective payee will be considered income to the household.

7. Emergency Assistance payments will be excluded if they are made directly to a third party for a household expense. This rule applies even if the household has the option of receiving a direct cash payment.

8. Under some pay/benefit plans, an employee may choose to have the employer withhold from the employee's earnings money to pay certain expenses such as child care and medical expenses as a vendor payment to a third party when the expenses are incurred. The amount is counted as earned income when withheld because the money is legally obligated and otherwise payable to the employee at that time.

9. Some companies make credits available to employees to use to buy health insurance, annual leave, sick leave or life insurance. The employee cannot elect to receive a cash payment and loses the credits if not used. The amount shows up on the pay stub when used. These flexible benefits are not counted as income because they are not legally obligated and otherwise payable to the employee as earnings.

Some companies give employees "points" as incentive to arrive to work on time, work so many weeks without taking leave, etc. These points have a monetary value that appears on the pay stub and the points are subject to taxes. The employee can only redeem the points for commodities or goods from a catalog provided by the employer; they cannot convert the points to cash. These points are excluded from income because the funds are not otherwise payable to the household.

B. Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30 a quarter.

C. Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits

and the like.

To be excluded, the educational assistance listed above must be:

- A. Awarded to a household member enrolled at a:
1. Recognized institution of post-secondary education,\*
  2. School for the handicapped,
  3. Vocational education program,
  4. Vocational or technical school, or
  5. Program that provides for obtaining a secondary school diploma or the equivalent;

\* Means any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance for that State. The institution must be authorized to provide an educational program beyond secondary education or provides a program of training to prepare students for gainful employment, including correspondence schools at that level.

B. Used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

1. Tuition,
2. Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved,
3. Books,
4. Supplies,
5. Transportation,
6. Miscellaneous personal expenses, other than the normal living expenses of room and board, of the student incidental to attending a school, institution, or program,
7. Dependent care (amounts excluded cannot be excluded under the income dependent care deduction under DSSM 9060 ), and
8. Origination fees and insurance premiums on educational loans.

Exclusions based on use for the allowable expenses listed above must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expenses are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income first when possible, and the remainder, if any, shall be excluded from earned educational income.

An individual's total educational income exclusions cannot exceed that individual's total educational income received.

D. All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred. Educational loans on which repayment is deferred shall be excluded according to DSSM 9059 C . A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

E. Reimbursements for past or future expenses, to the extent that they do not exceed actual expenses, and do not represent a gain or benefit to the household.

Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense will be counted as income. However, reimbursements will not be considered to exceed actual expenses, unless the provider or the household indicates that the amount is excessive.

Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

- Reimbursements or flat allowances for job or training related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded, as are maintenance funds provided to VR clients for uniforms, supplies, etc.
- Reimbursement for out-of-pocket expenses of volunteers incurred in the course of their work.
- Medical or dependent care reimbursements.
- Reimbursements received by households to pay for a service provided under Title XX of the Social Security Act.

Do not consider the following as excludable reimbursements:

- No portion of benefits provided under Title IV-A of the Social Security Act, (ABC) to the extent such benefit is attributed to an adjustment for work related or child care expenses, will be considered



excludable under this provision.

- No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this section.

F. Monies received and used for the care and maintenance of a third-party beneficiary who is not a household member.

If the intended beneficiaries of a single payment are both household and non-household members, any identifiable portion of the payment intended and used for the care and maintenance of the non-household member will be excluded. If the non-household member's portion cannot be readily identified, the payment must be evenly prorated among intended beneficiaries and the exclusion applied to the non-household member's prorata share or the amount actually used for the non-household member's care and maintenance, whichever is less.

G. The earned income of a student under age 18 who attends elementary or secondary school or classes to obtain a GED at least half-time and lives with a natural, adoptive or step parent, is under the control of a household member other than a parent, or is certified in a separate food stamp household but lives with a natural, adoptive or step parent.

This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, prorate the total earnings equally among the working members. The child's prorata share is excluded.

H. Money received in the form of a non-recurring lump sum payment.

These include, but are not limited to: income tax refunds, rebates or credits; retroactive lump sum Social Security, SSI, public assistance, railroad retirement benefits, or other payments; lump sum insurance settlement; or refunds of security deposits on rental property or utilities. These payments will be counted as resources in the month received unless specifically excluded from consideration as a resource by other federal laws.

Payments of large retroactive SSI benefit amounts are required to be made in installments for SSI recipients. These SSI retroactive lump sum installments are excluded from income.

Earned Income Tax Credit (EITC) payments, whether paid in advance or made as tax refunds, are considered to be non-recurring lump sum payments.

I. The cost of producing self-employment income (See DSSM 9074.4 ).

J. Any income that is specifically excluded by any other Federal law from consideration as income for the

purpose of determining eligibility for the Food Stamp Program.

The following laws provide such an exclusion:

#### PART A -- GENERAL

1. P. L. 79-396, Section 12(e) of the National School Lunch Act, as amended by Section 9(d) of P. L. 94-105, provides that,

The value of assistance to children under this Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

This law authorizes the School Lunch Program, the Summer Food Service Program for Children, the Commodity Distribution Program, and the Child and Adult Care Food Program. Note that the exclusion applies to assistance provided to children rather than that paid to providers.

2. P. L. 89-642, the Child Nutrition Act of 1966, Section 11(b), provides in part that,

The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

This law authorizes the Special Milk Program, the School Breakfast Program, and the Special Supplemental Food Program for women, infants, and children (WIC).

3. P. L. 91-646, Section 216, the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. Reimbursements are excluded from income and resources.

4. P. L. 93-113, the Domestic Volunteer Services Act of 1973, Titles I and II, as amended.

Payments under Title I of that Act, including payments from such Title I programs as VISTA, University Year for Action, and Urban Crime Prevention Program, to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the Title I program, except that households which were receiving an income exclusion for a Vista or other Title I Subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contraction in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income.

Payments to volunteers under Title II, including the Retired Senior Volunteer Program (RSVP), Foster Grandparents Program and Senior Companion Program, are

excluded from income.

5. P. L. 93-288, Section 312(d), the Disaster Relief Act of 1974, as amended by P. L. 100-707, Section 105(i), the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income or resources for food stamp purposes. This exclusion applies to Federal assistance provided to persons directly affected and to comparable disaster assistance provided by States, local governments, and disaster assistance organizations.

A major disaster is any natural catastrophe such as a hurricane or drought, or, regardless of cause, any fire, flood, or explosion, which the President determines causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

An emergency is any occasion or instance for which the President determines that Federal assistance is needed to supplant State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

Most, but not all, Federal Emergency Management Assistance (FEMA) funds are excluded. For example, some payments made to homeless people to pay for rent, mortgage, food, and utility assistance when there is no major disaster or emergency is not excluded under this provision.

6. P. L. 97-300, the Job Training Partnership Act (JTPA), 10/13/82. Section 142(b) provides that allowances, earnings and payments to individuals participating in programs under JTPA shall not be considered as income. Subsequently P. L. 99-198, the Food Security Act of 1985, 12/85, amended section 5(1) of the Food Stamp Act to require counting as income on-the-job training payments provided under section 204(5) of Title II of the JTPA except for dependents less than 19 years old. Section 702(b) of P.L. 102-367, the Job Training Reform Amendments of 1992, further amended the Food Stamp Act (by changing the reference) to exclude on-the-job training payments received under the Summer Youth Employment and training Program. This means that currently only on-the-job training payments to (1) youths, other than dependents under 19, in year-round programs and (2) adults can be counted. All other JTPA income is excluded.

7. P. L. 99-425, Section (e), the Low-Income Home Energy Assistance Act, 9/30/86. The amount of any home energy assistance payments or allowances provided directly to, or indirectly on behalf of, a household is excluded from income and resources. In determining any excess shelter expense deduction, the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses.

8. P. L. 99-498, the Higher Education Act Amendments of 1986, Section 479B, as amended by P. L. 100-50, June 3, 1987. Amounts made available for tuition and fees and, for students attending an institution at least half-time, books, supplies, transportation and miscellaneous personal expenses (other than room, board and dependent care) provided under Title IV of the Act and by the Bureau of Indian Affairs were excluded from income and resources.

P. L. 102-325, the Higher Education Amendments of 1992, dated 7/23/92, contain two separate provisions that affect the treatment of payments made under the Higher Education Act. In regard to Title IV-- Student Assistance, Part F, Section 479B provides that:

Notwithstanding any other provision of law, student financial assistance received under this title, or under Bureau of Indian Affairs student assistance programs, shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal, State, or local program financed in whole or in part with Federal funds.

Student assistance authorized under Title IV includes the following: (State and local agencies select students for some of these programs. In addition, some State and local agencies have separate programs of their own with similar names.)

- Basic Educational Opportunity Grants (BEOG or Federal Pell Grants)
- Presidential Access Scholarships (PAS-Super Pell Grants)
- Federal Supplemental Educational Opportunity Grants (FSEOG)
- State Student Incentives Grants (SSIG)
- Federal Direct Student Loan Programs (FDSLPL) (Formerly GSL and FFELP):
- Federal Direct Supplemental Loan Program (provides loans to students)
- Federal Direct PLUS Program (provides loans to parents)
- Federal Direct Stafford Loan Program
- Federal Direct Unsubsidized Stafford Loan Program, and
- Federal Consolidated Loan Program
- Federal Perkins Loan Program - Direct loans to students in institutions of higher education (Perkins Loans, formerly NDSL)
- Federal Work Study Funds (Note: Not all Federal work study funds come under Title IV of the Higher Education Act.)
- TRIO Grants (Go to organizations or institutions for students from disadvantaged backgrounds):
- Upward Bound (Some stipends go to students)
- Student Support Services
- Robert E. McNair Post-Baccalaureate Achievement

- Robert C. Byrd Honors Scholarship Program
- College Assistance Migrant Program (CAMP) for students whose families are engaged in migrant and seasonal farm work
- High School Equivalency Program (HEP)
- National Early Intervention Scholarship and Partnership Program (NEISP).

There is only one BIA student assistance program per se. It is the Higher Education Grant Program, which is sometimes called the Scholarship Grant Program. However, education or training assistance received under any BIA program must be excluded. There is an Adult Education Program that provides money to adults to get a GED, attend technical schools, and for job training. There is also an employment assistance program. In addition, education and training may be made available under separate programs like the Indian Child and Family Programs. Each tribe has a BIA agency that may be contacted for more information about education and training assistance.

Section 480(b) provides that:

The changes made in part F of title IV of the Act by the amendment made by this section shall apply with respect to determinations of need under such part F for award years beginning on or after July 1, 1993.

Title XIII, Indian Higher Education Programs, Part E--Tribal Development Student Assistance Revolving Loan Program (Tribal Development Student Assistance Act), Section 1343(c) provides in part that:

. . . for purposes of determining eligibility, loans provided under this program may not be considered in needs analysis under any other Federal law, and may not penalize students in determining eligibility for other funds.

The Part E exclusion was effective October 1, 1992.

P. L. 98-524, the Carl D. Perkins Vocational Education Act, Section 507, as amended by P. L. 101-392, 9/25/90, Sections 501 and 701 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990. Amounts made available for tuition and fees and, for students attending an institution at least half-time, books, supplies, transportation, dependent care, and miscellaneous personal expenses (other than room and board). This provision was effective July 1, 1991. The programs under this Act include the following:

- Indian Vocational Education Program
- Native Hawaiian Vocational Education Program
- State Vocational and Applied Technology Education Program which contains the:
  - State Program and State Leadership Activities
  - Program for Single Parents, Displaced Homemakers, and Single Pregnant Women
  - Sex Equity Program
  - Programs for Criminal Offenders

- Secondary School Vocational Education Program
- Postsecondary and Adult Vocational Education Program
- State Assistance for Vocational Education Support Programs by Community-Based Organizations
- Consumer and Homemaking Education Program
- Comprehensive Career Guidance and Counseling Program
- Business-Labor-Education Partnership for Training Program
- National Tech-Prep Education Program
- State-administered Tech-Prep Education Program
- Supplementary State Grants for Facilities and Equipment and Other Program Improvement Activities
- Community Education Employment Centers Program
- Vocational Education Lighthouse Schools Program
- Tribally Controlled Postsecondary Vocational Institutions Program
- Vocational Education Research Program
- National Network for Curriculum Coordination in Vocational and Technical Education
- National Center or Centers for Research in Vocational Education
- Materials Development in Telecommunications Program
- Demonstration Centers for the Training of Dislocated Workers Program
- Vocational Education Training and Study Grants Program
- Vocational Education Leadership Development Awards Program
- Vocational Educator Training Fellowships Program
- Internships for Gifted and Talented Vocational Education Students Program
- Business and Education Standards Program
- Blue Ribbon Vocational Education Program
- Educational Programs for Federal Correctional Institutions
- Vocational Education Dropout Prevention Program
- Model Programs of Regional Training for Skilled Trades
- Demonstration Projects for the Integration of Vocational and Academic Learning Program
- Cooperative Demonstration Programs
- Bilingual Vocational Training Program
- Bilingual Vocational Instructor Training Program
- Bilingual Materials, Methods, and Techniques Program

(Federal Perkins Loans authorized under Part E of Title IV of the Higher Education Act must be handled in accordance with other Title IV income.)

Section 5(d)(3) of the Food Stamp Act, as amended by P. L. 101-624, Food, Agriculture, Conservation and Trade Act of 1990, Title XVIII, Mickey Leland Memorial Domestic Hunger Relief Act, 11/28/90, and P. L. 102-237, Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Section 903, provides that educational monies are excluded from income:

- when they are awarded to a person enrolled at a recognized institution of post-secondary education, at a school for the handicapped, in a vocational education program, or in a program that provides for completion of a secondary school diploma or obtaining the equivalent thereof,
- to the extent that they do not exceed the amount used for or made available as an allowance determined by such school, institution, program, or other grantor, for tuition, mandatory fees (including the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course of study involved), books, supplies, transportation, and other miscellaneous personal expenses (other than living expenses), of the student incidental to attending such school, institution, or program, and
- to the extent loans include any origination fees and insurance premiums.)

9. P. L. 99-576, Veterans' Benefits Improvement and Healthcare Authorization Act of 1986, Section 303(a)(1), 8/7/86, which amended Section 1411(b) and 1412(c) of the Veterans' Educational Act of 1984 (GI Bill) provides that any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual. Title 38 of the USC, Chapter 30, Section 1411 refers to basic educational assistance entitlement for service on active duty and Section 1412 refers to basic educational assistance entitlement for service in the Selected Reserve. (Section 216 of P. L. 99-576 authorized stipends for participation in study of Vietnam-era veterans' psychological problems. These payments are not excluded by law.)

10. P. L. 100-175, Section 166, Older Americans Act, 11/29/87. Funds received by persons 55 and older under the Senior Community Service Employment Program under Title V of the Older Americans Act are excluded from income. Each State and eight organizations receive Title V funds. The organizations that receive some Title V funds are as follows:

Green Thumb  
National Council on Aging  
National Council of Senior Citizens  
American Association of Retired Persons  
U.S. Forest Service

National Association for Spanish Speaking Elderly  
National Urban League

National Council on Black Aging

11. P. L. 100-242, Section 126(c)(5)(A), 11-6-87, The Housing and Community Development Act of 1987, excludes most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by section 126. Demonstration projects are authorized by this law for Charlotte, North Carolina, and 10 additional locations. The affected regional offices will be contacted individually regarding these projects.

12. P. L. 100-383, section 105(f)(2), Wartime Relocation of Civilians, 8/10/88 (the Civil Liberties Act of 1988). Payments to U.S. citizens of Japanese ancestry and permanent resident Japanese aliens or their survivors and Aleut residents of the Pribilof Islands and the Aleutian Islands West of Unimak Island are excluded from income and resources.

13. P. L. 100-435, Section 501, 9/19/88, which amended Section 17(m)(7) of the Child Nutrition Act of 1966. Under WIC demonstration project, coupons that may be exchanged for food at farmers' markets are excluded from income and resources.

14. P. L. 101-201, Agent Orange Compensation Exclusion Act, 12/6/89. All payments from the Agent Orange Settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are excluded from income and resources retroactive to January 1, 1989. The disabled veteran will receive yearly payments. Survivors of deceased disabled veterans will receive a lump-sum payment. These payments were disbursed by the AETNA insurance company.

P. L. 101-239, 12/19/89, the Omnibus Budget Reconciliation Act of 1989, Section 10405, also excluded payments made from the Agent Orange settlement fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) from income and resources in determining eligibility for the amount of benefits under the Food Stamp Program.

(Note: P. L. 102-4, Agent Orange Act of 1991, 2/6/91, authorized veterans' benefits to some veterans with service connected disabilities resulting from exposure to agent orange. Most of the eligible veterans received a lump sum payment for retroactive benefits due them, followed by regular monthly payments. The lump sum payment is excluded as income but the subsequent monthly payments are counted as unearned income. These payments from the Department of Veterans Affairs are issued by the U.S. Treasury. These VA payments are not excluded by law.)

15. P. L. 101-426, Section 6(h)(2), the Radiation Exposure Compensation Act, dated October 15, 1990, excludes payments made under this public law from food

stamp income and resources.

16. P. L. 101-508, 11/5/90, the Omnibus Budget Reconciliation Act of 1990, Title XI Revenue Provisions, Section 11111, Modifications of Earned Income Tax Credit, subsection (b) provides that any Federal earned income tax credit shall not be treated as income and shall not be taken into account in determining resources for the month of its receipt and the following month. This provision was effective with taxable years beginning after December 31, 1990.

The September 1988 amendments to the Food Stamp Act require the exclusion from income of any payment made to the household under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit). The August 1993 amendments to the Food Stamp Act require the exclusion from resources of any earned income tax credits received by any member of the household for a period of 12 months from receipt if such member was participating in the food stamp program at the time the credits were received and participated in such program continuously during the 12-month period.

17. P. L. 101-610, Section 177(d), 11/16/90, National and Community Service Act (NCSA) of 1990, provides that Section 142(b) of the JTPA applies to projects conducted under Title I of the NCSA as if such projects were conducted under the JTPA. See item 6 above for the JTPA income exclusion. Title I includes three Acts: (1) Serve-America: The Community Service, Schools and Service-Learning Act of 1990, (2) the American Conservation and Youth Service Corps Act of 1990, and (3) the National and Community Service Act. There are about 47 different NCSA programs, and they vary by State. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning program and the AmeriCorps umbrella program come under this Title. The National Civilian Community Corps (NCCC) is a federally managed AmeriCorps program. The Summer for Safety program is an AmeriCorps program under which participants earn a stipend and a \$1000 post-service educational award. The National and Community Service Trust Act of 1993, P.L. 103-82, 9/23/93, amended the National and Community Services Act of 1990 but it did not change the exclusion.

18. P.S. 101-625, section 22(i), Cranston-Gonzales National Affordable Housing Act, dated 11/28/90 (42 USCS 1437t(i)) provides that,

(i) Treatment of Income - No service provided to a public housing resident under this section [Family Investment Centers] may be treated as income for purposes of any other program or provision of State or Federal law.

This exclusion applies to services such as child care, employment training and counseling, literacy training, computer skills training, assistance in the attainment of certificates of high school equivalency and other services. It does not apply to wages or stipends.

This same public law, Section 522(i)(4), excludes most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by this public law. Demonstration projects are authorized by this law for Chicago, Illinois, and 3 other locations. The affected regional offices will be contacted individually regarding these projects.

19. P. L. 102-550, Housing and Community Development Act of 1992, Section 456(e) provides that payments made under the Youthbuild Program are to be treated like JTPA payments. Therefore they should be excluded from income in accordance with item 6 above.

20. P. L. 102-586, signed 11/4/92, Section 8, amended the Child Care and Development Block Grant Act Amendments of 1992 by adding a new Section 658S to exclude the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter from income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need. (These payments are made under the Social Security Act, as amended.)

21. P. L. 103-286, dated 8/1/94, Section 1 (a) provides in part that:

Payments made to individuals because of their status as victims of Nazi persecution shall be disregarded in determining eligibility for and the amount of benefits or services to be provided under any Federal or federally assisted program which provides benefits or services based, in whole or in part, on need.

22. P. L. 103-322, section 230202, dated 9/13/94, amended Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) to provide in part that:

(e) Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay,

(1) such crime victim compensation program shall not pay that compensation; and

(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.

Based on this language, payments received under this program must be excluded from income and resources for food stamp purposes.

23. P. L. 104-193, section 103(a), dated 8/22/96, amended Section 404(h) of Part A of Title IV of the Social Security Act to provide that for the purpose of determining eligibility to receive, or the amount of, any benefit authorized by the Food Stamp Act, funds (including interest accruing) in an individual development account under the TANF block grant program shall be disregarded with respect to any period during which such individual maintains or

makes contributions into such an account.

24. P.L. 104-204, section 1804(d), dated 9/26/96 provides that:

Notwithstanding any other provision of law, the allowance paid to a child under this section shall not be considered income or resources in determining eligibility for or the amount of benefits under any Federal or federally assisted program.

A monthly allowance (from \$200 - \$1200) is paid to a child of a Vietnam veteran for any disability resulting from spina bifida suffered by such child.

## Part B - AMERICAN INDIAN OR ALASKA NATIVE

Usually a law will authorize payments to members of a tribe or band, and the law will apply to the members enrolled in the tribe or band wherever they live. However, items 2, 3, and 4 are general laws, and they apply to all tribes. The individuals should have documentation showing the type of payment and where it originated.

1. P. L. 92-203, section 29, dated 1/2/76, the Alaska native Claims Settlement Act, and Section 15 of P. L. 100-241, 2/3/88, the Alaska Native Claims Settlement Act Amendments of 1987 - All compensation (including cash, stock, partnership interest, land, interest in land, and other benefits) received under this Act are excluded from income and resources.

2. 25 USCA 640-d-22 (P.L. 93-531, section 22, dated 12/22/74) provides in part that the availability of financial assistance to any Navajo or Hopi Indian pursuant to 25 USCS § 460d-460d-31 may not be considered as income or resources or otherwise used as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

25 USCS 1407 Judgment Funds (as amended by P. L. 93-134 and P. L. 97-458) provides that:

None of the funds [appropriated in satisfaction of judgements of the Indian Claims and Commission or Claims Court in favor of any Indian tribe, band, etc.] which--

(1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this Act [25 USCS §§ 1401 et seq.], or

(2) on the date of enactment of this Act [enacted Jan. 12, 1983], are to be distributed per capita or are held in trust pursuant to a plan approved by Congress prior to the date of enactment of this Act [enacted Jan. 12, 1983], or

(3) were distributed pursuant to a plan approved by Congress after December 31, 1981 but prior to the date of enactment of this Act [enacted Jan. 12, 1983], and any purchases made with such funds, including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be

considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act [42 USCS § 301 et seq.] or, except for per capita shares in excess of \$2,000, any Federal or federally assisted program.

The \$2,000 amount applies to each payment made to each person. Initial purchases made with exempt payments distributed between January 1, 1982 and January 12, 1983, are excluded from resources to the extent that excluded funds were used.

3. P. L. 98-64, 8/2/83, applied the exclusion in 25 USCS 1407 to per capita payments from funds which are held in trust by the Secretary of Interior (trust fund distributions) for an Indian tribe. (Per capita payments may be authorized for specific tribes under other public laws.)

4. 25 USCS 1408 (as amended by P. L. 93-134, P. L. 97-458, and P. L. 103-66, Section 13736, 10/7/93) provides that interests of individual Indians in trust or restricted lands shall not be considered a resource and up to \$2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income in determining eligibility for assistance under the Social Security Act or any other Federal or federally assisted program. Interests include the Indian's right to or legal share of the trust or restricted land and any income accrued from the funds in trust or the restricted lands. The exclusion applies to each individual Indian than has an interest. The income exclusion applies for both eligibility and benefit level purposes for food stamp purposes. The income exclusion applies to calendar years.

5. P. L. 93-531, section 22 - Relocation assistance payments to members of the Navajo and Hopi Tribes are excluded from income and resources.

6. P. L. 94-114, section 6, 10/17/75 - Income derived from certain submarginal land held in trust for certain Indian tribes is excluded from income and resources. The tribes that may benefit are:

- Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin
- Blackfeet Tribe
- Cherokee Nation of Oklahoma
- Cheyenne River Sioux Tribe
- Crow Creek Sioux Tribe
- Lower Brule Sioux Tribe
- Devils Lake Sioux Tribe
- Fort Belknap Indian Community
- Assiniboine and Sioux Tribes
- Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- Keweenaw Bay Indian Community
- Minnesota Chippewa Tribe
- Navajo Tribe
- Oglala Sioux Tribe

Rosebud Sioux Tribe  
Shoshone-Bannock Tribes  
Standing Rock Sioux Tribe

7. P. L. 94-189, Section 6, 12/31/75 - Funds distributed per capita to the Sac and Fox Indians or held in trust are excluded from income and resources. The funds are divided between members of the Sac and Fox Tribe of Oklahoma and the Sac and Fox Tribe of the Mississippi in Iowa. The judgments were awarded in Indian Claims Commission dockets numbered 219, 153, 135, 158, 231, 83, and 95.

8. P. L. 94-540 - Payments from the disposition of funds to the Grand River Band of Ottawa Indians are excluded from income and resources.

9. P. L. 95-433, section 2 - Indian Claims Commission payments made pursuant to this Public Law to the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation are excluded from income and resources.

10. 25 USCS 1931 Indian Child Welfare (P. L. 95-608, 11/8/78), subparagraph (a) provides for child and family service grant programs on or near reservations in the preparation and implementation of child welfare codes. Such programs may include, but are not limited to, family assistance, including homemaker and home counselors, day care, after school care, and employment, recreational activities, and respite care; home improvement; the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters; and education and training of Indians; including tribal court judges and staff, in skills relating to child and family assistance and service programs. Subparagraph (b) provides that assistance under 25 USCS 1901 et seq. shall not be a basis for the denial or reduction of any assistance otherwise authorized under any federally assisted programs. (Similar off-reservation programs are authorized by 25 USCS 1932. We have asked the Office of General Counsel if the exclusion applies to these programs.)

11. P. L. 96-420, section 9(c), 10/10/80, Maine Indian Claims Settlement Act of 1980 - Payments made to the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet are excluded from income and resources.

12. P. L. 97-403 - Payments to the Turtle Mountain Band of Chippewas, Arizona are excluded from income and resources.

13. P. L. 97-408 - Payments to the Blackfeet, Grosventre, and Assiniboine tribes, Montana, and the Papago, Arizona, are excluded from income and resources.

14. P. L. 98-123, Section 3, 10/13/83 - Funds distributed under this Act to members of the Red Lake Band of Chippewa Indians are excluded from income and resources. Funds were awarded in docket number 15-72 of the United States Court of Claims.

15. P. L. 98-124, Section 5 - Per capita and interest payments made to members of the Assiniboine Tribe of the Fort Balknap Indian Community, Montana, and the Assiniboine Tribe of the Fort Peck Indian Reservation, Montana, under this Act are excluded from income and resources. Funds were awarded in docket 10-81L.

16. P. L. 98-500, Section 8, 10/17/84, Old Age Assistance Claims Settlement Act, provides that funds made to heirs of deceased Indians under this Act shall not be considered as income or resources nor otherwise used to reduce or deny food stamp benefits except for per capita shares in excess of \$2,000.

17. P. L. 99-146, Section 6(b), 11/11/85 - Funds distributed per capita or held in trust for members of the Chippewas of Lake Superior are excluded from income and resources. Judgements were awarded in Dockets Numbered 18-S, 18-U, 18-C, and 18-T.

Dockets 18-S and 18-U are divided among the following reservations.

Wisconsin:

Bad River Reservation  
Lac du Flambeau Reservation  
Lac Courte Oreilles Reservation  
Sokaogon Chippewa Community  
Red Cliff Reservation  
St. Croix Reservation

Michigan:

Keweenaw Bay Indian Community (L'Anse,  
Lac Vieux Desert, and Ontonagon Bands)

Minnesota:

Fond du Lac Reservation  
Grand Portage Reservation  
Nett Lake Reservation (including Vermillion  
Lake and Deer Creek)  
White Earth Reservation

Under dockets 18-C and 18-T funds are given to the Lac Courte Oreilles Band of the Lake Superior Bands of Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin, the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, and the St. Croix Chippewa Indians of Wisconsin.

18. P. L. 99-264, White Earth Reservation Land Settlement Act of 1985, 3/24/86, Section 16 excludes moneys paid under this Act from income and resources. This Act involves members of the White Earth Band of Chippewa Indians in Minnesota.

19. P. L. 99-346, Section 6(b)(2) - Payments to the Saginaw Chippewa Indian Tribe of Michigan are excluded from income and resources.

20. P. L. 99-377 - Section 4(b), 8/8/86, - Funds distributed per capita to the Chippewas of the Mississippi or

held in trust under this Act are excluded from income and resources. The judgements were awarded in Docket Number 18-S. The funds are divided by reservation affiliation for the Mille Lac Reservation, Minnesota; White Earth Reservation, Minnesota; and Leech Lake Reservation, Minnesota.

21. P. L. 101-41, 6/21/89, the Puyallup Tribe of Indians Settlement Act of 1989, Section 10(b) provides that nothing in this Act shall affect the eligibility of the Tribe or any of its members for any Federal program. Section 10(c) provides that none of the funds, assets, or income from the trust fund established in Section 6(b) shall at any time be used as a basis for denying or reducing funds to the Tribe or its members under any Federal, State, or local program. (The Puyallup Tribe is located in the State of Washington.)

22. P. L. 101-277, 4/30/90, funds appropriated in satisfaction of judgements awarded to the Seminole Indians in dockets 73, 151, and 73-A of the Indian Claims Commission are excluded from income and resources except for per capita payments in excess of \$2,000. Payments were allocated to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida.

23. P. L. 101-503, Section 8(b), Seneca Nation Settlement Act of 1990, dated November 3, 1990, provides that none of the payments, funds or distributions authorized, established, or directed from this Act, and none of the income derived therefrom, shall affect the eligibility of the Seneca Nation or its members for, or be used as a basis for denying or reducing funds under, any Federal program.

24. P.L. 103-436, 11/2/94, Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, Section 7(b), provides that payments made pursuant to that Act are totally excluded from income and resources for food stamps purposes.

K. Payments or allowances made for the purpose of providing energy assistance under any Federal Law, (LIHEAP), including HUD and FMHA (Farmers Home Administration) reimbursements, are excluded as income.

Federal or State one-time assistance for weatherization or emergency repair or replacement of heating or cooling devices are also excluded as income.

L. Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations, but not to exceed \$300 in a Federal fiscal year quarter.

M. Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).

N. Any payment made to an E & T participant for costs that are reasonably necessary and directly related to participation in the E & T program. These costs include, but

are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home.

O. Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with DSSM 9013.3.

P. Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS). The income set aside for this special PASS account is excluded for income purposes.

Q. Marines living on base in adequate quarters are not entitled to receive a Basic Allowance for Quarters (BAQ) even though the amount is listed under entitlements and a deduction is shown for the same amount under deductions on the Leave and Earnings Statement (LES). For these cases the BAQ is disregarded under the entitlement and deduction sections when verified. Staff must advise applicants to get a letter from their commanding officer stating that the LES is incorrect, the applicant is not entitled to the BAQ and does not receive it.

R. In HUD's Family Self-Sufficiency (FSS) Program, participants sign a contract to achieve economic independence within five years. As the participant's employment income rises, a portion of the rent increases they would normally be charged would be waived. The amount waived will be credited to an escrow account to be given to the family at the end of the program.

The participating household must fulfill its employment obligation under the contract or HUD may terminate the FSS supportive services. The family will then forfeit any escrow account funds.

While the funds are in the FSS Escrow Account, they are totally unavailable to the household and excluded as a resource. When the household achieves economic independence and is given the escrow account, the money will be excluded as income as a nonrecurring lump-sum payment.

S. The earnings of temporary census workers from the Bureau of the Census is not counted as income for food stamp purposes effective April 1, 2000 through December 31, 2000.

### **DSSM 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 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 from the following sources are not counted:

1. per capita payments to or funds held in trust for any individual in satisfaction of a judgment of Indian Claims Commissions or 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 (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 food and Food Stamp Act of 1964 as amended;

8. the value of supplemental food assistance under the Child Nutritional 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 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 ABC (such as CWEP) program or other job training programs;

16. all Vista income; and

17. all income derived as a Census taker during the period between April 1, 2000 and December 31, 2000.

#### **14710 Income**

Income is any payment from any source whether in money, goods or services; whether recurring or on a one-time basis. Gross income, net income, disregarded income, excluded income, earned and unearned income are defined in the policy of each specific program. Income eligibility limits vary from program to program.

For each Medicaid eligibility group and for the Delaware Healthy Children Program, all wages paid by the Census Bureau for temporary employment related to Census 2000 activities are excluded from April 1, 2000 through December 31, 2000.

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### **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 Provider 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 April 30, 2000.

#### **Delaware Prescription Assistance Program (DPAP)**

The Delaware Prescription Assistance Program (DPAP) provides payment assistance for prescription drugs to Delaware's low-income senior and disabled citizens who are ineligible for, or do not have, prescription drug benefits or coverage through federal, state, or private sources. The program is administered by the fiscal agent under contract

with the State.

To be eligible for this program a person must:

- Be a U.S. citizen or a lawfully admitted alien;
- Have income that is less than 200% of the Federal Poverty Level (FPL) or have prescription drug expenses that exceed 40% of his or her annual income;
- Be a resident of the State of Delaware;
- Be ineligible for Medicaid prescription benefits;
- Be ineligible for Nemours Health Clinic Pharmaceutical benefit;
- Be ineligible for and/or not receiving a prescription drug benefit through a Medicare supplemental policy or any other third party payer prescription benefit; and
- Be an individual aged 65 or over or be an individual between the ages 19 and 64 who is ~~otherwise eligible for~~ receiving disability (Social Security Disability Insurance) benefits under Title II of the Social Security Act.

Prescription drugs covered under the program are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. Policy and guidelines will follow the existing DMAP limitations. Services covered ~~are~~ include generic and brand name FDA-approved ~~and other legal~~ prescription drugs, as well as cost effective over-the-counter drugs prescribed by a physician practitioner. Necessary diabetic supplies not covered by Medicare will also be covered. Medications that are covered by Medicare are not covered by this program.

Payment assistance shall not exceed \$2,500 per State fiscal year to assist each eligible person in the purchase of prescription drugs. There will be a co-payment of \$5 or 25% of the cost of the prescription whichever is greater. The pharmacy will collect the co-payment before the prescription is dispensed. Copayments may be waived in case of good cause. Clients may request that their copayments be waived if they have experienced a catastrophic situation resulting in unexpected, extraordinary expenses related to loss or significant damage to shelter or the well being of themselves or their immediate family. The request must be in writing and explain the circumstances that led to the request. Verification will be required in the form of collateral contacts such as repair bills, police or insurance reports, etc. The DPAP team will notify the client if good cause is granted. Copayments will be waived for the remainder of the fiscal year.

### Eligibility Confirmation

It is the provider's responsibility to verify a recipient's

current eligibility each time a service is provided. The provider should request that the recipient show a current Medical Assistance card, establishing identity and dates of eligibility.

Pharmacy providers should refer to the Billing Instructions/POS Transactions section of the Pharmacy Manual, which outlines recipient eligibility confirmation via the authorization number for POS/DUR.

Assistance regarding eligibility information, restricted/hospice/managed care/Qualified Medicare Beneficiary coverage's, and third party liability information may be obtained by the provider by accessing the ~~CONFIRM Automated Voice Response~~ system. Refer to the ~~CONFIRM Automated Voice Response~~ section of this manual for more detail.

~~Note: Eligibility information regarding the Delaware Healthy Children Program cannot be obtained by accessing the CONFIRM system.~~

## DEPARTMENT OF JUSTICE

### DELAWARE SECURITIES ACT

Statutory Authority: 6 Delaware Code,  
Sections 7313, 7314 and 7325  
(6 Del.C. 7313, 7314 & 7325)

The Delaware Securities Division of the Attorney General's Office hereby gives notice that it intends to amend Rules 700 and 701 to accomplish the following:

1. Establish minimum competency requirements for new investment advisors and investment adviser representatives to protect Delaware investors.
2. Efficiently regulate the growing number of investment advisors and investment adviser representatives.
3. Streamline the mechanics of licensing by adopting the uniform qualification exams used by sister states, thereby avoiding duplicative or burdensome licensing processes.

The legal authority for this action is found in section 7325 of the Delaware Securities Act as well as sections 7313 and 7314 of the Act. Any person may submit his or her written comments on the proposed action by sending them to:

Securities Commissioner  
Department of Justice  
Carvel State Office Building, 5th Floor  
820 N. French Street  
Wilmington, DE 19801

All comments must be received no later than 30 days after the date of publication of this notice. Final action will be taken upon expiration of that period.

James B. Ropp, Securities Commissioner

**Part G. Investment Advisers and Investment Adviser Representatives****§700 Registration of Investment Advisors**

(a) A person applying for a license as an investment adviser in Delaware shall make application for such license on Form ADV (Uniform Application for Investment Adviser Registration under the Investment Advisers Act of 1940). Amendments to such application shall also be made on Form ADV.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form ADV; (ii) the fee required by Section 7314 of the Act; (iii) a balance sheet prepared in accordance with Schedule G of Form ADV; (iv) a list of all investment adviser representatives employed by the investment adviser; (v) ~~such other information as the Commissioner may reasonably require~~ proof of compliance with Rule 710 by filing an Investment Adviser Affidavit available at <http://www.state.de.us/securities> or by contacting the Division of Securities; and (vi) such other information as the Commissioner may reasonably require.

(c) Registration expires at the end of the calendar year. Any investment adviser may renew its registration by filing with the Commissioner an updated Form ADV, together with the fee required by Section 7314 of the Act and a list of all investment adviser representatives employed by the investment adviser.

(d) Every investment adviser must have at least one investment adviser representative registered with the Commissioner to obtain or to maintain its license as an investment adviser.

**§701 Registration of Investment Adviser Representatives**

(a) A person applying for a license as an investment adviser representative in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form U-4; (ii) the fee required by Section 7314 of the Act; (iii) ~~a certification that the applicant has successfully completed the Uniform Investment Adviser Law Examination (Series 65 or 66) administered by the NASD~~ proof of compliance with Rule 710 by filing an Investment Adviser Representative Affidavit available at <http://www.state.de.us/securities> or by contacting the Division of Securities; and (iv) such other information as the Commissioner may reasonably require. ~~The Commissioner may waive the exam requirements upon good cause shown.~~

(e) ~~Good cause for waiver of the exam requirement of~~

~~subsection (b)(iii) of this Rule shall include holding a credential designated by the Commissioner by rule or order, so long as the individual is in good standing with the organization that issued the credential. Such credentials shall include the designation Certified Financial Planner awarded by the Certified Financial Planner Board of Standards.~~

~~(d)~~ (c) Registration expires at the end of the calendar year. Any investment adviser representative may renew his or her registration by filing with the Commissioner a letter of intent to renew and the fee required by Section 7314 of the Act.

**§ 710 Examination Requirements**

(a) Examination Requirements. An individual applying to be registered as an investment adviser or investment adviser representative under the Act shall provide the Commissioner with proof of obtaining a passing score on one of the following examinations:

(1) The Uniform Investment Adviser Law Examination (Series 65 examination); or

(2) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(b) Grandfathering.

(1) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on the effective date of this Rule shall not be required to satisfy the examination requirements for continued registration, except that the Commissioner may require additional examinations for any individual found to have violated any state or federal securities law.

(2) An individual who has not been registered in any jurisdiction for a period of two (2) years shall be required to comply with the examinations requirements for this Rule.

(c) Waivers. The examination shall not apply to an individual who currently holds one of the following professional designations:

(1) Certified Financial Planner (CFP) awarded by the International Board of Standards and Practices for Certified Financial Planners, Inc.;

(2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(4) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(5) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(6) Such other professional designation as the Commissioner may by rule or order recognize.

(d) The Commissioner reserves the power to waive the exam requirements upon good cause shown.

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

Statutory Authority: 7 Delaware Code,  
Chapters 60 and 63 (7 Del.C. Ch. 60, 63)

**1. TITLE OF THE REGULATIONS:**

*Delaware Regulations Governing Hazardous Waste (DRGHW).*

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

The State of Delaware is authorized by the U. S. Environmental Protection Agency to administer its own hazardous waste management program. To maintain this authorization, the State must remain equivalent to and no less stringent than the federal program. To accomplish this, the State regularly amends the DRGHW by adopting regulations previously promulgated by EPA.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

NONE

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 & 63.

**5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**

NONE

**6. NOTICE OF PUBLIC COMMENT:**

The public hearing on the proposed amendments to DRGHW will be held on Tuesday May 9, 2000 beginning at 7:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. In addition, those affected by the proposed amendments are invited to attend one of two workshops conducted on April 25th and May 4th, 2000.

**7. PREPARED BY:**

Donald Short, Hazardous Waste Management  
(302) 739-3689

**2000 AMENDMENTS TO  
DELAWARE REGULATIONS GOVERNING  
HAZARDOUS WASTE**

**SUMMARY**

This summary presents a brief description of the 2000 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 miscellaneous changes to the existing regulations 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 **Federal Register** notice. For additional information please contact the Hazardous Waste Management Branch at (302) 739-3689.

**1. Title: Hazardous Remediation Waste Requirements (HWIR-Media)**

Federal Register Reference: 63 FR 65874-65947

Federal Promulgation Date: November 30, 1998

**Summary:** This rule streamlines permitting for treatment, storage and disposal of remediation wastes managed at cleanup sites. The new requirements: 1) make permits faster and easier to obtain, 2) provide that obtaining these permits will not subject the owner/operator to facility-wide corrective action at remediation-only facilities, and 3) allow the use of Remediation Action Plans (RAPs) as an alternative to traditional RCRA hazardous waste permits. This rule also finalizes regulations regarding use of staging piles during cleanup and providing an exclusion for dredged materials managed under appropriate Clean Water Act or Marine Protection Research and Sanctuaries Act permits.

Sections or portions of DRGHW affected by these changes include:

260.10, 261.4(g), 264.1(j), 264.73(b), 264.101(d), 264.552(a), 264.553(a), 264.554, 265.1(b), 268.2(c),

268.50(g), 122.2, 122.11(d), 122.42 Appendix I, 122.70, 122.73(a), 122 Subpart H.

**2. Title: Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program)**

Federal Register Reference:63 **FR** 71225-71230  
Federal Promulgation Date:December 24, 1998

**Summary:** This rule corrects EPA errors that appeared in the May 11, 1995 **Federal Register**, Universal Waste Rule (60 **FR** 25492). No new regulatory requirements are created with this rule; instead it, (1) makes three corrections to regulations governing the management of spent lead-acid batteries that are reclaimed, (2) corrects the definition of a small quantity universal waste handler, and (3) clarifies the export requirements which apply to destination facilities, when the facilities act as universal waste handlers.

Sections or portions of DRGHW affected by these changes include: 266.80(a) and (b), 273.6.

**3. Title: Petroleum Refining Process Wastes Leachate Exemption**

Federal Register Reference:64 **FR** 6806  
Federal Promulgation Date:February 11, 1999

**Summary:** From the definition of hazardous waste, this rule temporarily defers landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes (K169, K170, K171, and K172). This exemption applies to landfill leachate and gas condensate subject to regulation under the Clean Water Act. The exempted leachate may not ordinarily be managed in surface impoundments or otherwise placed on the land after February 13, 2001, except for the purpose of providing storage under temporary or emergency conditions.

Sections or portions of DRGHW affected by these changes include: 261.4(b)(15).

**4. Title: Land Disposal Restrictions Phase IV Technical Corrections and Clarification to Treatment Standards**

Federal Register Reference:64 **FR** 25408-25417  
Federal Promulgation Date:May 11, 1999

**Summary:** This rule clarifies and/or makes technical

corrections to the following five final rules that were promulgated by EPA and adopted by DNREC in 1998 and 1999:

(1) Regulations promulgating Land Disposal Restrictions (LDR) treatment standards for wood preserving wastes, as well as reducing the paperwork burden for complying with LDRs;

(2) Regulations promulgating LDR treatment standards for metal-bearing wastes, as well as amending the LDR treatment standards for soil contaminated with hazardous waste, and amending the definition of which secondary materials from mineral processing are considered to be wastes subject to the LDRs;

(3) An administrative stay of the metal-bearing waste treatment standards as they apply to zinc micronutrient fertilizers;

(4) An emergency revision of the LDR treatment standards for hazardous wastes from the production of carbamate wastes; and,

(5) Revised treatment standards for spent aluminum potliners from primary aluminum production.

Sections or portions of DRGHW affected by these changes include:

261.2(c) and (e), 261.4(a), 262.34(d), 268.2(h), 268.7(a) and (b), 268.9(d), 268.40(i) and (j), 268.40/Table, 268.48(a), 268.49(c).

**5. Title: Test Procedures for the Analysis of Oil and Grease and Non-Polar Material**

Federal Register Reference:64 **FR** 26315-26327  
Federal Promulgation Date:May 14, 1999

**Summary:** This rule approves use of EPA Method 1664, Revision A: N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated N-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry (hereafter Method 1664) for use in EPA's Clean Water Act (CWA) programs, and incorporates Method 1664 by reference for use in EPA's Resource Conservation and Recovery Act (RCRA) programs. The rule also deletes Method 9070 and adds revised Method 9071B as Update IIIA to the Third Edition of the EPA-approved test methods manual SW-846. EPA has taken these actions as a part of the Agency's effort to reduce dependency on use of chlorofluorocarbons (CFCs) to protect Earth's ozone layer and to meet the CFC phaseout agreed to in the Montreal Protocol and required by the Clean Air Act Amendments of 1990.

Sections or portions of DRGHW affected by these changes include:

260.11(a)(11), 260.11(a)(16).



**6. Title: Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps**

Federal Register Reference: 64 FR 36466-36490  
Federal Promulgation Date: July 6, 1999

**Summary:** With this rule, DNREC adds spent hazardous waste lamps to the list of universal wastes. Handlers of universal wastes are subject to less stringent standards for storing, transporting, and collecting these wastes. The streamlined universal waste management requirements under Part 273 should lead to better management of spent lamps and will facilitate compliance with hazardous waste requirements.

Sections or portions of DRGHW affected by these changes include:

260.10, 261.9(b)-(d), 264.1(g)(11), 265.1(c)(14), 268.1(f)(2)-(4), 122.1(c)(2)(viii), 273.1(a), 273.2(a)&(b), 273.3(a), 273.4(a), 273.5(a)-(c), 273.6, 273.7, 273.8(a)&(b), 273.9, 273.10, 273.13(d), 273.14(e), 273.30, 273.32(b)(4)&(5), 273.33(d), 273.34(e), 273.50, 273.60(a), 273.81(a).

**7. Miscellaneous Changes:** Miscellaneous 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:

Part 260, a Statement of Authority is being added indicating that enforcement may also occur under 7 **Del.C.**, Chapter 60 authority. Other changes being proposed affect §§261.3(c) & (d), 264.1(g)(2), 264.13, 265.13, 268 Appendix VIII, and 273.32(a)(1).

**DEPARTMENT OF PUBLIC SAFETY**  
**BOARD OF EXAMINERS OF PRIVATE**  
**INVESTIGATORS & PRIVATE SECURITY AGENCIES**  
Statutory Authority: 24 Delaware Code,  
Section 1304(b)(3) (24 **Del.C.** 1304(b)(3))

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 11/04/1994-7 – Employment Notification. This amendment will clarify the employer's responsibility of the action of their employees to the Detective Licensing Section. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by April 30, 2000, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903; The Board will hold its quarterly meeting Thursday, April 13, 2000, 10:00am, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

**11/04/1994 -1 Firearm's Policy**

No person licensed under 24 **Del.C.** 1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course given by a Board approved certified firearms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these three, there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.

See 3 DE Reg 960 (1/1/00)

A. Firearms - approved type of weapons

- 1 9mm
- 1 .357
- 1 .38
- 1 .40

See 3 DE Reg 960 (1/1/00)

B. All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.

C. Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.

D. All individuals must qualify with the same type of weapon that he/she will carry.

E. All ammunition will be factory fresh (no re-loads).

F. The minimum passing score is 75%. All licenses

are valid for a period of one (1) year.

See 3 DE Reg 960 (1/1/00)

### **11/04/1994 - 2 Nightstick, Pr24, Mace, Peppergas and Handcuffs**

To carry the above weapons/items a security guard must have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Proof of these certifications must be provided to the Director of the Board of Examiners. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director of the Board of Examiners.

### **11/04/1994 - 3 Personnel Rosters and Job Assignments**

Anyone licensed under 24 Del.C. Ch. 13 shall submit an alphabetical personnel roster and a job site list to the director of the Detective Licensing Section by the tenth of every month. Alphabetical personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual in your employ. For example:

Mark A. Smith	01/25/60	W	M	01/25/99	SG
Helen E. White	03/17/71	B	F	03/17/00	FA
John F. Henry	05/23/43	B	M	05/23/00	PI
James D. Williams	12/03/40	W	M	06/30/99	MG
Frank G. Montgomery	07/24/55	B	M	06/30/99	LH
Anne L. Murray	10/20/40	W	F	06/30/99	CO

SG	Security Guard
FA	Firearm's
PI	Private Investigator
MG	Delaware Manager
LH	License Holder
CO	Corporate Officer

See 3 DE Reg 960 (1/1/00)

Job site lists shall include the name, address, location, and hours of coverage. For example:

The DuPont Industry  
Barley Mill Road  
2200 - 0600 Hours, Monday, Wednesday, and Friday  
See 3 DE Reg 960 (1/1/00)

### **11/04/1994 - 4 Record Book; Right of Inspection**

All persons licensed under 24 Del.C. Ch.13 shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include the list of weapons/items each employee is qualified

to carry, the certification dates, scores and the serial number of the weapon/item, if applicable.

See 3 DE Reg 960 (1/1/00)

### **11/04/1994 - 5 Uniforms, Patches, Badges, Seals, Vehicular Markings**

**Amended 04/17/97**

**Amended 04/23/98**

No person licensed under 24 Del.C. Ch. 13 shall wear or display any uniform, patch, or badge unless first approved by the Board of Examiners. The use of "patrol" and/or "officer" on any type of uniform, patch, badge, seal, vehicular marking or any type of advertisement shall first be proceeded by the word "security". Under no circumstances shall a uniform, patch, badge, seal, vehicular marking, letterhead, business card or any type of advertisement contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

A. Advertisement and other forms of publications:

No letterhead, business card, advertisement, or other form of publication including but not limited to uniforms, patches, badges, seals, vehicular markings and similar items may be used or displayed unless first approved by the Board of Examiners. No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.

All uniforms displaying a patch must contain an approved patch that is not generic in nature. The patch must have the name of the agency printed on it.

Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

See 3 DE Reg 960 (1/1/00)

### **11/04/1994 - 6 Qualified Manager**

A qualified manager cannot be employed by more than one company at the same time. For example; a person cannot serve as a qualified manager for two separate private security agencies and/or private investigative agencies.

### **11/04/1994 - 7 Employment Notification**

It shall be the responsibility of each person licensed as a security guard under 24 Del.C. Ch. 13 to notify the Director of the Board of Examiners, in writing within 24 hours, if such person is terminated or leaves one agency for employment with another or works for more than one security guard agency. Under no circumstances will a security guard be permitted to be employed by more than two agencies at a time. It is also the responsibility for each licensed security guard to advise his/her employer(s) of whom he/she is employed with (i.e. If a security guard is employed with two security guard agencies, both employers

must be made aware of this fact as well as the Director of the Board of Examiners.)

**A. Employers Responsibility**

A license holder of a private security agency shall notify the Director within 24 hours, if an employee is terminated and/or ceases employment.

1. A licensed private security agency, after investigation, shall notify the Detective Licensing Office, in writing, of any terminated employees. This information is to be included in the next monthly roster report following the termination.

2. A licensed private security agency shall report to the Detective Licensing Office, in writing, the following:

a. The name of any employee arrested;

b. The name of any employee admitted to any mental hospital ward, mental institution or sanitarium; or

c. The name of any employee disabled from carrying, owning, or possessing a gun by action of federal or state statute and/or court order, including bond orders and protection from abuse orders.

**11/04/1994 - 8 Criminal Offenses**

In addition to those qualifications set forth in 24 Del.C. §1314, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III or Offensive Touching misdemeanor within the last three (3) years.

**11/04/1994 - 9 Private Investigators**

A. A Private Investigator must not be a member or employee of any Law Enforcement Organization, as defined by the Council on Police Training.

B. At the time of processing, a Private Investigator must provide proof of employment by a licensed Private Investigative Agency with the Private Investigator application signed by the employer. The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be re-licensed with the new employer and a new identification card will be issued as in the previous procedure.

C A licensed Private Investigator may only be employed by one licensed private investigative agency at a time.

**11/04/1994 - 10 Licensing Fees**

**A. Class A License - Private Investigative Agency In-State License Holder**

Individual - No Employees - Not Corporation  
\$230 for 2 years to expire June 30th of odd

years

\$5,000 Bond

\$1,000,000 Liability Insurance per occurrence

Corporation - Has Employees

\$345 for 2 years to expire June 30th of odd

years

\$10,000 Bond

\$1,000,000 Liability Insurance per occurrence

License Holder

\$345 for 2 years to expire June 30th of odd

years

Out-of-State

Individual and Corporation

\$10,000 Bond

\$1,000,000 Liability Insurance per occurrence

occurrence

Office Manager

\$230 for 2 years to expire June 30th of odd

years

\$5,000 Bond

**B. Class B License - Private Security Agency**

**In-State License Holder**

Individual - No Employees - Not Corporation

\$230 for 2 years to expire June 30th of odd

years

\$5,000 Bond

\$1,000,000 Liability Insurance per occurrence

occurrence

Corporation - Has Employees

\$345 for 2 years to expire June 30th of odd

years

\$10,000 Bond

\$1,000,000 Liability Insurance per occurrence

occurrence

\$10,000 Bond

\$1,000,000 Liability Insurance per occurrence

occurrence

Office Manager

\$230 for 2 years to expire June 30th of odd

years

Individual and Corporation

Out-of-State License Holder

\$345 for 2 years to expire June 30th of odd

years

\$5,000 Bond

**C. Class C License - Private Investigative & Private Security Agency**

**In-State License Holder**

Individual - No Employees - Not Corporation

\$345 for 2 years to expire June 30th of odd

years

\$10,000 Bond

\$1,000,000 Liability Insurance per occurrence

occurrence



Corporation - Has Employees

\$520 for 2 years to expire June 30th of odd

years

\$15,000 Bond

\$1,000,000 Liability Insurance per

occurrence

Out-of-State

Individual and Corporation License Holder

\$520 for 2 years to expire June 30th of odd

years

\$15,000 Bond

\$1,000,000 Liability Insurance per

occurrence

Office Manager

\$345 for 2 years to expire June 30th of odd

years

\$10,000 Bond

D. Class D License - Armored Car Agency License  
License Holder

Corporation - Has Employees

\$345 for 2 years to expire June 30th of odd

years

Banking Commissioner License

5 Del.C. 3203

**04/23/98 - 11 Use Of Animals**

The use of animals is prohibited in the performance of private security activities.

See 3 DE Reg 960 (1/1/00)

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Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF ELECTRICAL EXAMINERS**  
Statutory Authority: 24 Delaware Code,  
Section 1406(a)(1)(24 Del. C. §1406(a)(1))

In Re: |  
Rules and Regulations | Order

**Summary of the Evidence and Information Submitted**

1. The Board received a letter from Robert H. Keis, retired chief electrical inspector, dated February 29, 2000 that is made part of the record in its entirety. He suggested changes to proposed Rule 1.2 and asked for clarification of the CE requirements. Mr. Keis raised a concern about Rule 10.1.3 as it applies to concealed wiring in plants. He thought the term “d-mark” needed further explanation in Rule 10.1.6. Finally, he suggested that all electrical work should be inspected and a permit should be required for any electrical work by a homeowner.

2. Mr. Keis made further verbal comments at the public hearing. He suggested that the proof required for Continuing Education (CE) must be clarified and suggested license numbers be included on certificates of completion to distinguish between licensees with similar names.

3. Robert Smith offered verbal comments to the Board. He suggested sentence reordering for clarification and typographical corrections. He agreed that the CE requirements needed clarification Mr. Smith pointed out the problems with the statutory language requiring inspection five days following application when the work was not yet complete.

**Findings of Fact**

1. It is necessary to promulgate rules and regulations as authorized and required by Chapter 14 of Title 24 of the Delaware Code that was amended effective July 20,1999.
2. There probably needs to be some clarification of the proof of CE requirement but it can be deferred since it is not an imminent problem.
3. The words “or on” in the definition of electrical services clarify the meaning of the term “structure” as it is used in 24 Del. C. Section 1402.
4. Adding the term “point of service” and using the word “demarcation” improve Rule 10.1.7
5. With the changes indicated, the rules explain sections of the statute as needed to accomplish its purpose.
6. The changes made after hearing and discussion are non-substantive.

**Text and Citation**

The exact text and citation of each rule as it appeared in the Delaware Register of Regulations, Vol. 3, Issue 8

(February 1, 2000) is attached hereto with the changes noted.

### **Decision**

Pursuant to the Authority in 24 Del. C. §1406(a)(1) and after due notice as required under the Administrative Procedures Act, the Board of Electrical Examiners by the undersigned members hereby promulgates and adopts the Rules and Regulations to be effective ten days following publication in the Delaware Register of Regulation.

SO ORDERED THIS 7<sup>th</sup> day of March 2000.

Board of Electrical Examiners  
Anthony Szczuka, President  
C. Kenneth Draper  
David Whitt  
Charles Davis  
Steven Dignan  
Bruce A. Goldsborough  
Pravin Dattani  
Donald King

### **Delaware Board Of Electrical Examiners Rules And Regulations**

#### 1.0 License required.

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

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

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

#### 2.0 Applications.

2.1 Applications may be obtained in person during regular business hours or by mail from the Division of Professional Regulation, Cannon Building, Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904-2467 . Applications must be made in the name of the individual, not a company. The Board shall approve the application form to insure that it contains all of the information necessary to satisfy the statutory requirements for licensure.

2.2 Applications which are incomplete shall be retained for one year to allow an applicant the opportunity to supplement the application. After one year, incomplete applications are destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

2.3 Applications approved for testing will be valid for two years. If the test isn’t taken, the application is destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

#### 3.0 Qualifications.

3.1 Persons demonstrating the education and experience qualifications set forth in 24 Del. C. §1408 may be licensed as a master electrician, limited electrician, master electrician special, or limited electrician special.

3.2 An applicant shall submit proof of qualifications verified by his or her affidavit on a form approved by the Board. Proof of experience requires either an employer’s affidavit, a tax form w-2, or tax Schedule C. The required experience and training must be completed prior to taking the licensure test

#### 4.0 Examinations.

4.1 As a condition of licensure, applicants shall obtain a grade of 75% on the Division-approved test. Only the National Electrical Code Book can be used during the test as a reference. Applicants should submit a completed application with all necessary credentials for Board approval at least 45 days before the test is given. As long as the credentials have been approved, a license may issue from the Division of Professional Regulation upon proof of obtaining a passing score on the test, proof of insurance, and payment of the fee as provided herein. A member of the State Board of Electrical Examiners will attend the examination. All scores will be presented to the Board at the first meeting after the examination results are available. The roster of persons qualified for licensure will appear in the minutes.

4.2 Applicants who fail two consecutive times with a grade of less than 50% each time must wait one year before retesting.

#### 5.0 Fees

5.1 Fee information can be obtained from the Division of Professional Regulation, Cannon Building Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904 -2467.

#### 6.0 License and Insurance.

6.1 The license will be issued by the Division of Professional Regulation to a qualified applicant upon receipt of the required fee and proof of insurance.

6.2 Each licensee shall maintain general liability insurance of at least \$300,000.00. Proof of said insurance shall be submitted at the time of license issuance and each renewal.

## 7.0 Expiration and Renewal.

7.1 All licenses as master electrician or master electrician special expire on June 30, 2000 and even - numbered years thereafter. All licenses as limited electrician or limited electrician special expire on June 30, 2001 and odd - numbered years thereafter.

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

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

7.4 A licensee with a valid license may request in writing to be placed on inactive\_status. An inactive status can be effective for up to two years and renewed biennially by application to the Division. Said license may be reactivated by the Board upon written request which includes evidence of 10 hours of continuing education completed within the preceding 2 years, proof of insurance, and payment of a prorated fee to be computed by the Division of Professional Regulation.

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

## 8.0 Continuing Education

8.1 Continuing education (CE) is required of all licensees and proof shall be submitted to the Board by April 30 of any year after 2000 in which a license is to be renewed. For example, if a license must be renewed June 30, 2001, the proof of completion of CE is due on April 30, 2001. A licensee who has submitted CE hours that are not allowed will be notified so that he or she may obtain replacement CE before the June 30 expiration of the license.

8.2 Sponsors or licensees seeking pre-approval of CE hours should submit the request on a form approved by the Board at least 60 days before the CE course is being offered.

8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal.

8.4 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

## 9.0 Loss of license holder

9.1 A procedure permitting temporary practice after loss of a licensee to avoid business interruption is provided in 24 Del.C. §1418 and is necessary only where there is no currently employed licensee to assume the duties of the former license holder.

9.2 The notification must include documentation of the business relationship with the former license holder.

## 10.0 Exceptions.

10.1 No license is required for performing electrical work by the following persons or entities:

10.1.1 persons working under the supervision of a Delaware licensed master or limited electrician;

10.1.2 persons under the supervision of a licensed electrician who is the owner or full-time employee of a company performing electrical work;

10.1.3 a professional engineer in a manufacturing or industrial plant having six years experience in electrical planning and design who is registered with the Board as the person responsible for the plant repairs, maintenance, and electrical additions;

10.1.4 the Department of Transportation, or a contractor, for work performed by or under the supervision of the Department for the installation erection, construction, reconstruction and/or maintenance of drawbridges and traffic control devices

10.1.5 persons working beyond the main breaker or fuse of 200 amps or less in a structure used exclusively for agriculture;

10.1.6 persons performing the work of any light or power company, electric or steam railway company, telegraph or telephone company when the work is part of the plant or service used in rendering authorized service to the public such as power delivery by an electric company. This exception ends at the point of **[attachment service]**, termination box, or **[d-mark demarcation point]**;

10.1.7 a homeowner who has obtained a homeowner's permit provided by law.

## 11.0 Reciprocity

11.1 An applicant for licensure by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure under this provision must submit to the Board a copy of reciprocal state's current licensure requirements. If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least five years after licensure. Proof of practice can be by an employer's affidavit, tax form w-2, or tax Schedule C

**12.0 Required Inspection.**

12.1 Every licensee shall file for an inspection by a licensed inspection agency no later than five working days after the commencement of electrical work. The inspection agency shall complete the inspections no later than five working days after the application has been received.

12.2 Any professional engineer excepted from licensure shall at least annually file with the Board a certificate of inspection by a licensed inspection agency and a letter stating that all repairs, maintenance, and additions to a manufacturing or industrial plant meet the Standards of the National Electrical Code. The annual inspection should include a representative sampling of the work performed by the authority of the responsible professional engineer.

12.3 Any person performing electrical work on agricultural structures excepted from licensure shall nevertheless obtain a certificate of inspection from a ~~[Board-approved licensed]~~ inspection agency for new installations.

12.4 Any person authorized to perform work by a homeowner's permit shall obtain a final inspection by a ~~[Board-approved licensed]~~ inspection agency.

**13.0 Organization of the Board****13.1 Election of Officers**

Annually during the July meeting, the Board shall elect officers to serve for a one year term from September 1-August 31.

**13.2 Duties of the Officers**

13.2.1 President - The president shall preside at all meetings, designate subordinates when provided by law, sign correspondence on behalf of the Board, and perform other functions inherent in the position. In conducting meetings or hearings, the President may limit or exclude evidence as provided under the Administrative Procedures Act unless overruled by a majority of the Board.

13.2.2 Vice President - The Vice President assumes the duties and powers of the President when the President is unavailable.

13.2.3 Secretary - The Secretary assumes the duties and powers of the President when neither the President nor the Vice President is available.

13.2.4 Complaint officer - The complaint officer shall be a professional member who works with the investigator of the Division of Professional Regulation when complaints are investigated pursuant to 29 Del.C. §8807. The complaint officer shall report to the Board when complaints are closed and recuse himself or herself from participating in disciplinary hearings involving matters that have been reviewed in his or her capacity as complaint officer.

13.2.5 Education officer - The education officer may review courses submitted for continuing education approval and makes recommendations to the Board.

**13.3 Meeting Minutes**

The minutes of each meeting are taken by the Administrative Assistant from the Division of Professional Regulation and approved by the Board.

**14.0 Homeowners Permits**

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

14.2 A homeowner shall not be permitted to install a hot tub or a swimming pool.

**15.0 Inspection agencies**

15.1 Inspection agencies shall be licensed in accord with the provisions of 24 Del.C. §1421 in order to operate in Delaware. An application on a form approved by the Board must be filed at the Division of Professional Regulation.

15.2 No inspection agency will be approved until it produces proof of general liability insurance in the amount of at least \$1,000,000.00 and errors and omissions insurance in the amount of at least \$1,000,000.00.

15.3 Inspection agencies must submit, to the Division of Professional Regulation, the names of its employees who are inspectors and proof of compliance with the statutory requirements for inspectors. Inspectors must have seven years of experience in residential, commercial, or industrial wiring. Proof of experience shall be submitted by affidavit of the named employer, a tax form w-2, or tax Schedule C. The experience requirement for an inspector employed by an approved inspection agency on July 20, 1999 is satisfied with seven years of inspection experience. Each inspector shall also submit a passing score for the Electrical one and two family dwelling and the Electrical General examinations within 18 months of employment and the Electrical Plan Review examination within 24 months of employment. For inspectors employed by the inspection agency on July 20, 1999, the time for taking said examinations shall run from the date these regulations become effective and not the date first employed.

**16.0 Voluntary treatment option for chemically dependent or impaired professionals.**

A voluntary treatment option is available for chemically dependent or impaired professionals as provided in 29 Del.C. §8807 (n) who are reported to the Board or Division using the following procedures:

16.1 If the report is received by the president of the Board, that president shall immediately notify the Director of Professional regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the president of the

Board, or that president's designate or designates.

16.2 The president of the Board or that president's designate or designates shall, within seven (7) days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

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

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

16.5 Failure to cooperate fully with the Board president or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option and the Board president or that president's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in 29 Del.C. §8807(h).

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

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

16.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the president of the Board or to that president's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the president of the Board or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

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

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

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

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

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

16.10 Failure to enter into such agreement or to

comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

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

16.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected.

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**DIVISION OF PROFESSIONAL REGULATION**  
**BOARD OF NURSING**

Statutory Authority: 24 Delaware Code,  
Section 1906(1) (24 **Del.C.** 1906(1))

In Re:

Revision of Regulations,  
Articles II; V; VI; VIII and X

**Final Order**  
**Background**

Pursuant to 24 **Del.C.** §1906(1) the Board of Nursing (the "Board") proposed to adopt amendments to its Rules and Regulations, as more specifically set forth in the Notice appearing in the Delaware Register of Regulations published December 1, 1999. As required by 29 **Del.C.** §10115, notice was given to the public that a hearing would be held on January 12, 2000 at 9:00 a.m. in the second floor conference room of the Cannon building, 861 Silver Lake Boulevard, Dover, Delaware, to consider the proposed amendments. (Board Exhibit No. 1) The public hearing was held as scheduled before a quorum of the members of the Delaware Board of Nursing. There were no relevant written comments received concerning the proposed changes and additions.

**Summary of Public Hearing Comments**

Iva Boardman, RN, MSN, the Executive Director of the Board of Nursing, was sworn and presented an explanation of each of the proposed changes and additions to the Rules and Regulations and provided a brief over-view of the rationale for each change and addition. (Board Exhibit No. 2).

Comments at the hearing were also provided by Nancy W. Snyder, RN, MSN, the Chair of the Department of

Associate Degree Nursing at the Stanton/Wilmington Campus of Delaware Technical and Community College. Ms. Snyder spoke suggesting clarification of two proposed modifications: Revised Article II, Section 7.1 and Revised Article VI, Section 3.7.

Article II, Section 7.1 concerns Nursing Education Programs and the procedure for annual review of such programs. As proposed this provision read, "The Board shall review the annual reports and self-evaluation reports of the programs submitted each October." Ms. Snyder suggested that the proposal be clarified to reflect that the reports would be submitted October 1st and not necessarily reviewed by the Board at that time.

Ms. Snyder also suggested the possibility of clarification to the proposed wording of Article VI, Section 3.7 which, as revised will be Section 3.6, and which addresses the time period allowed for an applicant to retake the National Council Licensing Examination (NCLEX). Ms. Snyder noted that there could be confusion concerning the time periods set out in the Rule.

**Findings**

The Board finds that the proposed changes and additions as published in the Delaware Register of Regulations, Vol. 3, Issue 6, Wednesday, December 1, 1999 are reasonable and necessary for the proper regulation of the practice of nursing within the authority of the Board of Nursing with the following non-substantive modification to address the public comments received at the hearing. Specifically, Article II, Section 7.1 as originally proposed will be modified to clarify that the Board will receive the required reports on October 1st of each year. The Section, as modified and as approved by the Board unanimously will read: "The Board shall review the annual reports and self-evaluation reports of the programs to be submitted each October 1st." This date correction will be carried throughout the regulation as indicated in the final version attached hereto.

The Board finds that no modification is necessary for Article VI, Section 3.6 because the language "Notwithstanding the foregoing", clarifies that the application of the two year limitation on retesting is to operate prospectively for graduates after April 30, 2000. The proposed Amendments apply to all individuals and entities subject to regulation by the Board and the Board finds no basis for any exemptions pursuant to Chapter 104 of Title 29 (Regulatory Flexibility Act) and no such exemptions have been requested.

**Conclusion**

Based on the Board's authority to adopt and revise rules

and regulations pursuant to 24 Del. C. § 1906(1), it is the decision of the Board to adopt the proposed changes and additions to its Rules and Regulations with the single change discussed above. A copy of the Rules and Regulations with the modifications adopted by this Order are attached hereto as Exhibit "A" and incorporated herein. The effective date of this Order and of the Rules and Regulations amendments hereby adopted is March 10, 2000 or ten (10) days from the date of its publication in the Delaware Register of Regulations, pursuant to 29 Del. C. §10118(e) whichever is later.

IT IS SO ORDERED this 8<sup>th</sup> day of March, 2000.

Delaware Board of Nursing

(As authenticated by a quorum of the Board):

Betty Baker  
 Deborah Boyle-Borkowski, RN, APN  
 Emma Lou Browning  
 Doris Dayton  
 Beulah Gray  
 Gwelliam Hines, LPN  
 Deborah Maichle, RN, MSN  
 Jan Monihan, RN, M.Ed.  
 Helen Perkins, LPN  
 Til Purnell  
 Sallie Seger, LPN  
 Janet West, RN, MSN  
 Pamela Andrade, RN, MS, Vice-President  
 June Turansky, President

## ARTICLE II NURSING EDUCATION PROGRAMS

### SECTION 1 - DEFINITIONS

1.1 "Board" - the Delaware Board of Nursing.

1.2 "Conditional Approval" - the status granted to a program that is determined to be deficient in a specified area. When this determination is made by the Board, written notice shall be sent to the program specifying the deficient areas, and the time limit within which the deficiencies are to be corrected.

1.3 "Full Approval" - the status granted to a program that meets the requirements of the Law and the Rules and Regulations of the Board. Continuation of full approval is contingent upon annual review of the program and continuing to meet the criteria.

1.4 "Initial Approval" - authorization to admit students and enter into contractual agreements for clinical facilities. It is granted only after an application has been submitted, reviewed and a survey visit made by the Board. No students shall be admitted to the program until the institution has received written notification that initial approval has been

granted. Failure to comply will delay initial approval.

1.5 "National Accrediting Agency For Nursing Education"- a national accrediting agency for nursing education that is recognized by the Council on Postsecondary Accreditation and by the U.S. Department of Education.

1.6 "Nursing education program" - as defined in 24 Del. C., Chapter 19.

### SECTION 2: AUTHORITY DESIGNATED TO BOARD OF NURSING

2.1 In accordance with 24 Delaware Code, Chapter 19, the Board may:

A. Approve curricula and develop criteria and standards for evaluating nursing education programs;

B. Provide for surveys of such programs at such time as it may deem necessary;

C. Approve such programs to meet the requirements of the Chapter and of the Board; and

D. Deny or withdraw approval from nursing education programs for failure to meet prescribed curriculum or other standards. (Subsections 1906 (b), (c), (e)).

### SECTION 3: PURPOSES OF APPROVAL

3.1 The state requires that nursing education programs be approved in order to:

A. Provide for the safe practice of nursing by setting minimum requirements for the programs that prepare the licensee.

B. Encourage self-evaluation for the improvement of a nursing education program.

C. Provide for the public a list of nursing education programs that meet the requirements set by the Board.

D. Assure the graduates of approved nursing programs of their eligibility to apply for admission to the licensing examination and to facilitate their licensure by endorsement in other states.

### SECTION 4: PROCEDURE FOR ESTABLISHING A NURSING EDUCATION PROGRAM

#### PHASE I

4.1 An administrative officer of the institution shall complete the appropriate application form and forward three copies to the Executive Director of the Board at least 12 months prior to enrollment of students.

4.2 The Board shall review the application and conduct a site visit. At least one of the visitors shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

4.2:1 Alternatively, the institution desiring to establish a nursing education program may elect to have the site visit made by a Board member(s) and a nursing



education consultant, the latter with special expertise in the same type of nursing education as the program. The consultant shall be from a list of qualified persons approved by the Board. Costs associated with the visit of the consultant shall be borne by the nursing education program requesting same.

4.3 The purpose of the site visit is to validate the information recorded on the application.

4.4 The site visitation team shall make a written report to the Board.

4.5 The Board shall report to the institution within 90 days after all requirements of Phase I have been met.

#### PHASE II

4.6 The institution shall notify the Board of the appointment of a qualified nurse as director of the program at least nine months in advance of the anticipated enrollment of students in nursing courses.

4.7 The director shall be responsible for planning the program and providing the information required in Part II of the application form, which must be resubmitted at least three months prior to the anticipated enrollment of students.

4.8 The Board shall review the application and supporting information at a regularly scheduled meeting and determine if the program is prepared to admit students. If it is so determined, initial approval will be granted.

#### PHASE III

4.9 Following initial approval, the director of the program shall submit five copies of a progress report to the Board every six months. This shall be a general report of progress to date to include number of students enrolled, attrition rate, faculty credentials, curriculum design, and use of clinical facilities. After the admission of students, these reports shall continue to be submitted at six month intervals until discontinued by the Board.

4.10 The institution shall appoint other qualified nurse faculty members no less than four months in advance of enrollment of students in nursing courses to participate in determining the theoretical framework and in developing the curriculum plan and course content.

4.10:1 The program shall be developed according to criteria in accordance with Section V of these Regulations. The curriculum plan, including course descriptions, shall be submitted for Board review and approval three months in advance of enrollment of students in nursing courses.

4.11 Following the graduation of the first class, the nurse faculty shall prepare and submit five copies of a self evaluation report to the Board for review. The Board will conduct a survey visit to consider full approval of the program.

4.11:1 The Board's decision regarding approval status shall be sent in writing to the appropriate administrative officers and to the director of the nursing

education program.

#### SECTION 5: STANDARDS FOR APPROVAL

##### 5.1 Organization and Administration.

5.1:1 The school shall be authorized to conduct a nursing education program by charter or articles of incorporation of the controlling institution, by resolution of its board of control, or by the school's own charter or articles of incorporation.

5.1:2 Universities, colleges, community or junior colleges, and public schools offering programs in nursing shall be accredited by their appropriate agencies.

5.1:3 Hospitals conducting a nursing education program shall be accredited by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association.

5.1:4 Any agency or institution that is used by a nursing education program shall be authorized to conduct business in the state of Delaware, or in the state in which the agency or institution is located.

5.1:5 The authority and responsibility for the operation of the nursing education program shall be vested in a director who is duly licensed to practice professional nursing in Delaware and who is responsible to the controlling board, either directly or through appropriate administrative channels.

5.1:6 A written organization plan shall be prepared and submitted to the Board and shall indicate the lines of authority and communication of the program to the controlling body, other departments within the controlling institution, the affiliating and cooperating agencies, and to the advisory committee, if one exists.

5.1:7 Adequate funds shall be allocated by the controlling agency to carry out the stated purposes of the program. The director of the nursing program shall be responsible for budget recommendations and administration, consistent with the established policies of the controlling agency.

5.1:8 When the program uses educational or clinical resources that are under the control of another authority, there shall be written agreements with each resource provider. Such agreements shall be developed jointly with the provider, reviewed periodically according to the policies of the program and the agency, and include provision for adequate notice of termination.

5.1:9 Clerical services shall be provided to support the program with a minimum of one full-time secretary and additional secretarial staff as needed.

##### 5.2 Philosophy and Objectives

5.2:1 Philosophy and objectives shall be clearly stated in writing.

##### 5.3 Faculty

###### 5.3:1 Minimum Qualifications

A. All nursing faculty members, including the

director, shall hold current licenses to practice as Registered Nurses in Delaware.

B. The director and each member of the nursing faculty shall be academically and professionally qualified for the position to which appointed. All nursing faculty members shall maintain professional competence in their area(s) of teaching responsibility through professional development activities such as nursing practice, participation in professional meetings, workshops, formal college courses, and nursing research.

C. The director of a baccalaureate degree program shall hold an earned doctoral degree or have a specific plan for completing a doctoral degree and shall hold a degree in nursing at the Master's level or higher. The director shall have experience in nursing practice, nursing education and shall give evidence of ability in providing leadership. A director employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

D. The director of a nursing education program shall hold a minimum of a Master's degree. The director shall hold a degree in nursing at the baccalaureate level or higher and shall have experience in nursing practice, nursing education and shall give evidence of ability in providing leadership. A director employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

E. Each member of the nursing faculty shall hold a baccalaureate degree in nursing or a Master's in nursing. Faculty employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

F. Non-nurse members of the faculty shall hold academic and professional credentials in their field of specialization.

#### 5.3:2 Number

The number of faculty members shall be sufficient to prepare the students for licensure, to achieve the objectives as stated in the school's application, and reasonably proportionate to:

- A. Number of students enrolled;
- B. Frequency of admissions;
- C. Education and experience of faculty members;
- D. Number and location of clinical facilities; and
- E. Total responsibilities of the faculty members.

#### 5.3:3 Conditions of employment

A. Qualifications and responsibilities for faculty member positions shall be defined in writing.

B. Written personnel policies shall be consistent with the policies of the sponsoring institution.

C. Faculty assignments shall allow time for class and laboratory preparation, teaching, program evaluation, improvement of teaching methods, guidance of the students, participation in faculty organizations and committees, attendance at professional meetings, and participation in continuing education activities.

#### 5.3:4 Functions

The principal functions of the faculty shall be to:

- A. Develop the philosophy and objectives of the nursing program;
- B. Develop, implement, evaluate and revise the curriculum;
- C. Participate in the recruitment, admission and retention of students in the nursing program;
- D. Establish criteria for promotion and completion of the program in nursing;
- E. Evaluate student achievement on the basis of established criteria;
- F. Recommend successful candidates for degree, diploma and other forms of recognition; and
- G. Participate in appropriate activities of the controlling institution.

#### 5.3:5 Organization

- A. The nursing faculty shall attend regular meetings of the faculty for the purpose of developing, implementing and evaluating the nursing curriculum.
- B. Committees shall be established as needed.
- C. Written rules or bylaws shall govern the conduct of nursing faculty meetings and committees.
- D. Minutes of faculty and committee meetings, including action taken, shall be recorded and available for reference.
- E. Provision shall be made for nursing student membership and participation on faculty committees and in committee meetings as appropriate.

F. Where nursing practice/education (advisory) committees are established, their functions and relationship to the board of control and to the program shall be clearly defined

G. Written rules shall govern the activities of the nursing practice/education (advisory) committee(s) and minutes of the meetings shall be on file in the administrative office of the program.

#### 5.4 Students

##### 5.4:1 Admission, Promotion and Graduation

###### A. Criteria

Policies and procedures related to the selection and admission of students are the responsibility of the individual school.

B. Students shall be admitted on the basis of

established criteria and without discrimination as to age, race, religion, sex, sexual preference, national origin, or disability.

C. There shall be written policies for the admission and re-admission of students.

D. Schools granting advanced standing after admission via challenge examinations, College Level Examination Program, teacher made tests or any other method shall have written criteria for granting course credit.

E. The policies for promotion, retention and graduation shall be published in the school catalogue or in other appropriate documents that are available to students.

F. All candidates in a program that requires applicants to be registered nurses must be licensed in Delaware if any clinical experiences occur in the State.

#### 5.4:2 Services

A. There shall be written policies for student welfare as related to health, counseling and guidance, financial aid, and residence life, if offered.

B. There shall be well-defined written policies governing payment and refund of tuition and other fees.

#### 5.5 Information

##### 5.5:1 Annual Report

By [~~September~~ **October**] 1 of each year, five copies of an annual report of the nursing education program shall be sent to the Board, using the format supplied by the Board. The report will include information from August 1 of the previous year through July 31 of the current academic year.

##### 5.5:2 School Records

A nursing education program shall maintain a system of records which shall contain all data relating to approval by any agency or body. The data shall include, but not be limited to, course outlines, minutes of faculty and committee meetings, pertinent correspondence, reports of standardized tests and survey reports. Such data shall be available to the Board representatives during the course of a site survey visit subject to applicable provisions of state and federal law.

##### 5.5:3 Student Records

A. The school shall maintain a record for each student. Subject to applicable provisions of law, such records shall be available to Board representatives during the course of a site survey visit.

B. A final transcript for each student shall be retained in the permanent records of the school.

C. Provision shall be made for the protection of records against loss, destruction and unauthorized use.

##### 5.5:4 School Bulletin or Catalogue

Current information about the school shall be published periodically and distributed to students, applicants for admission and to the Board. It should include a general

description of the program, philosophy and objectives of the controlling institution and of the nursing programs, admission and graduation requirements, fees, expenses, and financial aid, educational facilities, living accommodations, student activities and services, curriculum plan, course descriptions, and faculty staff roster.

#### 5.6 Curriculum

The following shall apply to nursing education programs:

##### 5.6:1 Nursing Education Programs

A. The curriculum shall reflect the stated philosophy and objectives of the school and evidence of an organized pattern of instruction and appropriate supervised nursing practice consistent with sound educational practices and principles of learning.

B. LPN and RN programs shall provide for concurrent or correlated theory and clinical practice in the physical and/or mental health care of individuals of all ages, the nursing care of mothers and newborns, children, adults, the aged, individuals with mental health problems, and individuals in diverse settings, not necessarily in separate courses.

1. Clinical experiences shall include preventive aspects of illness, nursing care of persons with acute and chronic illnesses and rehabilitative care. Opportunities shall be provided for the student to participate in patient teaching in a variety of settings with individuals, families and other groups.

2. Concurrent and or correlated theory shall include the history of nursing, health care issues, and legal-ethical issues.

C. The RN curriculum shall provide instruction in the following fields:

1. Physical and biological sciences including content from the areas of anatomy and physiology, chemistry, microbiology, pharmacology and nutrition, which may be integrated, combined or presented as separate courses, and

2. Social and behavioral sciences including content drawn from the fields of communication theory, psychology and sociology and shall serve as a basis for the selection of learning experiences which develop abilities and skills in observation, interviewing, interpersonal relations, and problem-solving.

3. Professional nursing responsibilities.

4. Nursing research and nursing leadership in BSN programs.

D. The LPN curriculum shall provide instruction in the following fields:

1. Essential facts and principles in the biological, physical and social sciences including body structure and functions, elementary microbiology, pharmacology and nutrition, signs of emotional and mental health, human growth and development, and administration

of medications.

#### 5.7 Evaluation

5.7:1 Evaluation as a basis for curriculum revision and change in practices is a continuous process and an inherent responsibility of the faculty. The degree to which the faculty accomplishes its objectives shall be determined through evaluation of curriculum content, teaching methodologies, clinical and other learning experiences, student progress, success of graduates on the licensing examination, promotion, retention and degree of nursing competence of the graduate.

#### 5.8 Educational Facilities

5.8:1 Classrooms, laboratories, and conference rooms shall be adequate in number, size and type for the number of students and educational purposes for which the rooms are used.

##### 5.8:2 Offices

A. Offices shall be available and adequate in size, number and type to provide faculty with opportunities for uninterrupted work and privacy for conferences with students.

B. Space for clerical staff, records, files and other equipment shall be adequate for the needs of the program.

##### 5.8:3 Learning Resources

A. The library shall have recent, pertinent and sufficient holdings to meet the learning needs of students and faculty.

1. Provision shall be made for regular additions to and deletions from the library collection.

2. Library facilities and policies shall be conducive to effective use.

B. Equipment shall be available so that a multimedia approach to learning is afforded.

##### 5.8:4 Clinical Facilities

A. The clinical facility to which the student is assigned for clinical practice is considered an integral part of the nursing program.

B. Clinical facilities shall be selected by the faculty to provide learning experiences essential to achieve the stated purposes of the program and the stated objectives for each clinical course. They may include, but are not limited to:

1. Inpatient facilities such as acute care hospitals, specialized hospitals, long term and extended care facilities.

2. Outpatient facilities such as hospital based clinics, community health centers, mental health clinics and physicians' offices.

3. Other community agencies such as hospices, health maintenance organizations, day care centers, senior centers and prisons.

C. The following criteria for clinical facility use must be met:

1. There shall be an environment in which effective learning can take place and in which the student is recognized as a learner.

2. There shall be an adequate number of qualified professional and other nursing personnel not including the student, to ensure safe care of the patient.

3. There shall be a sufficient number and variety of patients to provide adequate learning experiences.

D. Hospital facilities shall be accredited by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association. Other facilities such as specialized hospitals, long term and extended care facilities and community health agencies shall be licensed or approved by the appropriate approving authority.

E. Facilities used for clinical experience shall be approved by the Board prior to the assignment of students. Approval shall be based on information provided by the school on forms furnished by the Board. A visit by Board representatives to the clinical site may be scheduled.

F. Clinical facilities used in another state require written notification to that jurisdiction's Board of Nursing.

G. Written agreements between the school and agencies involved shall:

1. Ensure that the faculty are ultimately responsible for the students' learning experiences.

2. Provide for continuous planning for students in cooperation with the director of nursing and appropriate nursing staff of the agency.

3. Provide adequate space for the number of students and faculty to conduct educational conferences.

H. Observational experiences shall be planned in cooperation with the agency to meet stated objectives.

#### 5.9 Program Changes

5.9:1 Program Changes Requiring Board of Nursing Prior Approval

A. Changes in the philosophy and/or objectives of the program.

B. Changes in the overall curriculum plan.

C. Changes in the administrative sponsorship of the program.

##### 5.9:2 Procedure for Approval of Program Change

A. When a program change is contemplated, consultation from the Board is available.

B. When any program change is proposed, a written plan shall be submitted to the Board including the:

1. Description of the change

2. Rationale for the change

3. Relationship of the proposed change to the present program.

C. Three copies of these materials shall be

submitted to the Board at least one month prior to the Board meeting at which time the request will be considered.

5.10 Procedure for Continuing Full Approval

5.10:1 Each nursing education program that is accredited by a Board-approved national accrediting agency for nursing education must submit a copy of the self-study document and the letter of notification of accreditation status by [~~September~~ **October**] following the reaccreditation visit. This is contingent on the program remaining accredited and sharing copies of all correspondence related to compliance with the national accrediting agency's recommendations. Extraneous material will be disseminated to Board Members at the discretion of the Executive Director in consultation with the President.

5.10:2 Each nursing education program that does not have Board approved national accreditation will be re-evaluated at least every five years. Survey visits may be scheduled as determined by the Board.

A. Representative(s) of the Board will conduct a survey visit on a date mutually acceptable to the nursing program and the Board.

B. The Board shall notify the director of the nursing education program of the intended survey visit by June of the year preceding the survey visit. The Director shall coordinate an agenda for the visit with the Board and submit it to the Board office three weeks prior to the visit for distribution to the team.

C. The school shall submit five copies of a comprehensive self-evaluation report, following the format supplied by the Board, by [~~September~~ **October**] 1 of the survey year.

5.10:3 Interim visits may be made at any time within the five-year period either by request or as deemed necessary by the Board, with advance notice. At least one of the visitors shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

5.10:4 If the Board determines that a program is not maintaining the standards of Section 5 of these Rules and Regulations, the program shall be granted conditional approval and given a reasonable period of time to correct deficiencies.

5.10:5 A failure to attain an eighty percent pass rate on the licensure examination for first time candidates as reflected in two consecutive annual reports will require presentation to the Board of a plan to identify and correct deficiencies. Progress reports will be required.

A. A program reporting five or fewer candidates in a 12 month period with a failure to attain an eighty percent pass rate as reflected in two consecutive annual reports must provide a written explanation to the Board for action.

5.10:6 Deficiencies sufficient to warrant a determination of conditional approval (probation) may include one or more of the following:

A. Failure to adhere to the school's stated philosophy and curriculum objectives.

B. Repeated violations of stated academic and/or admission policies.

C. Failure to maintain a faculty and administration of adequate size and qualifications.

D. Use of students for nursing services or other purposes that are not primarily educational.

E. Failure to provide adequate resources for cognitive learning and clinical practice.

F. Failure to admit and retain students and/or hire and promote faculty and other personnel without discrimination as to age, race, religion, sex, sexual preference, national origin, or disability.

G. Failure to attain an eighty percent pass rate on the licensure examination for first time candidates in any three consecutive calendar years.

H. Any other deficiencies that, in the opinion of the Board, detrimentally affect the educational process.

5.10:9 7 Upon notification of conditional approval (probation), the program administrator shall submit an action plan no less than two weeks preceding the Board meeting designated in the notification. The action plan shall include identification of the deficiency(ies), proposed corrective action, and projected timeline to remediate the deficiency(ies). The program administrator will be invited to present the action plan at the designated Board meeting. The Board may approve the plan as submitted, recommend revisions, or reject the plan. The program shall submit progress reports as specified by the Board during the term of conditional approval (probation). Prior to the expiration of the probationary period, the program administrator will be invited to meet with the Board to review the status of the plan relative to remediation of the deficiency(ies). A program becomes eligible for unconditional approval when the Board is satisfied that the stated deficiency(ies) has been corrected. If satisfactory remediation has not occurred in the stated timeline, the program administrator will submit an explanation and revised plan with projected timeline. The Board may approve the plan as submitted, or with revisions, or reject the plan and propose to withdraw program approval.

5.10:7 8 A program that fails to correct these deficiencies to the satisfaction of the Board within a reasonable time shall be discontinued after a hearing in which facts regarding such deficiencies are established.

5.10:8 9 Provisions of Sections 6.1 B., C., D., and E. shall prevail for any program for which Board approval has been discontinued.

**SECTION 6: TERMINATION OF A NURSING PROGRAM**

6.1 The controlling institution shall:

A. Submit written notification to the Board of its intent to terminate or interrupt the nursing program.

B. Provide for the completion of the nursing program for all students currently enrolled.

C. Safeguard the quality of the educational program for these students.

D. Provide for the permanent retention of records of students and graduates.

E. Notify the Board in writing as to the location of records and where requests for records may be sent.

#### SECTION 7: PROCEDURE FOR ANNUAL REVIEW OF NURSING EDUCATION PROGRAMS

7.1 The Board shall review the annual reports and self-evaluation reports of the programs [to be] submitted each ~~September~~ October [1].

7.2 Following review of the reports from the programs, written notification of the action taken at the regularly scheduled board meeting, including any recommendations, shall be sent to the appropriate administrative officers of the school. This could include notification of the Board's intention to conduct a site visit.

##### 7.3 Site Visits

7.3:1 For any site visit, the President shall designate the Board members who are to make the survey visits and the chair person of the survey team. At least one member of each team shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

7.3:2 The site visit may be made by a Board member(s) and a nursing education consultant, the latter with special expertise at the same level of nursing education as the program. The consultant shall be selected from a list of qualified persons submitted by the nursing program and approved by the Board. Costs associated with the hiring of the consultant shall be borne by the program.

7.3:3 The Board will indicate in advance any clinical areas they wish to visit.

7.3:4 The school shall schedule separate interviews for the visitors with:

- A. The nurse administrator of the program
- B. The faculty
- C. Representative students from each level
- D. Others as deemed appropriate by the agency or the Board.

7.3:5 The school shall have records available for visitor review, including:

- A. Committee minutes
- B. Course materials
- C. Evaluation data regarding the entire program
- D. Other materials as specified by the survey team.

(Approved 11/8/95)

(Revised 7/8/98)

#### ARTICLE V GUIDELINES FOR COURSES RELATED TO ASSISTANCE WITH MEDICATIONS 24 Del. Code, Subsection 1902

##### SECTION 1: DEFINITION

1.1 "Assistance with medications" means a situation where a designated care provider functioning in a setting authorized by Section 1921 of this Chapter, who has taken a Board approved medication training program, or a designated care provider who is otherwise exempt from the requirement of having to take the Board approved self administration of medication training program, assists the patient in self-administration of medication other than by injection, provided that the medication is in the original container with a proper label and directions. The designated care provider may hold the container for the patient, assist with the opening of the container, and assist the patient in taking the medication.

##### SECTION 2: PROCEDURE FOR ADMINISTERING TRAINING COURSE

2.1 Three copies of each proposed medication training course shall be submitted to the Board for approval or advance notice made to the Board that the approved core training program will be used.

2.2 Credentials of all instructors shall be submitted to the Board for approval.

2.3 Upon completion of the course, the instructor shall submit a list of the successful students to the Board.

##### SECTION 3: PROVIDER QUALIFICATIONS

3.1 Upon completion of this assistance with self-administration of medications training course, the designated care provider will be able to meet the objectives as indicated in the Board approved course guidelines.

3.2 Designated care providers will be recertified as specified by the Board of Nursing.

##### SECTION 4: ANNUAL REPORTING

4.1 The administrator of the program shall submit an annual report to the Board of Nursing by ~~July~~ August 1 on a form provided by the Board.

4.2 The report shall indicate compliance with the guidelines as set forth in the Board approved assistance with administration of medication training program.

#### ARTICLE VI: REQUIREMENTS AND PROCEDURES FOR LICENSURE

##### SECTION 1: EXAMINATIONS

1.1 The Board declares that the National Council Licensure Examination-RN (NCLEX-RN) and the National

Council Licensure Examination-PN (NCLEX-PN) are the required examinations for licensure in Delaware. The Division of Professional Regulation has the authority to review and approve the content and validity of examinations.

1.2 Up to July 1982, the passing score for professional nurse candidates was a standard score of 350 on each test of the State Board Test Pool Examination.

1.3 Effective July 1, 1982, the passing score for Registered Nurse candidates was 1600 on the NCLEX-RN and 350 on NCLEX-PN.

1.4 Effective July 1, 1988, results are reported and recorded as pass or fail.

1.5 The candidate shall take the licensing examination within 90 calendar days following graduation from a Board approved program of professional or practical nursing and not there after without petitioning the Board for specific authorization to test after the 90 day period. Such petitions may be granted by the Board upon a showing of good cause.

1.6 To be eligible to take the examination for licensure for practical nursing, the applicant must be a graduate of a Board approved program for practical nursing. A graduate of a program for professional nursing will be denied permission to take the examination for licensure as a practical nurse.

1.7 The candidate shall file two applications for each examination.

A. The NCLEX application shall be filed with a non-refundable fee.

B. The candidate shall file a completed and notarized Delaware application for licensure by examination, along with the required fee.

C. In addition, the candidate shall file a signed official school transcript indicating the date of graduation or date degree was conferred. If this is not possible, a certifying letter from the director indicating the candidate had completed the program will be accepted until an official transcript is available.

D. The candidate shall present the admission card issued by the Board in order to be admitted to any portion of the examination.

1.8 A candidate who has been accepted but is unable to attend the scheduled examination must notify the Board prior to the starting time or during the first day of examination with a specific reason for not attending. If the reason is acceptable to the Board, (e.g. candidate is ill, death in immediate family, accident, etc.) the Delaware application for licensure by examination will be extended to the next examination date.

## SECTION 2: TEMPORARY PERMITS PRIOR TO EXAMINATION

2.1 Prior to the employment starting date the candidate shall submit a notarized application for a temporary permit on a form provided by the Board.

2.2 The temporary permit is a limited license

authorizing professional or practical nursing practice only at the institution employing the graduate, and only under supervision and pending the results of the examination.

2.3 Any graduate who has completed the requirements of a state board of nursing approved program of professional or practical nursing and who has filed for licensure by examination in Delaware may be employed in professional or practical nursing, working under the direct supervision of a Registered Nurse pending results of the licensing examination.

2.4 Direct supervision means supervision by a Registered Nurse on the same assigned unit during the same time period. The term "unit" is defined as one staffed unit of a maximum of forty patients.

2.5 In order to practice nursing in Delaware with a temporary permit, a recent graduate of a state board of nursing approved program of nursing in another state must file an application for licensure before beginning to practice. If the graduate has taken, or is scheduled to take, the NCLEX Examination in the state in which the program is located, the applicant shall file an application for licensure by endorsement in Delaware.

A. Candidates must submit written documentation that they are candidates for the NCLEX in the state in which the examination is being written.

2.6 The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

2.7 Only a candidate approved to take an examination scheduled after graduation from an approved State Board of Nursing program in the United States or its territories may be issued a temporary permit to practice nursing, good until the release of the examination results.

2.8 The temporary permit shall terminate forthwith if a candidate fails to take the examination in the time prescribed. The Board will notify the candidate's employer of the termination of the permit. The candidate shall return the permit to the Board.

2.9 If extenuating circumstances exist, the candidate may apply to the Board for reissuance of a temporary permit. If the reason is acceptable, the permit may be reissued. (Refer to Section 7: Temporary Permits)

## SECTION 3 TEST RESULTS

3.1 In the case of a successful candidate, the results are released in the following order: the candidate, the director of the school of nursing and the news media. In the case of the unsuccessful candidate the results are released in the following order: the candidate, the employer, and the director of the school program.

3.2 A successful candidate will receive the test results and a copy of the Law regulating the practice of nursing in Delaware, (24 Delaware Code, Chapter 19), and a certificate of registration with a permanent license number.

3.3 A letter to unsuccessful candidates will accompany the test results to advise them of their status and the procedure to be followed for re-examination.

~~3.4 A candidate taking the Practical Nursing examination for the first time in October of a renewal year will be issued a license for the next biennium with the certificate of registration.~~

3.5 ~~4~~ Candidates for licensure who fail the National Council Licensure Examination may not be employed in nursing, are not permitted to practice nursing as defined in the Law, and must return the temporary permit upon receipt of the failure notification.

3.6 ~~5~~ The candidate's employer shall be notified that the temporary permit is not valid, and the candidate may not be employed in nursing until the NCLEX has been passed.

3.7 ~~6~~ The applicant shall retake the examination within a one-year period following notification of failure in order to be eligible for re-examination and not there after without petitioning the Board for specific authorization to retest after the one-year period. Such petitions may be granted by the Board upon a showing of good cause to allow for further examination. There is a fee for each re-examination. Any candidate who graduated following the date of February 1982 may retake NCLEX for an unlimited number of times within a five year period from ~~writing the first exam the date of graduation from an approved nursing education program.~~ Notwithstanding the foregoing, any candidate who graduates from an approved nursing education program after April 30, 2000 may retake NCLEX an unlimited number of times within a two year period from graduation and not there after without petitioning the Board for specific authorization to retest after [the] two year period. Such petitions may be granted by the Board upon a showing of good cause to allow further examination.

#### SECTION 4: REQUIREMENTS FOR APPLICANTS GRADUATING FROM FOREIGN PROGRAMS

4.1 Applicants graduating from programs outside of the United States and not licensed by the State Board Test Pool Examination or NCLEX in another state:

A. Must have been issued a certificate of licensure by the licensing agency in the state, territory, or country where the nursing program is located;

B. Must submit a certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the educational requirements of a curriculum for the preparation of professional nurses which is equivalent to the approved professional schools in Delaware;

C. Must submit official English translations of all required credentials;

D. Must, in instances when completion of a four-year high school course study or its equivalent cannot be verified, take the high school equivalence examination given by a State Department of Education;

E. Must submit evidence that the program from which applicant is a graduate meets the approved standards adopted by the Board (24 Delaware Code, Chapter 19, subsections 1910 and 1914) and Rules and Regulations: Article II -Section 5. (If the program does not include the areas specified in the above curricula, the deficiencies must be made up before the applicant is eligible to take NCLEX);

F. Are allowed one year from the date of Board review of the completed application to make up all deficiencies, including the taking of the initial examination;

G. Effective July 1, 1982, professional nurse applicants must have passed the NCLEX examination (with a minimum standard score of 1600) and practical nurse applicants must have passed the NCLEX examination (with a minimum standard score of 350) within four examination opportunities, within a period of two years or original notification of failure.

H. Effective July 1, 1988, results are reported and recorded as pass or fail.

I. May be issued a temporary permit and may be employed in professional or practical nursing if the applicant has met all of the Board's prerequisites for taking the NCLEX in Delaware and is scheduled to do so;

J. May work only at the institution employing the applicant, under the direct supervision of a registered nurse pending results of the first licensing examination.

K. Must meet all other requirements for licensure.

4.2 All applications will be reviewed by the Board to determine if the applicant is eligible to take the NCLEX Examination or to determine if applicant's educational qualifications are as Board prescribed and may be eligible for licensure by examination.

4.3 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination from 1970 - 1979 are eligible for licensure by endorsement.

4.4 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination, first administered August 1980, are eligible for licensure by endorsement with a passing score of 400. (September 15, 1981)

4.5 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination after that examination became graded on a pass or fail basis are not eligible for licensure by endorsement and must pass the NCLEX. (June 8, 1996)

#### SECTION 5: LICENSURE BY ENDORSEMENT

5.1 All endorsement applicants shall:

A. Submit a completed, signed, and notarized application on a form provided by the Board.

B. Remit the required non-refundable fee.

C. Attach to the application a photocopy of a current license indicating date of expiration.

D. Provide official verification of original



licensure in another jurisdiction on a form acceptable to the Board.

E. An applicant for endorsement must have completed high school or must have passed a nationally standardized test, and be otherwise qualified for licensure.

5.1:2 The Board shall request a reference on a form supplied by the Board from:

A. the applicant's immediate past employer(s) in the past six months. Such reference(s) should be given by the nursing employer, or if the immediate past employer is not a nursing professional, by the applicant's immediate supervisor (e.g. physician, director, manager). In the case of someone engaged in solo practice or who is self-employed, the reference shall be provided by at least one professional colleague with whom the individual has most recently worked for at least six months in the past five years.

B. in the event of no previous nursing employer, the Director of the applicant's approved nursing education program. Any unsatisfactory reference shall be brought to the attention of the Board for review.

5.1:3 If the applicant has not been employed in nursing a minimum of 1000 hours in the past five years or a minimum of 400 hours of nursing practice within the previous two years, the applicant must give evidence of satisfactory completion of an approved refresher program within a two-year period before licensure by endorsement will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional/practical nursing.

5.1:4 All completed applications for endorsement will be submitted to the Board for consideration of approval.

5.1:5 Issuance of a license shall be considered as notice of approval of the application.

5.1:6 All applications will be purged in accordance with Division policy.

#### 5.2 Registered Nurses

5.2:1 The Board may issue a license to practice professional nursing as a Registered Nurse by endorsement, without a written examination, to an applicant who has been duly licensed as a Registered Nurse under the laws of another state, territory, or foreign country if, in the opinion of the Board, the applicant meets the qualifications for licensure in this state.

5.2:2 As of 1950 and thereafter, the State Board Test Pool Examination for professional nursing is the licensing examination authorized for use by all boards of nursing in jurisdictions in the United States. (In July 1982, the examination was re-titled National Council Licensure Examination-RN (NCLEX-RN). Prior to this date, examinations constructed by state boards of nursing are acceptable, providing such examinations include all of the required clinical areas: medicine, surgery, obstetrics-gynecology, pediatrics, psychiatry). Until 1953, the passing score required for each of the tests was 70%.

5.2:3 Those applicants graduating as of 1953 and thereafter are required to show evidence of clinical experience in medical nursing, surgical nursing, psychiatric nursing, nursing of children, and obstetrical nursing.

5.2:4 An applicant for licensure by endorsement must be a graduate of a State Board of Nursing approved school of nursing, and be otherwise qualified for licensure.

#### 5.3 Licensed Practical Nurses

5.3:1 Effective October 1, 1963, waiver or equivalency licensure is not acceptable in Delaware. The Board may issue a license to practice nursing as a Licensed Practical Nurse, without a written examination, to an applicant who has been licensed as a Practical Nurse or a person entitled to perform similar services under a different title under the laws of any state, territory or foreign country if, in the opinion of the Board, the applicant has the qualifications required for the licensing of practical nurses.

5.3:2 Candidates for licensure are required to have theory and clinical experience in medical nursing, surgical nursing, psychiatric nursing, obstetrical nursing, and nursing of children.

5.3:3 The applicant must be a graduate of a Board approved program for practical nursing.

5.3:4 A licensed practical nurse applicant for licensure by endorsement must have passed the NCLEX-PN.

5.3:5 An applicant for endorsement must be otherwise qualified for endorsement.

### SECTION 6: LICENSURE: BIENNIAL RENEWAL AND REINSTATEMENT

#### 6.1 Biennial Renewal of Licensure

6.1:1 In order to practice nursing in Delaware with or without financial compensation, Registered Nurses or Licensed Practical Nurses who are duly licensed under any provision of Chapter 19 shall renew their licenses biennially, prior to December 31 of the biennium. In the event that applicant for renewal or reinstatement of licensure has not been actively employed in professional or practical nursing in the past five years, the applicant will be required to give evidence of satisfactory completion of a professional or practical nursing refresher program within an approved agency within a two-year period to renewal before licensure will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

A. Registered Nurses - the license shall be valid for two calendar years expiring each odd-numbered year on dates established by the Department of Administrative Services.

B. Licensed Practical Nurses - the license shall be valid for two calendar years expiring each even-numbered year on the dates established by the Department of Administrative Services.

6.1:2 The applicant shall indicate nursing

employment within the past five years before the renewal application will be processed. A minimum of 1000 hours of nursing practice within the past five years or a minimum of four hundred hours of nursing practice within the past two years is required for licensure by renewal or reinstatement. Verification of completion of the practice hours will occur for a minimum of 1% of the total number of licensees with notice of the audit two months prior to the renewal in a biennium. An additional 2% will be audited within six months of renewal of licensure. See Article IX, for Mandatory Continuing Education requirements.

A. Upon receipt of such notice, the licensee must submit verification of compliance for the period being audited/verified. Verification will be done on a form supplied by the Board office that includes employer's name, title, address, telephone number, job title, and dates of employment.

B. The employer will submit the completed form directly to the Board office.

C. The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

D. An unsatisfactory verification or audit shall result in Board action.

E. Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

6.1:3 An application for renewal of license will be mailed at least 12 weeks prior to the expiration date of current licensure.

6.1:4 Failure to receive the application for renewal shall not relieve the licensee of the responsibility for renewing their license by the expiration date.

6.1:5 Renewal application, along with the required fee, shall be returned to the Board office and postmarked no later than the last day of the month before the month of expiration.

6.1:6 Licenses that have lapsed may be reinstated by the Board upon satisfactory explanation by the licensee of failure to renew and after payment of a penalty fee.

6.1:7 During the month of expiration, the Board may issue a renewal certificate upon receipt of a renewal application, the documentation of nursing employment, the renewal fee and late fee.

#### 6.2 Reinstatement of Licensure

6.2:1 Registered Nurses or Licensed Practical Nurses who fail to renew their licenses by February 28, May 31, and September 30, of the renewal period shall be considered to have lapsed licenses and shall not practice nursing in the state of Delaware. After February 28, May 31, and September 30 of the current licensing period, any requests for reinstatement of a lapsed licensed shall be presented to the Board for action. All applicants shall have a minimum of 1000 hours of nursing practice within the

previous five years or a minimum of four hundred hours of nursing practice within the past two years before licensure by reinstatement will be granted. The practice of nursing can be with or without financial compensation. In the event the applicant has not been actively employed in nursing as described above, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reinstatement. In the event no refresher course is available, the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

6.2:2 The applicant shall file a notarized application for reinstatement of licensure. The application shall be accompanied by a satisfactory reference from a current or previous employer, renewal fee and penalty fee.

6.3 It is unprofessional conduct and a violation of Delaware Law to practice without a license. The Board may refuse a license or refuse to renew a license of a professional nurse or a practical nurse who practices without a current license.

#### 6.4 Reinstatement Hearings

6.4:1 Hearings for consideration of reinstatement licensure may be held for those applicants who file for reinstatements more than 90 days after the renewal period and who have been practicing nursing without a current license, or who have submitted an unsatisfactory explanation for failure to renew.

6.4:2 A notice of hearing shall be sent to the Registered Nurse or Licensed Practical Nurse. The hearing shall be conducted in accordance with the Administrative Procedures Act and the Nurse Practice Act.

6.4:3 The Board shall make determination for reinstatement of licensure or shall determine that the Registered Nurse or Licensed Practical Nurse shall be subject to the penalties provided for violations of the Nurse Practice Act.

6.4:4 Upon determination that licensure shall be reinstated, the Board shall issue a license to practice nursing.

### SECTION 7: TEMPORARY PERMITS

7.1 The temporary permit is a limited license authorizing professional, practical or graduate nursing practice only at the employing institution for no longer than an initial 90 day period.

7.2 Nurses who produce current evidence of licensure to practice nursing in another state and who have applied for endorsement may be issued a temporary permit to practice nursing for a maximum of 90 days, if they have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing practice within the past two years.

7.3 A temporary permit to practice nursing for a maximum of 90 days may be issued to persons who have requested reinstatement of their licensure, if they have been

employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing practice in the past two years.

7.4 All applicants seeking temporary permits to practice professional, practical or graduate nursing in Delaware must:

A. Prior to employment starting date, submit a notarized application for endorsement or examination, completing the portion for a temporary permit, and indicating employer.

B. Have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours in the past two years, if applying for reinstatement or endorsement, with current evidence of licensure from another state.

C. Have been accepted as a nurse employee in Delaware. The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

D. Have graduated from a State Board of Nursing approved program.

E. Pay a licensure fee which is not refundable.

7.5 Upon completion of all requirements, a temporary permit will be issued for no longer than 90 days with subsequent renewal periods of 60 and 30 days sequentially.

7.6 The Executive Director shall:

A. Keep a register of permits.

B. Refrain from issuing a temporary permit in any doubtful situation until further evidence is obtained or until the Board has given approval.

7.7 In the absence of the Executive Director, the President may issue a temporary permit with the same restrictions.

#### SECTION 8: INACTIVE STATUS

8.1 A person previously licensed by the Board and not engaged in the practice of nursing in the state of Delaware, but desiring to maintain the right to use the title Registered Nurse or Licensed Practical Nurse, may apply and be granted inactive status by the Board in accordance with these regulations.

8.2 A nurse desiring inactive status shall send a written notice to the Board with fee. Upon receipt of notice and fee the Board shall place the name of the person on an inactive status list and shall issue a certificate. The person shall not practice nursing in this state.

8.3 A licensee on inactive status shall use the appropriate title, Registered or Licensed Practical Nurse, followed by (INACTIVE).

8.4 A licensee will receive a certificate of inactive status with the term Inactive Registered Nurse or Inactive Licensed Practical Nurse printed across the top.

8.5 A notice of inactive status shall be sent to all persons on the inactive list at renewal time. To receive a

certificate of inactive status, the licensee shall return the renewal notice with the fee.

8.6 All applications from persons on inactive status who decide to resume active status will be presented to the Board for review for reinstatement.

8.7 In the event the applicant has not been actively practicing nursing within the previous five years, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reactivation, or participate in an alternate Board approved method of evaluating current knowledge in professional or practical nursing. All applicants shall have a minimum of 1000 hours of nursing within the previous five years or a minimum of four hundred hours of nursing practice within the previous two years. See Article IX, for Mandatory Continuing Education requirements.

#### SECTION 9: LOSS OF LICENSE, CHANGE OF NAME/ ADDRESS

9.1 If a license is lost, stolen or destroyed, the licensee shall submit a letter to the Board explaining the loss. A letter indicating the original number and expiration dates shall be issued by the Executive Director in lieu of a duplicate license.

9.2 Licensees who legally change their names and wish to change the name on the license, shall provide notarized copies of evidence, such as marriage licenses or court actions. The maiden name will be retained on the license.

9.3 Notice of change of address shall be submitted in writing within 30 days of the change. All notices from the Board will be sent to the last address provided by the licensee or applicant to the Board.

9.4 A list of license numbers of lost, stolen or otherwise destroyed licenses shall be kept on file in the Board office.

#### SECTION 10: REGISTER OF NURSES LICENSED IN DELAWARE

##### 10.1 Licensure Verification

10.1:1 Following the official renewal period, the Executive Director shall request each employer or employing agency to submit to the Board by ~~February~~April 15 a list of all nurses employed. The list shall include the following information:

A. Name of employee, alphabetized by last name;

B. Classification (Registered Nurse, Licensed Practical Nurse, Advanced Practice Nurse or nurse holding temporary permit);

C. License number; and

D. Expiration date of current license or temporary permit.

10.1:2 Individuals submitting the list attest by their signatures that they viewed each current registration of

licensure and advanced practice recognition.

10.1:3 The list will be checked by the Executive Director. If it is not possible to verify current licensure, the Executive Director will immediately notify the employer by letter.

10.1:4 The Executive Director shall prepare a summary of the survey to be presented to the Board.

#### 10.2 Release of Information

10.2:1 The Executive Director may release to a citizen of Delaware the following information:

A. Whether or not the individual was or is currently licensed,

B. Date of original licensure,

C. Under what condition license was issued (examination, endorsement, or waiver),

D. Whether license was ever suspended or revoked following a hearing.

10.2:2 Additional information may be released pursuant to the Freedom of Information Act.

### ARTICLE VIII - RULES AND REGULATIONS GOVERNING THE PRACTICE OF NURSING AS AN ADVANCED PRACTICE NURSE IN THE STATE OF DELAWARE

#### SECTION 1: AUTHORITY

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

#### SECTION 2: PURPOSE

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

#### SECTION 3: SCOPE

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

#### SECTION 4: DEFINITIONS

4.1 "Advanced Practice Nurse" as defined in 24 Del. C., §1902(d)(1).

Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title

Advanced Practice Nurse within his/her specific specialty area.

#### 4.1:1 "CERTIFIED NURSE MIDWIFE (C.N.M.)"

A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ACNM Certification Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

#### 4.1:2 "CERTIFIED REGISTERED NURSE ANESTHETIST (C.R.N.A.)"

A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists' Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists' Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

#### 4.1:3 "CLINICAL NURSE SPECIALIST (C.N.S.)"

A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master's degree program in a clinical nurse specialty or post Master's certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in Article VIII, Section 9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

#### 4.1:4 "NURSE PRACTITIONER (N.P.)"

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

#### 4.2 "Audit"

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

#### 4.3 "Board"

The Delaware Board of Nursing

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

4.4-5 “Collaborative Agreement”

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

4.5 6 “Guidelines/ Protocols”

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

4.6 7 “National Certification”

That credential earned by a nurse who has met requirements of a Board approved certifying agency.

4.6 7:1 The agencies so approved include but are not limited to:

- A. American Academy of Nurse Practitioners
- B. American Nurses Credentialing Center
- C. American Association of Nurse Anesthetists Council on Certification of Nurse Anesthetists
- D. American Association of Nurse Anesthetists Council on Recertification of Nurse Anesthetists
- E. National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties
- F. National Certification Board of Pediatric Nurse Practitioners and Nurses.
- G. ACNM Certification Council, Inc.

4.7 8 “Post Basic Program”

4.7 8:1 A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

4.7 8:2 The program must be one offered and administered by an approved health agency and/or institution of higher learning,

4.7 8:3 Post basic means a program taken after licensure is achieved.

4.8 9 “Scope of Specialized Practice”

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

4.9 10 “Supervision”

Direction given by a licensed physician or

Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

**SECTION 5: GRANDFATHERING PERIOD**

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

**SECTION 6: STANDARDS FOR THE ADVANCED PRACTICE NURSE**

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

6.2 Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in Section 4.1 of these Rules and Regulations:

- A. Performs comprehensive assessments using appropriate physical and psychosocial parameters;
- B. Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;
- C. Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited to psychotherapy, administration of anesthesia, and vaginal deliveries;
- D. Functions under established guidelines/protocols and/or accepted standards of care;
- E. Uses the results of scientifically sound empirical research as a basis for nursing practice decisions;
- F. Uses appropriate teaching/learning strategies to diagnose learning impediments;
- G. Evaluates the quality of individual client care in accordance with quality assurance and other standards;
- H. Reviews and revises guidelines/protocols, as necessary;
- I. Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;
- J. Collaborates with members of a multi-disciplinary team toward the accomplishment of mutually established goals;
- K. Pursues strategies to enhance access to and use of adequate health care services;
- L. Maintains optimal advanced practice based on

a continual process of review and evaluation of scientific theory, research findings and current practice;

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

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

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

SECTION 7: GENERIC FUNCTIONS OF THE ADVANCED PRACTICE NURSE WITHIN THE SPECIALIZED SCOPE OF PRACTICE include but are not limited to:

- 7.1 Eliciting detailed health history(s)
- 7.2 Defining nursing problem(s)
- 7.3 Performing physical examination(s)
- 7.4 Collecting and performing laboratory tests
- 7.5 Interpreting laboratory data
- 7.6 Initiating requests for essential laboratory procedures
- 7.7 Initiating requests for essential x-rays
- 7.8 Screening patients to identify abnormal problems
- 7.9 Initiating referrals to appropriate resources and services as necessary
- 7.10 Initiating or modifying treatment and medications within established guidelines
- 7.11 Assessing and reporting changes in the health of individuals, families and communities
- 7.12 Providing health education through teaching and counseling
- 7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public
- 7.14 Delegating tasks appropriately
- 7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del. C., §1906(20).

SECTION 8: CRITERIA FOR APPROVAL OF CERTIFICATION AGENCIES

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

8.2 The national certifying body:

- 8.2:1 Is national in the scope of its credentialing.
- 8.2:2 Has no requirement for an applicant to be a

member of any organization.

8.2:3 Has educational requirements which are consistent with the requirements of these rules.

8.2:4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.2:5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.2:5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.2:5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.2:5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.2:5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.2:5.5 Examinations are evaluated for psychometric performance;

8.2:5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.2:5.7 Examination security is maintained through established procedures

8.2:6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.2:7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.2:8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.2:9 Has an evaluation process to provide quality assurance in its certification program.

SECTION 9: APPLICATION FOR LICENSURE TO PRACTICE AS AN ADVANCED PRACTICE NURSE

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

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

9.2:1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system

with whom a current collaborative agreement exists before beginning employment in Delaware.

9.2:2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

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

9.4 A Registered Nurse meeting the practice requirement as listed in Section 11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

9.4:1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

9.4:2 Faculty members teaching in nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 11.2.1.

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

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

#### SECTION 10: TEMPORARY PERMIT FOR ADVANCED PRACTICE NURSE LICENSURE

10.1 A temporary permit to practice, pending Board

approval for permanent licensure, may be issued provided that:

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

B. The individual applying holds a current license in Delaware, and

C. The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

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

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

10.1:1 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

A. The individual meets the requirements in 10.1.A. or B., and E. and;

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

C. The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 10.1 D; or,

D. The individual meets A and B hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

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

10.3 A temporary permit may be issued:

A. For up to two years in three month periods.

B. At the discretion of the Executive Director.

10.4 A temporary permit will be withdrawn:

A. Upon failure to pass the first certifying examination

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

a. current employer reference,

b. supervision available,

c. job description,

d. letter outlining any extenuating

circumstances,

e. any other information the Board of Nursing deems necessary.

~~B. In the absence of a collaborative agreement.~~

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

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

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

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

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

#### SECTION 11: MAINTENANCE OF LICENSURE STATUS: REINSTATEMENT

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

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

11.2:1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

11.2:2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

11.3 The Advanced Practice Nurse will be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

11.4 Advanced Practice Nurses who fail to renew their licenses by December 31 of the renewal period shall be considered to have lapsed licenses. After December 31 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600

hours in the past two years in the specialty area must be met or the process described in 11.4 followed.

11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

#### SECTION 12 AUDIT OF LICENSEES

12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

A. Upon receipt of such notice, the licensee must submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

B. The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

C. An unsatisfactory audit shall result in Board action.

D. Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

12.2 The Board may select licensees for audit throughout the biennium.

#### SECTION 13 EXCEPTIONS TO THE REQUIREMENTS TO PRACTICE

13.1 The requirements set forth in Section 9 shall not apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

#### ARTICLE X DISCIPLINARY PROCEEDINGS

##### SECTION 1: DISCIPLINARY SANCTIONS

1.1 The Board may:

- refuse to issue a temporary permit or a license to practice nursing;
- revoke, suspend or censure a license to practice nursing;
- issue a letter of reprimand;
- place a license on probationary status;
- refuse to renew a license; or
- otherwise discipline a licensee as provided by 24

Delaware Code, Chapter 19 §1922.

##### SECTION 2: PROCEDURES

2.1 Any individual shall submit written complaints of violations of Delaware Code 24, Chapter 19 to the Division of Professional Regulation and the Executive Director shall retain a copy.

2.2 Any Board member receiving a complaint alleging a practitioner's or licensee's violation of the Nurse Practice



Act should promptly forward the complaint to the Division of Professional Regulation with a copy to the Executive Director.

2.3 Hearings on licensing matters and complaints filed with the Board that allege a practitioner or licensee has violated the Nurse Practice Act, 24 Del. C. Chapter 19, shall be heard and determined by the Board in accordance with the applicable provisions of the Nurse Practice Act and the Administrative Procedures Act, 29 Del. C., Chapter 101. When the licensee/practitioner, prosecuting Deputy Attorney General, and appointed Board member, if any, consent, the complaint may be resolved through the Consent Agreement process described herein in lieu of a formal disciplinary hearing before the Board.

### SECTION 3: REISSUANCE OF LICENSE FOLLOWING DISCIPLINARY ACTION

3.1 Upon application made by the licensee, a suspended or probated license may be reissued or reinstated, on such conditions as the Board may determine, after the imposed period of discipline has concluded and after evidence is presented to satisfy the Board that the condition that lead to the disciplinary action has been corrected.

### SECTION 4: UNPROFESSIONAL CONDUCT DEFINED

4.1 Nurses whose behavior fails to conform to legal standards and accepted standards of the nursing profession and who thus may adversely affect the health and welfare of the public may be found guilty of unprofessional conduct.

4.2 Unprofessional conduct shall include but is not limited to the following:

A. Performing acts beyond the authorized scope of the level of nursing practice for which the individual is licensed.

B. Assuming duties and responsibilities within the practice of nursing without adequate preparation, or without maintaining competency.

C. Performing new nursing techniques and/or procedures without education and practice.

D. Inaccurately recording, falsifying or altering a patient or agency record.

E. Committing verbal or physical abuse of patients or co-employees.

F. Assigning unlicensed persons to perform the practice of licensed nurses.

G. Delegating nursing practice or advanced nursing practice to unqualified persons.

H. Failing to supervise persons to whom nursing practice or advanced nursing practice has been delegated.

I. Leaving a patient assignment after accepting responsibility except in documented emergency situations.

J. Failing to safeguard a patient's dignity and right to privacy in providing services.

K. Violating the confidentiality of information

concerning a patient.

L. Failing to take appropriate action to safeguard a patient from incompetent, unethical or illegal health care practice.

M. Practicing nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical, psychological, or mental impairment.

N. Diverting drugs, supplies or property of a patient or agency.

O. Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.

P. Practicing professional or practical nursing when license or temporary permit has expired.

Q. Practicing as an Advanced Practice Nurse when designation and/or certification and/or temporary permit has expired.

R. Practicing professional or practical nursing in this state without a current Delaware license or permit.

S. Practicing as an Advanced Practice Nurse in this state without current designation and a registered nurse license and/or temporary permits.

T. Allowing another person to use her/his nursing license, temporary permit, or certification of Advanced Practice Nurse for any purpose.

U. Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule and regulation intended to guide the conduct of a nurse or other health care provider.

V. Resorting to fraud, misrepresentation or deceit in taking NCLEX-RN or PN, or in obtaining a license, temporary permit or advanced practice designation.

W. Disclosing the contents of the licensing examination or soliciting, accepting or compiling information regarding the examination before, during or after its administration.

X. Failing to report unprofessional conduct by another licensee.

Y. Practicing or holding oneself out as an Advanced Practice Nurse in any category without holding a Board authorized certificate of state designation in such category.

Z. Failing to comply with the requirements for mandatory continuing education.

AA. Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

BB. Failing to comply with the terms and conditions set out in a disciplinary action of the Board. (4/8/98)

## SECTION 5 - CONSENT AGREEMENT PROCESS

5.1 Disciplinary proceedings subject to resolution by Consent Agreement process shall proceed as follows:

5.1:1 The President shall appoint a Board member, subject to ratification by the Board at the next meeting, to review each formal complaint against a licensee and determine whether the Consent Agreement process can be used in lieu of a formal disciplinary hearing. Similarity to previous cases that have established Board remedies and severity and number of counts may be considered. The assigned Deputy Attorney General may also request that the complaint proceed by the Consent Agreement process.

5.1:2 If the appointed Board member and the state prosecutor concur that a consent agreement is appropriate, the Board office shall send the licensee a copy of the formal complaint and a request to proceed either to a formal hearing or to a Consent Agreement process within 14 days. If the Consent Agreement process is not appropriate, the complaint will be set for hearing.

5.1:3 The licensee shall be required to respond within 14 days when the Consent Agreement alternative is offered. When the response deadline is not met or the licensee declines the Consent Agreement process, a hearing date shall be scheduled.

5.1:4 Upon receipt of agreement to use the Consent Agreement process, the appointed Board member and Board counsel shall receive a copy of the complaint, investigative report, and any other appropriate material within seven days.

5.1:5 The Board counsel shall consult with the appointed Board member in drafting the Consent Agreement. Negotiations among the licensee and his/her counsel, if any, the Board member, Board counsel, and the prosecutor may take place by informal conferences, telephone, or correspondence. The Consent Agreement will include a brief recitation of the facts; the licensee's acknowledgment of charge(s) in the complaint and violation of the Nurse Practice Act; the licensee's waiver of rights to the formal disciplinary hearing before the Board; and sanction to be imposed.

5.1:6 The consultation and drafting and acceptance of the consent agreement are to be done in a timely fashion, with a report to the Board at 60 day intervals until presentation for approval by the Board.

5.1:7 If agreement among all parties has not occurred after 120 days from presentation of the first consent agreement, the Board shall be notified of the reasons why no agreement has been reached. If appropriate, the Board may schedule a complaint for a hearing.

5.1:8 After the licensee and his or her attorney, if any, the prosecutor, and the appointed Board member have signed the consent agreement, it shall be presented to the Board at the Board's next meeting for signature by a quorum of the Board and entry as an order of the Board.

5.1:9 The Consent Agreement is not effective until

it is entered as an order of the Board. At any time before the Consent Agreement is entered as an order of the Board, either the licensee or the State may terminate the consent agreement process and elect to proceed by formal disciplinary hearing before the Board.

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## DEPARTMENT OF EDUCATION

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

### Regulatory Implementing Order

#### Amendments To Regulation From The Handbook Of Personnel Administration For Delaware School Districts Sick Leave And Accumulation Of Annual Leave

##### I. Summary Of The Evidence And Information Submitted

The Acting Secretary of Education seeks to amend the regulation from the *Handbook for Personnel Administration for Delaware School Districts: Sick Leave and Accumulation of Annual Leave*.

Sick Leave and Accumulation of Annual Leave from pages 7-1 and 7-2 have been amended and included in one regulation called Employee Leave. The *Del.C.* references and the technical assistance comments have been removed. In the case of vacation leave the regulation has been revised to reflect current practice and 14 *Del.C.*, Section 1318(I), which addresses how to handle the accumulated vacation leave when an employee retires or goes to another job.

Notice of the proposed amendment to the regulation was published in the News Journal and the Delaware State News on December 13, 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 this regulation in order to remove the *Del.C.* references and the technical assistance language and to update the references to reflect present practice.

##### III. Decision To Amend The Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulation as presented. Therefore, pursuant to Section 122 the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 *Del.C.*, 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 amended hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the *Regulations of the Department of Education*.

#### V. Effective Date Of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 *Del. C.*, Section 122, in open session at the said Board's regularly scheduled meeting on March 16, 2000. 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 16th day of March, 2000.

DEPARTMENT OF EDUCATION  
Valerie A. Woodruff  
Acting Secretary of Education

Approved this 16th day of March, 2000.

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

#### Employee Leave

1.0 Sick Leave - Sick leave accumulated by an employee of any state agency shall be transferred when said employee begins subsequent employment in a school district.

1.1 Sick leave days are made available at the start of the fiscal year, but adjustments for employees who terminate service prior to the end of the school year shall be made in the final paycheck.

2.0 Vacation Leave – Subject to any limitation imposed by statute, accumulated vacation leave shall be paid upon termination of employment. The employee may either remain on the regular payroll until such time as all vacation time is exhausted, or a lump sum payment may be made for all unused vacation time on the employee’s final paycheck. The vacated position may be filled at any time provided that

the two employees do not receive compensation for the same pay period. Accumulated vacation time shall not be transferred between different employing state agencies.

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## 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))

Adoption of State of Delaware |  
Rules and Regulations Governing |  
The State of Delaware Food Code |

#### Nature of the Proceedings:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt Rules and Regulations Governing The State of Delaware Food Code. The DHSS’s proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code Chapter 1, Section 122 (3) (u).

On October 1, 1999 (Volume 3, Issue 4), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by November 1, 1999, or be presented at public hearings on October 27 or October 28, 1999, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

A summary of the comments is part of the accompanying “Summary of Evidence.”

#### Findings of Fact:

The Department finds that the proposed rules in Section 3-603.11 of the regulations, pertaining to Consumer Advisory, shall not be adopted. However, said section will be reserved for future Consumer Advisory rules.

Exclusive of the proposed rules in Section 3-603.11 as described above, the Department finds that the proposed regulations as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include modifications from those published in the October 1, 1999 Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed

Rules and Regulations Governing The State of Delaware Food Code are adopted as modified and excepting amendments in Section 3-603.11. Said regulations shall become effective April 11, 2000 after publication of the final regulation in the Delaware Register of Regulations.

Gregg C. Sylvester, MD, Secretary  
March 15, 2000

### Summary of Evidence

#### State of Delaware Rules and Regulations Governing the State of Delaware Food Code

Public hearings were held on October 27, 1999, in the Department of Transportation Southern District Office, in Georgetown and in the Department of Transportation Administration Building in Dover, and on October 28, 1999, in the Carvel State Office Building, in Wilmington, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed Delaware Health and Social Services (DHSS) Rules and Regulations Governing The State of Delaware Food Code. The announcements regarding all public hearings were advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. Thom May, Director of Community Environmental Health Services, and the Office of Food Protection staff made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. With few exceptions, public testimony focused on the six national level problematic issues between the food industry and the Food and Drug Administration (FDA). Those concerns and the DHSS (Agency) response are as follows:

- Members of the food industry and the Delaware Food Safety Council (DFSC) would like a 10 year exemption versus a 5 year exemption as allowed in the 1999 Food Code to replace refrigeration equipment that does not meet the 41 (F) degrees or below cold holding temperature requirement. The food industry would also like to see open-top, grill-line and prep reach-in refrigeration units be exempted from this requirement for the life of the equipment.

*Agency Response:* DHSS recommends retaining the 5 year exemption requirement. A survey of five major refrigeration manufacturers (Hussman, Hobart, Hill Phoenix, Delfield and Beverage Air) revealed that they have offered industry refrigeration units (open-air, reach-in, restaurant, merchandise display) that meet the 41 (F) degree standard since the early 1990s. DHSS pledges to work with the DFSC and industry during the 1999 Food Code 1-year

phase-in period to identify refrigeration units that do not meet the 1999 Food Code standard. By working with industry and identifying these units early, industry can phase-in new purchases over the next 5 years to ease the financial load. In addition, under the 1999 Food Code, Public Health has the authority to grant case-by-case, temporary variances for bonafide hardships. DHSS will also monitor the science and feasibility of this requirement as provided by the FDA, and will consider extending this phase-in period in the future if warranted. It is the agency's contention that the public health benefits of compliance with the refrigeration requirement far outweigh the cost or inconvenience associated with the 5 year phase-in period.

- Members of the food industry and the DFSC asked that the 1999 Food Code, food hot holding temperature requirement of 140 (F) be reduced to 130 (F).

*Agency Response:* DHSS recommends retaining the 140 (F) hot holding temperature requirement. Although from an unscientific standpoint, to lower this requirement seems inconsequential. However, this standard has a scientific basis that takes into consideration equipment variables and human error. Lowering this standard by 10 degrees could mean the difference between rapid food pathogen growth and no pathogen growth. Food-borne illnesses are directly linked to disease causing pathogen growth. In a meeting held after the public hearings, the DFSC voted to accept the 140 (F) food hot holding standard in the 1999 Food Code as written.

- Members of the food industry and the DFSC asked that the 1999 Food Code requirement that prohibits bare-hand contact with ready-to-eat foods be changed to minimal bare-hand contact.

*Agency Response:* DHSS recommends retaining this requirement. In this section of the 1999 Food Code there are provisions providing regulators leeway to approve minimal bare-hand contact on a case-by-case basis with ready-to-eat foods. DHSS contends that prohibited bare-hand contact with ready-to-eat foods provides maximum protection against ready-to-eat food contamination. Through proper education, supervision and awareness, this requirement will have minimal impact on the food-service industry while providing maximum protection to the consumer. In a meeting held after the public hearings, the DFSC voted to accept this requirement of the 1999 Food Code as written.

- Members of the food industry and the DFSC asked to have a language change (by adding an "or") made in the section of the 1999 Food Code requiring demonstration of knowledge of the person in charge.

Agency Response: DHSS recommends retaining the original language of this section. By adding an “or” to the demonstration of knowledge section, makes compliance with the 1999 Food Code an optional indicator of knowledge for the person in charge. DHSS contends that knowledge that reflects compliance with the 1999 Food Code cannot be optional for the person in charge of food service operations. In a meeting held after the public hearings, the DFSC voted unanimously to accept this section of the 1999 Food Code as written.

- Members of the food industry and the DFSC asked that the section of the 1999 Food Code requiring a consumer advisory about undercooked or raw food be deleted.

*Agency Response:* DHSS recommends deleting this requirement, but reserve this section (3-603.11) for future FDA Consumer Advisory rules. Based on FDA’s recommendation, DHSS prefers not to adopt a requirement it will not enforce. FDA’s current recommendation on the Consumer Advisory section of the 1999 Food Code is to not enforce this requirement until acceptable language and guidance is agreed upon at the national level. When this issue is resolved at the national level, DHSS will analyze the FDA Consumer Advisory guidance and in cooperation with the DFSC consider adoption.

- Members of the food service industry and the DFSC recommended that food inspectors be required to have the same knowledge as is required in the 1999 Food Code of the person in charge of a food service operation.

*Agency Response:* The agency agrees with the food service industry and the DFSC. Agency Food Service Inspectors are required to have qualification training and recurring training as part of their certification process. This level of training exceeds that which is required of the person in charge of a food service operation. In a meeting held after the public hearings, the DFSC voted unanimously to accept this section of the 1999 Food Code as written.

- Two members of the food service industry and the DFSC asked in the event of a hardship, existing restaurants be considered for a variance or waiver in meeting the strict facility guideline standards set forth in the 1999 Food Code.

*Agency Response:* In the 1999 Food Code under the Modifications and Waivers section, public health has the authority to grant facility variances on a case-by-case basis.

- A member of the food service industry and the DFSC voiced concern over the wording, “criminal remedies” used under the Responsibilities of the Permit Holder section of the 1999 Food Code.

*Agency Response:* DHSS recommends retaining the wording in this section as written. Although these words sound harsh, it is necessary language to make food service permit holders aware that the 1999 Food Code is linked to and enforceable by established Delaware Statute. This particular wording, “criminal remedies” is needed for the rare occasion when a food service proprietor willfully, repeatedly and knowingly violates food safety procedures that jeopardizes the health of residents or visitors to Delaware.

Upon further review and advisement by the Deputy Attorney General, the Agency has decided to delete Section 8-604.20, of the regulation, pertaining to Administrative Penalties. This section was deleted due to DHSS not having specific statute authority to enforce such penalties.

In addition, page number errors were discovered on the index page of the 1999 Food Code. These errors do not change the intent or regulatory nature of the Code and will be corrected prior to publication.

The public comment period was open from October 1, 1999 to November 1, 1999.

Verifying documents are attached to the Hearing Officer’s record. The regulations have been approved by the Delaware Attorney General’s office and the Cabinet Secretary of DHSS.

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

Chapters 1 – 8 of the “1999 FDA Food Code” is being herewith adopted 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, 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://ym.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 Del. 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 Del. C., 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 Del. C. §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.

~~[Current Status of Consumer Advisory Language Regarding] [§ 3-603.11 (Reserved)]~~

~~[The following information is not part of Chapter 3 and is not intended to be included in the codified portion of the Food Code. It is inserted here to provide a summary of recent events surrounding the matter of a consumer advisory, addressed in § 3-603.11 of the Code. In cases where the Food Code is adopted through incorporation by reference, this page may be removed.]~~

~~A consensus as to what constitutes satisfactory compliance with § 3-603.11 was reached at the 1998 Conference for Food Protection (CFP) meeting. A third option for the consumer "reminder" was added later. This insert page is to alert the reader to the options available to food establishments in advising consumers of the increased possibility of foodborne illness when animal derived foods are eaten raw or undercooked.~~

~~Included in Annex 3 is a full discussion of the evolution of the 1998 CFP consensus, satisfactory compliance, applicability of the Code provision, and the meaning and application of the phrase that appears in § 3-603.11, i.e., "or otherwise processed to eliminate pathogens."~~

~~There are two components to satisfactory compliance: Disclosure and Reminder.~~

~~Disclosure is satisfied when:~~

- ~~(1) Items are described, such as:~~
  - ~~(a) Oysters on the half shell (raw oysters);~~
  - ~~(b) Raw egg Caesar salad, and~~
  - ~~(c) Hamburgers (can be cooked to order); or~~
- ~~(2) Items are asterisked to a footnote that states that the items:~~

- ~~(a) Are served raw or undercooked, or~~
- ~~(b) Contain (or may contain) raw or undercooked ingredients.~~

~~Reminder is satisfied when the items requiring disclosure~~

~~are asterisked to a footnote that states:~~

~~(1) Regarding the safety of these items, written information is available upon request;<sup>1</sup>~~

~~(2) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; or~~

~~(3) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.~~

~~<sup>1</sup>Essential criteria for such written information are being developed and will be made available with a downloadable model brochure on the CFSAN Web Page at <http://www.cfsan.fda.gov>. All brochures must meet these essential criteria.]~~



**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SEVENTY-SEVEN**

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

**RE:** CREATING THE ELECTRONIC GOVERNMENT STEERING COMMITTEE

WHEREAS, the State of Delaware is committed to enhancing the delivery of services and providing taxpayers and citizens with information about their government;

WHEREAS, through the rapid proliferation of access to the Internet, citizens can more easily access needed information at little or no cost, and may take advantage of Internet-based transactions with businesses and government;

WHEREAS, the Internet holds enormous potential for simplifying and enhancing service delivery and information sharing with citizens, and reducing the cost to taxpayers associated with such activities;

WHEREAS, the State of Delaware has made significant progress to date in providing citizens with access to information and in providing services through the use of Internet-based technologies; and

WHEREAS, to build on the successes achieved to date, and to coordinate efforts to improve Internet-based service delivery by Delaware State agencies, a coordinating body needs to be appointed to provide leadership and direction across state agencies.

NOW, THEREFORE, I, Thomas R. Carper, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby order and declare the following:

1. An "Electronic Government Steering Committee" (hereinafter referred to as the Committee) shall be established to provide leadership, direction and coordination for the State of Delaware in providing State services and information through the Internet.

A. The Committee shall have the following membership:

- (i) The Secretary of State;
- (ii) The Secretary of the Department of

Finance;

- (iii) The State Budget Director;
- (iv) The Director of the Office of Information

Services;

- (v) The Delaware State Treasurer;
- (vi) A representative of the Office of the

Governor; and,

- (vii) Others as the Governor shall deem

appropriate.

B. The Chair of the Committee shall be selected by the Governor, and shall serve at the pleasure of the Governor.

2. The Committee shall have the following duties and responsibilities:

A. Identification of both short and long-term projects to enhance state service delivery and information exchange through the use of the Internet;

B. To work with agency personnel to implement, to the extent practicable within current budget constraints, identified short-term projects before the close of calendar year 2000;

C. To develop and promulgate standards to be adhered to by State agencies in the use of the Internet for service delivery and information exchange by state agencies; and,

D. To issue a report no later than December 15, 2000 summarizing the steps taken by the Committee during calendar year 2000, and identifying areas where the state can improve its use of Internet-based technologies to enhance service delivery and information exchange.

3. An "Electronic Government Project Director" (hereinafter referred to as the Director) shall be appointed by the Committee.

4. The Director shall have the following duties and responsibilities:

A. To ensure that projects identified by the Committee are completed in a timely fashion;

B. To assist in the development of standards for use by State agencies in developing Internet based services; and,

C. To report to the Committee on the regular basis regarding the progress of identifies projects.

5. The provisions of this Order shall be effective immediately.

Approved this 22 day of February 2000.

Thomas R. Carper, Governor

Attest:

Edward Freel, Secretary of State



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER  
NUMBER SEVENTY-EIGHT**

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

RE: ESTABLISHING TEMPORARY GOALS FOR  
STATE AGENCIES IN AWARDING PUBLIC  
WORKS CONTRACTS AND MAKING  
CHANGES TO THE MEMBERSHIP OF THE  
BUILDING AND TRADE COUNCIL.

WHEREAS, the State is committed to maximizing the participation of minority and women-owned businesses in public works projects and other areas of procurement, in accordance with applicable federal and state law;

WHEREAS, under current state law, state funded public works projects undertaken by Delaware State agencies may only be awarded on the basis of price and schedule;

WHEREAS, the United States Supreme Court, in City of Richmond v. J.A. Croson Co. (1989), held that state and local governments may only implement targeted minority business enterprise (MBE) programs if they demonstrate a "compelling governmental interest" justifying the program and the program is otherwise "narrowly tailored" to remedy any disparity identified;

WHEREAS, to demonstrate a "compelling government interest," a study empirically establishing the existence, extent and possible causes of disparity in the awarding of public works contracts must be conducted;

WHEREAS, the State has not as yet undertaken such an in-depth, quantitative disparity study, but intends to do so in the near future;

WHEREAS, the study should, to the extent disparity is established, identify appropriate remedies to address the disparity;

WHEREAS, in the absence of such a study, it appears that minority and women-owned businesses may be underrepresented on several major public works contracts that have been let by the State of Delaware; and,

WHEREAS, the State has a responsibility to determine if discrimination exists in public works contracting and to ameliorate the effects of any discrimination identified.

NOW, THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, do hereby order as follows:

1. The following interim goals are set for participation by minority and female individuals, and minority and women-owned firms in State public works projects, pending the outcome and recommendations of a disparity study:

**A. Workforce Goal:**

(i) The percentage of women and racial minorities employed by construction firms working on state agency public works projects should approximate the percentage that exists in the appropriate labor market.

(ii) In determining whether this goal has been achieved, the aggregate of all construction related employment for the calendar year should be examined.

**B. Contractor/Sub-Contractor Participation Goal:**

(i) Documented, good faith efforts should be made to encourage prime contractors on State agency public works projects to employ Minority or Disadvantaged Owned Businesses (M/DBE) as subcontractors to meet or exceed the goals established by this order.

(ii) The goal of participation by M/DBEs as sub-contractors during the calendar year should be no less than 10 percent over the average percentage participating during the previous five (5) calendar years on such projects.

2. Additionally, documented, good faith efforts should be made to maximize the number of M/DBEs that provide goods and services, professional services or non-professional services with an understanding of state procurement practices and information on how to provide goods and services to state agencies.

3. Each state agency shall submit to the Governor's Building and Trades Council, no later than January 31, 2001, a report documenting efforts to meet the goals set forth in this order during calendar year 2000.

4. The goals set forth in this order are temporary in nature. Any disparity study commissioned by the State of Delaware should address the issue of whether the factual predicate establishes the need for any ongoing remedies, and if so, whether the interim goals as established by this Executive Order should be suspended, extended, modified and/or augmented with other kinds of remedies, such as amending current State law to allow for the establishment of a State M/DBE program.

5. While the primary focus of the interim goals set forth in this Order is public works contracting, it is understood and acknowledged that the viability of establishing similar goals for other areas of procurement should be examined in the future.

6. Amend Executive Order 71 by striking the text of paragraph 2 and inserting in lieu thereof the following language:

"2. The Council shall be composed of the following:

(i) A Chairperson, to be selected by the Governor;

(ii) Director of the Delaware Economic Development Office;

(iii) Secretary of the Department of Labor;

(iv) Secretary of the Department of Administrative Services;

(v) Secretary of the Department of Transportation;

(vi) A representative of the Office of the Mayor of the City of Wilmington;

(vii) A representative of the Latin American Community Center;

(viii) A representative of the Delaware Commission for Women;

(ix) A representative of the state branch of the National Association for the Advancement of Colored People (NAACP);

(x) A representative of the Metropolitan Wilmington Urban League;

(xi) A representative of the Interdenominational Ministers Action Council of Delaware, Inc.;

(xii) A representative of the Delaware Contractors' Association;

(xiii) A representative of the Association of Builders and Contractors;

(xiv) A representative of the Delaware Building and Trade Association;

(xv) A representative of the Delaware Construction Council;

(xvi) A representative of the Micro Business Chamber of Commerce;

(xvii) A representative of the Minority Business Association; and

(xviii) One At-Large member to be selected by the Governor,"

7. The provisions of this Order shall be effective immediately.

Approved this 17th day of March, 2000.

Thomas R. Carper, Governor

Attest: Edward Freel, Secretary of State

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**GOVERNOR'S APPOINTMENTS**

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1401

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council for Children, Youth and Their Families	Dr. Paula J. Malone Reverend Gloria L. Cherry	02/21/02 02/16/02
Architectural Accessibility Board	Mr. Ralph W. Simperts	02/11/03
Board of Examiners for Nursing Home Administrators	Ms. Mary Ann Poling	02/07/03
Board of Examiners of Psychologists	Mr. Richard M. Lindale Mr. Frank Szczuka	09/05/00 03/20/03
Board of Landscape Architects	Ms. Lorene Athey	02/11/03
Board of Massage and Bodywork	Ms. Carla J. Arcaro	02/11/03
Board of Registration of Geologists	Ms. Elizabeth Brown Dr. Robert Jordan	01/17/03 01/17/03
Board Registration for Land Surveyors	Mr. Amos W. Aiken	02/10/03
Child Protection Accountability Commission	Colonel Gerald R. Pepper	Pleasure of the Governor
Children's Trust Fund Board of Directors	Ms. Carlene M. Whitsel	03/16/03
Council of Corrections	Mr. Weston E. Nellius	Pleasure of the Governor
Council on Forestry	Mr. George Barczewski	03/27/03
Council on Hispanic Affairs	Mr. Hector Figueroa Ms. Iris Rosa-Boyd Mr. Rene Solis	06/12/01 06/12/01 05/06/00
Council on Real Estate Appraisers	Ms. Jill K. Morrison	07/24/01
Delaware Bicycle Council	Mr. Fred Breukelman Ms. P. Raquel Bushweller Ms. Jana Simpler Mr. Paul A. Stevenson, Jr.	03/20/03 03/17/03 03/20/03 03/20/03
Delaware Commission for Women	Ms. Patricia Rodriguez	03/20/03
Delaware Commission on Veterans Affairs	Mr. Robert D. Marcinkowski Mr. John Thomas	02/07/04 03/21/04
Developmental Disabilities Planning Council	Ms. Linda Barnett Mr. James Cartmell Ms. Margaret Cartmell	03/20/03 03/20/03 03/20/03

# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Developmental Disabilities Planning Council	Ms. Bethel Chang	03/20/03
	Mr. Goodwin Cobb, III	03/20/03
	Mr. Brian Hartman	03/20/03
	Mr. Larry Henderson	03/20/03
	Ms. Helen Skinner	03/20/03
	Ms. Catherine Sullivan	03/20/03
Dover Housing Authority	Mr. Philemon Hill	03/20/06
Foster Care Review Board	Mr. Roger Blevins	01/24/03
Governor's Building and Trade Council	Mr. Desmond A. Baker	Pleasure of the Governor
	Honorable Lisa Blunt-Bradley	Pleasure of the Governor
	Mr. Charles E. Brittingham	Pleasure of the Governor
	Honorable Anne P. Canby	Pleasure of the Governor
	Edward J. Capodanno	Pleasure of the Governor
	Mr. James H. Gilliam, Sr.	Pleasure of the Governor
	Ms. Maria M. Matos	Pleasure of the Governor
	Mr. John McMahon	Pleasure of the Governor
	Honorable Vincent P. Meconi	Pleasure of the Governor
	Honorable Darrell J. Minott	Pleasure of the Governor
	Ms. Kathy Laffey Montgomery	Pleasure of the Governor
	Mr. Thomas J. Moyer	Pleasure of the Governor
	Ms. Olakunle S. Oludina	Pleasure of the Governor
Reverend Lawrence W. Wright	Pleasure of the Governor	
Human Relations Commission	Ms. Neta L. Pringle	02/07/03
State Rehabilitation Advisory Council	Ms. Christine Mantyla	03/20/03
	Ms. Jamie Wolfe	03/20/03
Tourism Advisory Board	Mr. Frank Fantini	03/20/03
	Ms. Carol S. Harding	02/07/03
	Mr. Edward J. Sutor	02/11/03
	Mr. Xavier Teixido	02/07/03

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**GOVERNOR'S APPOINTMENTS**

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1403

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Water Supply Coordinating Council	Mr. Charles Jenner	Pleasure of the Governor
	Ms. Naomi McCafferty	Pleasure of the Governor
Wilmington Housing Authority	Mr. Gary E. Hindes	Pleasure of the Governor
Workforce Investment Board	Ms. Suzanne C. Moore	Pleasure of the Governor
	Ms. Didi Bowditch	Pleasure of the Governor
	Mr. Jeffrey M. Bross	Pleasure of the Governor
	Mr. Richard Fluri	Pleasure of the Governor
	Mr. Bruce R. Fitzgerald	Pleasure of the Governor

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF FUNERAL SERVICES**

The Delaware Board of Funeral Services will hold a public hearing prior to its regularly scheduled meeting on May 31, 2000 to hear public comment on proposed changes to its rules and regulations related to the qualifications for licensure including requirements for the equivalent of an Associate Degree in Mortuary Science, the state and national tests, and the internship in 24 Del. C. §3107(a). The public hearing will be held at 9:30 a.m. in conference room A on the second floor of the Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Copies of the proposed regulations can be obtained from Susan Miccio, Division of Professional Regulation (302-739-4522 ext. 206), at the above address. Written comments may be submitted to the Board in care of Susan Miccio at the same address. The final date to submit written comments shall be at the scheduled public hearing.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF LICENSED  
PROFESSIONAL GEOLOGISTS**

**PLEASE TAKE NOTICE**, pursuant to 29 Del.C., Chapter 101 and 24 Del.C. §3606(a)(1), the Delaware Board of Licensed Professional Geologists proposes to revise its rules and regulations. Please note that the following Rules and Regulations are a total rewriting and reordering of existing regulations, and will supersede and replace any previously adopted rules and regulations of the Board.

A public hearing will be held on the proposed Rules and Regulations on Friday, May 5, 2000 at 10:00 a.m., in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey at the above address. The 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 notify Mary Paskey at the above address or by calling (302) 739-4522, extension 207.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

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**DEPARTMENT OF AGRICULTURE  
PESTICIDES SECTION**

The Delaware Department of Agriculture, Pesticides Section, is proposing to amend the **Delaware Pesticide Rules and Regulations**, (“Rule”) Revised, February 10, 1999, and originally proposed in the February 2000 issue of the **Delaware Register of Regulations** beginning at page 1037. The amendments are being proposed under legal authority of 3 Del.C. Chapter 12, §1237. Persons may present their views in writing to H. Grier Stayton, Pesticides Administrator, Delaware Dept. of Agriculture, 2320 S. duPont Hwy., Dover, DE 19901. A Public Hearing is also scheduled to receive verbal or written comments and will be held on April 25, 2000, at 7 p.m., at the Delaware Department of Agriculture Building, 2320 S. DuPont Hwy., Dover, DE.

The proposed revisions of Sections 4, **Registration**, and Section 5, **Licensing** are the consequence of changes to 3 Del.C. Chapter 12, **Pesticide Law**, made during the 140<sup>th</sup> General Assembly session. Amendments to Section 4 **Registration** will provide for a biennial pesticide product registration period and a fee increase. Amendments to Section 5, **Licensing**, will require a pesticide business license applicant or holder of the license to employ a certified applicator with a minimum of two years practical experience pursuant to §1207(c)(1) of the Law. Section 5 amendments also provide for the option of a one or two year license period.

The proposed revision of Section 22, **Restrictions on the Use of Pesticides for the Control of Subterranean Termites**, will clarify disclosure requirements and prescribe a disclosure form for applicators of termiticides.

Copies of the proposed **Rules** may be obtained by calling the Department’s Pesticides Section at 1-800-282-8685. The comment period for the proposed **Rules** will remain open until May 1, 2000.

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**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, April 21, 2000 at 2:00 p.m. in the Townsend Building, Dover, Delaware.

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

Delaware Health and Social Services is proposing changes to regulations contained in the Division of Social Services Manual Sections 4006.1, 8030.1, 9059, 11003.9.1, and 14710. These changes are initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512. These changes are initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

Written materials and suggestions by interested persons for related to this proposal must be forwarded by April 30, 2000, to the Director, Division of Social Services, P. O. Box 906, New Castle, DE 19720.

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**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 Provider 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 April 30, 2000.

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**DEPARTMENT OF JUSTICE  
DELAWARE SECURITIES ACT**

The Delaware Securities Division of the Attorney General's Office hereby gives notice that it intends to amend Rules 700 and 701 to accomplish the following:

1. Establish minimum competency requirements for new investment advisors and investment adviser representatives to protect Delaware investors.
2. Efficiently regulate the growing number of investment advisors and investment adviser representatives.
3. Streamline the mechanics of licensing by adopting the uniform qualification exams used by sister states, thereby

avoiding duplicative or burdensome licensing processes.

The legal authority for this action is found in section 7325 of the Delaware Securities Act as well as sections 7313 and 7314 of the Act. Any person may submit his or her written comments on the proposed action by sending them to:

Securities Commissioner  
Department of Justice  
Carvel State Office Building, 5th Floor  
820 N. French Street  
Wilmington, DE 19801

All comments must be received no later than 30 days after the date of publication of this notice. Final action will be taken upon expiration of that period.

James B. Ropp  
Securities Commissioner

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
HAZARDOUS WASTE MANAGEMENT SECTION****1. TITLE OF THE REGULATIONS:**

*Delaware Regulations Governing Hazardous Waste (DRGHW).*

**2. BRIEF SYNOPSIS OF THE SUBJECT,  
SUBSTANCE AND ISSUES:**

The State of Delaware is authorized by the U. S. Environmental Protection Agency to administer its own hazardous waste management program. To maintain this authorization, the State must remain equivalent to and no less stringent than the federal program. To accomplish this, the State regularly amends the DRGHW by adopting regulations previously promulgated by EPA.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:  
NONE****4. STATUTORY BASIS OR LEGAL AUTHORITY  
TO ACT:**

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 & 63.

**5. OTHER REGULATIONS THAT MAY BE  
AFFECTED BY THE PROPOSAL:**

NONE

## 6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGHW will be held on Tuesday May 9, 2000 beginning at 7:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. In addition, those affected by the proposed amendments are invited to attend one of two workshops conducted on April 25th and May 4th, 2000.

## 7. PREPARED BY:

Donald Short, Hazardous Waste Management  
(302) 739-3689

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## SOLID WASTE MANAGEMENT SECTION REGISTER NOTICE

### 1. TITLE OF THE REGULATIONS:

Regulations Governing Solid Waste

### 2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Revisions are being proposed to many sections of the regulations. See attachment for a section-by-sections synopsis of the changes.

### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7 Delaware Code, Chapter 60

### 5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

## 6. NOTICE OF PUBLIC COMMENT:

A public workshop will be held on Wednesday, May 10, 2000, from 9:00 a.m. to 12:00 noon in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, DE. A public hearing will be held on Tuesday, July 25, 2000, from 7:00 p.m. to 10:00 p.m. in the auditorium of the Richardson and Robbins Building.

## 7. PREPARED BY:

Janet T. Manchester, 302-739-3820.

## Synopsis of proposed revisions to Regulations Governing Solid Waste

### Section 2 (Scope and Applicability)

- Clarify requirements applicable to agricultural waste.
- Remove composting and recycling from "Exemptions" and place them in a new subsection, "Composting and Recycling Approvals".

### Section 3 (Definitions)

- Define some previously undefined terms.
- Delete definitions of terms no longer used in the regulations.
- Clarify definitions found to be imprecise or incomplete.

### Section 4 (Permit Requirements and Administrative Procedures)

- Add a provision requiring all permittees to comply with the conditions of their permits.
- Clarify procedures for transferring a permit.
- Increase the notification time for transfer of a permit.
- Streamline the procedure for approving the closure of a solid waste facility.
- Provide greater consistency in permitting requirements.

### Section 5 (Sanitary Landfills)

- Prohibit the acceptance of Conditionally Exempt Small Quantity Generator waste.

### Section 7 (Transporters)

- Clarify administrative requirements pertaining to permit applications.
- Clarify reporting and documentation requirements.
- Prohibit transporters who have been denied a transporter permit from being listed as a sub-contractor or sub-lease on another transporter's permit for a period of one year after the expiration or denial date.
- Provide references to other sections of the regulations where applicable.

### Section 10 (Transfer Stations)

- Remove language referring to flow control at Delaware Solid Waste Authority facilities.



**Section 11, Part 1 (Infectious Waste)**

- Reorganize portions of this section to make requirements more understandable.
- Reference other applicable sections of the regulations to minimize misunderstanding of requirements.

In addition, DNREC is proposing the following changes throughout the regulations:

- Change "Solid Waste Management Branch" to "Solid and Hazardous Waste Management Branch."
- Eliminate, where possible, provisions requiring compliance with regulations, standards, or procedures not contained within this document and potentially subject to change by entities other than the DNREC Solid and Hazardous Waste Management Branch.

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**DEPARTMENT OF PUBLIC SAFETY**  
**BOARD OF EXAMINERS OF PRIVATE**  
**INVESTIGATORS & PRIVATE SECURITY AGENCIES**

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 11/04/1994-7 – Employment Notification. This amendment will clarify the employer's responsibility of the action of their employees to the Detective Licensing Section. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by April 30, 2000, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903; The Board will hold its quarterly meeting Thursday, April 13, 2000, 10:00am, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

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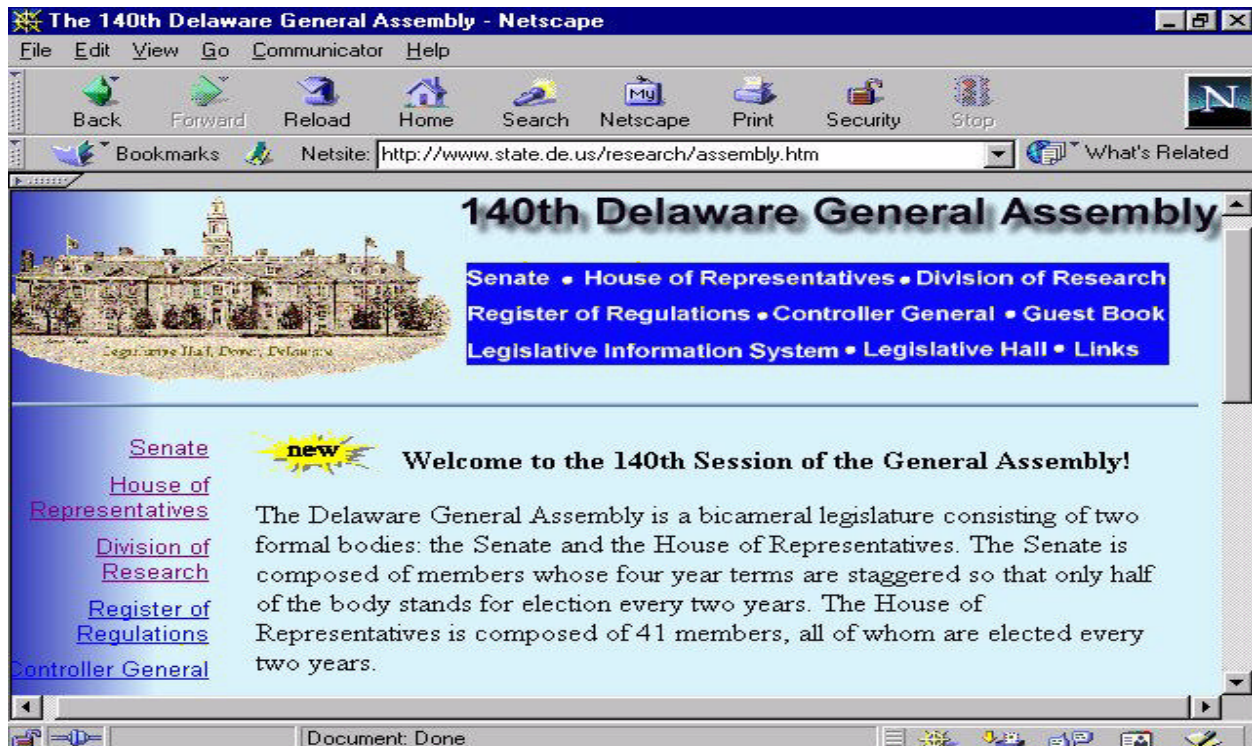
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