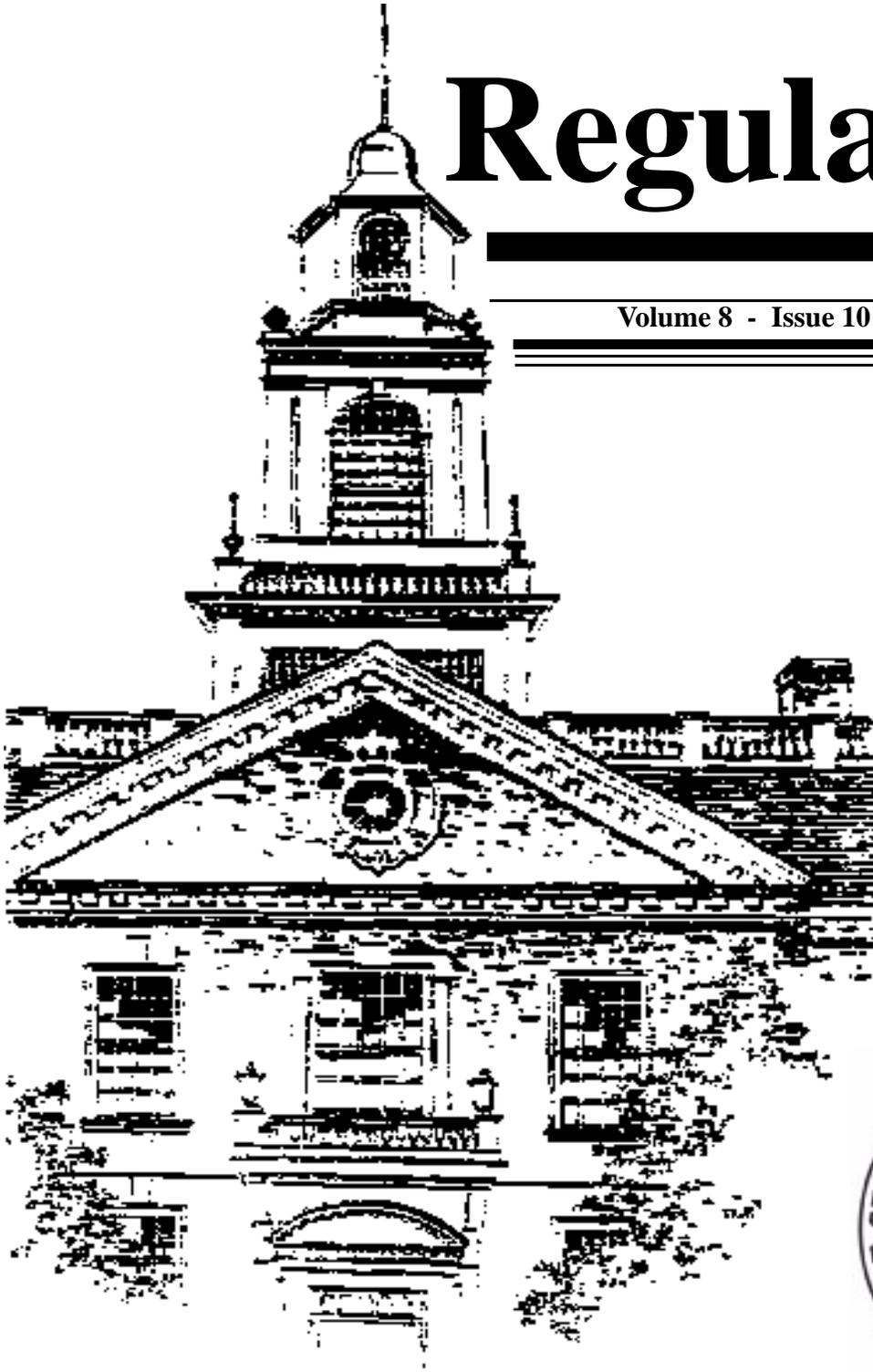

Delaware Register of Regulations



Issue Date: April 1, 2005

Volume 8 - Issue 10

Pages 1339 - 1504

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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, 2005.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the *Registrar* for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

| ISSUE DATE | CLOSING DATE | CLOSING TIME |
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| 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. |

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**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF SOIL AND WATER CONSERVATION**

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

Secretary's Order No.: 2005-S-0001

* **NOTICE:** On February 1, 2005, an incorrect version of the this final regulation was published in the *Register of Regulations*. The following version is the correct regulation and has been adopted by the Secretary of DNREC pursuant to the following Order. It is in final form and does not show additions and deletions.

I. Background

On April 20, 2004, a public hearing was held in the DNREC Auditorium in Dover to receive comment on the Department's proposed revisions to the *Delaware Sediment and Stormwater Regulations*. The Sediment and Stormwater Program of the Department held a series of workshops in the fall of 2003 to explain and discuss the draft proposed changes to these Regulations. Comments were solicited from the community by the Department regarding same at that time as well.

This rule making procedure represents a culmination of a process which began in February of 2001 when the Department convened a regulatory advisory committee to assist in the implementation of proposed changes to these regulations. Subsequent to the Start Action Notice being filed in August of 2001, the first public workshop was held in October of 2002. Additional comment and response periods occurred between October of 2002 and April 2003, at which time the Division received their legal review concerning these proposed revisions. In November of 2003, several optional public review workshops were once again held to further discuss the draft regulation with the public. On March 1, 2004, the proposed amendments were forwarded to the *Register of Regulations*, and the actual public hearing was held on April 20, 2004.

No public comments were entered into the record at the time of the public hearing on April 20, 2004. However, as a result of Department's solicitation for public input regarding this rulemaking, there were written comments received and incorporated into the record from the public in both the pre-hearing and post-hearing phases of this rulemaking process. The Department provided their Final Response Document with regard to these comments in a memorandum to the Hearing Officer dated January 3, 2005. Thereafter, the Hearing Officer prepared her report and recommendation in

the form of a memorandum to the Secretary dated January 4, 2005, and that memorandum is expressly incorporated herein by reference. Proper notice of the hearing was provided as required by law.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated January 4, 2005, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed amendments be promulgated and implemented in the manner and form provided for by law, as recommended in the Hearing Officer's memorandum.

IV. Reasons

The adoption of these proposed changes in the Delaware Sediment and Stormwater Regulations will be beneficial to the State of Delaware, in that it will clarify the difference between federal requirements and the state permitting process regarding such matters. Additionally, the adoption of these amendments will help to improve and/or enhance the overall performance of the State of Delaware's Sediment and Stormwater Program, in furtherance of the policies and purposes of 7 **Del.C.** Ch. 40.

John A. Hughes, Secretary

Date of Issuance: March 16, 2005

Effective Date of the Amendment: April 11, 2005

5101 Delaware Sediment and Stormwater Regulations

1.0 Scope

1.1 Stormwater runoff may reasonably be expected to be a source of pollution to waters of the State, and may add to existing flooding problems. The implementation of a statewide sediment and stormwater program will prevent existing water quantity and water quality problems from becoming worse, and in some cases, reduce existing problems.

1.2 Sediment and stormwater approvals are required for land changes or construction activities for residential, commercial, industrial, or institutional land use which are not exempted or waived by these Regulations. Requirements under these Regulations do not apply to agricultural land management practices unless the Conservation District or the Department determines that the land requires a soil and water conservation plan, and the owner or operator of the land has refused either to apply to a Conservation District for

the development of such a plan, or to implement a plan developed by a Conservation District.

1.3 The Department intends that, to the extent possible, the provisions of these Regulations be delegated to either the Conservation Districts, local governments, or other State agencies. Those program provisions which are subject to delegation include sediment and stormwater management plan approval, inspection during construction, post-construction inspection, and education and training. Initial consideration regarding delegation of program components shall be given to the Conservation Districts.

1.4 The implementation of a stormwater utility represents a comprehensive approach to program funding and implementation. The activities which may be undertaken by a stormwater utility include not only assessment, collection, and funding activities, but also carrying out provisions of adopted stormwater management plans. These provisions may include contracting for such services as project construction, project maintenance, project inspection, and enforcement of installation and maintenance requirements imposed with respect to approved land disturbing activities.

8 DE Reg. 1172 (2/01/05)

2.0 Definitions

As used in these regulations, the following terms shall have the meanings indicated below:

“Adverse Impact” means a negative impact to land or waters resulting from a construction or development activity. The negative impact includes increased risk of flooding; degradation of water quality; increased sedimentation; reduced groundwater recharge; negative impacts on aquatic organisms; negative impacts on wildlife and other resources, and threatened public health.

“Agricultural Land Management Practices” means those methods and procedures generally accepted by the Conservation Districts and used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

“Applicant” means a person, firm, or governmental agency who executes the necessary forms to obtain plan approval for a land disturbing activity.

“Appropriate Plan Approval Agency” means the Department, Conservation District, county, municipality, or State agency that is responsible in a jurisdiction for review and approval of sediment and stormwater management plans.

“As-Built Plans or Record Documents” means a set of engineering or site drawings that delineate the specific approved stormwater management facility as actually constructed.

“Certified Construction Reviewer” means those individuals, having passed a Departmental sponsored or approved training course, who provide on-site inspection for

sediment control and stormwater management in accordance with these regulations.

“Delegation” means the acceptance of responsibility by a Conservation District, county, municipality, or State agency for the implementation of one or more elements of the statewide sediment and stormwater management program.

“Department” means the Department of Natural Resources and Environmental Control.

“Designated Watershed or Subwatershed” means a watershed or subwatershed proposed by a Conservation District, county, municipality, or State agency and approved by the Department. The Department may establish additional requirements in these watersheds and subwatersheds due to existing water quantity or water quality problems. These requirements shall be implemented on an overall watershed or subwatershed master plan that is developed for water quality and/or water quantity protection.

“Detention Structure” means a permanent stormwater management structure whose primary purpose is to temporarily store stormwater runoff and release the stored runoff at controlled rates.

“Develop Land” means to change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, or institutional construction or alteration.

“Developer” means a person undertaking, or for whose benefit, activities covered by these regulations are commenced and/or carried out.

“Drainage Area” means that area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line.

“Easement” means a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

“Erosion and Sediment Control” means the control of solid material, both mineral and organic, during a land disturbing activity, to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.

“Exemption” means those land development activities that are not subject to the sediment and stormwater requirements contained in these regulations.

“Grading” means excavating, filling (including hydraulic fill) or stockpiling of earth materials, or any combination thereof, including the land in its excavated or filled condition.

“Green Technology Best Management Practices (BMP's)” means those practices that achieve stormwater management objectives by applying the principles of filtration, infiltration and storage most often associated with natural vegetation and undisturbed soils while minimizing a reliance on structural components. They may also be constructed using an imported soil medium and planted with

vegetation designed to promote the natural hydrologic process. These practices include, but are not limited to, vegetative filtration, riparian buffer plantings, bio-retention areas, vegetative flow conveyance, as well as recharge and surface storage in undisturbed natural areas.

“Infiltration” means the passage or movement of water through the soil profile.

“Land Disturbing Activity” means a land change or construction activity for residential, commercial, industrial, and institutional land use which may result in soil erosion from water or wind or movement of sediments or pollutants into State waters or onto lands in the State, or which may result in accelerated stormwater runoff, including, but not limited to, clearing, grading, excavating, transporting and filling of land.

“Off-site Stormwater Management” means the design and construction of a stormwater management facility that is necessary to control stormwater from more than one land disturbing activity.

“On-site Stormwater Management” means the design and construction of stormwater management practices that are required for a specific land disturbing activity.

“Person” means any State or federal agency, individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or other political subdivision of this State, any interstate body or any other legal entity.

“Redevelopment” means a land disturbance activity that alters the use of land but does not necessarily alter the pre-development runoff characteristics.

“Responsible Personnel” means a foreman or superintendent who is in charge of on-site clearing and land disturbing activities for sediment and stormwater control associated with a construction project.

“Sediment” means soils or other surficial materials transported and/or deposited by the action of wind, water, ice or gravity as a product of erosion.

“Sediment and Stormwater Management Plan” (or Detailed Plan) means a plan for the control of soil erosion, sedimentation, stormwater quantity, and water quality impacts resulting from any land disturbing activity.

“Stabilization” means the prevention of soil erosion by surface runoff or wind through the establishment of a soil cover through the implementation of vegetative or structural measures. Examples include, but are not limited to, straw mulch with temporary or permanent vegetation, wood chips, and stone or gravel ground cover.

“Standard Plan” means a set of pre-defined standards and/or specifications for minor land disturbing activities that may preclude the preparation of a detailed plan under specific conditions.

“State Waters” means any and all waters, public or private, on the surface of the earth which are contained within, flow through or border upon the State or any portion thereof.

“Stormwater” means the runoff of water from the surface of the land resulting from precipitation or snow or ice melt.

“Stormwater Management” means:

- for water quantity control, a system of vegetative, structural, and other measures that may control the volume and rate of stormwater runoff which may be caused by land disturbing activities or activities upon the land; and
- for water quality control, a system of vegetative, structural, and other measures that control adverse effects on water quality that may be caused by land disturbing activities or activities upon the land.

“Stormwater Utility” means an administrative organization that has been established for the purposes of funding sediment control, stormwater management or flood control planning, design, construction, maintenance, and overall resource needs by authorized and imposed charges.

“Tidewater” means water that alternately rises and falls due to the gravitational attraction of the moon and sun and is under the regulatory authority of 7 Del.C. Ch. 72. Examples of tidewaters include the Atlantic Ocean, the Delaware Bay, and the Delaware Inland Bays.

“Variance” means the modification of the minimum sediment and stormwater management requirements for specific circumstances where strict adherence of the requirements would result in unnecessary hardship and not fulfill the intent of these regulations.

“Waiver” means the relinquishment from sediment and stormwater management requirements by the appropriate plan approval authority for a specific development on a case-by-case review basis.

“Water Quality” means those characteristics of stormwater runoff from a land disturbing activity that relate to the chemical, physical, biological, or radiological integrity of water.

“Water Quantity” means those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff to downstream areas resulting from land disturbing activities.

“Watershed” means the total or partial drainage area contributing stormwater runoff to a single point.

8 DE Reg. 1172 (2/01/05)

3.0 Exemptions, Waivers, and Variances

3.1 The following activities are exempt from both sediment control and stormwater management requirements established by these regulations:

3.1.1 Agricultural land management practices, unless the local Conservation District or the Department determines that the land requires a new or updated soil and water conservation plan, and the owner or operator of the land has refused either to apply to a Conservation District for the development of such a plan, or to implement a plan developed by a Conservation District;

3.1.2 Developments or construction that disturb less than 5,000 square feet;

3.1.3 Land development activities which are regulated under specific State or federal laws which provide for managing sediment control and stormwater runoff. An example of this exemption would be specific permits required under the National Pollutant Discharge Elimination System when discharges are a combination of stormwater and industrial or domestic wastewater or which must comply with Parts 122, 123, and 124 of Title 40 of the Code of Federal Regulations. The Department shall ensure that all land developments which are regulated under specific State or federal laws are coordinated with delegated plan approval agencies to ensure compatibility of requirements

3.1.4 Projects which are emergency in nature that are necessary to protect life or property such as bridge, culvert, or pipe repairs and above ground or underground electric and gas utilities or public utility restoration. The emergency nature of a project may preclude prior plan review and approval, but subsequent inspection may necessitate sediment control or site stabilization in accordance with the provisions of this Chapter. The appropriate plan approval agency shall be notified orally or in writing within 48 hours of the initiation of such emergency activity.

The appropriate plan approval agency shall determine and approve of the emergency nature of a project. If the nature of the emergency will require more than 120 days to accomplish construction, formal approval shall be obtained for sediment control and stormwater management. These activities must still comply with other State, federal, and local requirements.

3.1.5 Commercial forest harvesting operations that meet the requirements of the Department of Agriculture under 3 **Del.C.** Ch. 29, Subchapter VI.

3.2 Appropriate Plan Approval Agencies may grant waivers from the stormwater management requirements of these regulations for individual developments provided that a written request is submitted by the applicant containing descriptions, drawings, and any other information that is necessary to evaluate the proposed development. A separate written waiver request shall be required if there are subsequent additions, extensions, or modifications which

would alter the approved stormwater runoff characteristics to a development receiving a waiver.

3.2.1 A project may be eligible for a waiver of stormwater management for both quantitative and qualitative control if the applicant can demonstrate that:

3.2.1.1 The proposed project will return the disturbed area to a pre-development runoff condition and the pre-development cover is unchanged at the conclusion of the project; or

3.2.1.2 The proposed project consists of a linear disturbance of less than ten (10) feet in width; or

3.2.1.3 The project is for an individual residential detached unit or agricultural structure, and the total disturbed area of the site is less than one acre; or

3.2.1.4 The proposed project is for agricultural structures in locations included in current soil and water conservation plans that have been approved by the appropriate Conservation District.

3.2.2 A project may be eligible for a waiver or variance of stormwater management for water quantity control if the applicant can demonstrate that:

3.2.2.1 The proposed project will not generate an increase in the 2-year post-development peak discharge rate of more than ten (10) percent above the 2-year pre-development peak discharge rate and will have no adverse impact on the receiving wetland, watercourse, or waterway; or

3.2.2.2 Provisions will be made or exist for a nonerosive conveyance system to tidewater by either a closed drainage system or by open channel flow that has adequate capacity to contain the runoff events being considered as a requirement of these regulations; or

3.2.2.3 The location of a project within a watershed would aggravate downstream flooding by the imposition of peak control requirements.

3.3 The plan approval agency may grant a written variance from any requirement of these regulations if there are exceptional circumstances applicable to the site such that strict adherence to the provisions of these regulations will result in unnecessary hardship and not fulfill the intent of these regulations. A written request for variance shall be provided to the plan approval agency and shall state the specific variances sought and the reasons for their granting. The plan approval agency shall not grant a variance unless and until sufficient specific reasons justifying the variance are provided by the applicant.

8 DE Reg. 1172 (2/01/05)

4.0 Departmental Responsibilities

4.1 The Department is responsible for the implementation and supervision of the sediment and stormwater program which is established by 7 **Del.C.** Ch. 40. This responsibility shall include, but not be limited to, the authority to:

4.1.1 Provide technical and other assistance to Conservation Districts, counties, municipalities, federal, and State agencies in implementing this Chapter;

4.1.2 Develop and publish, as regulation components, minimum standards, guidelines and criteria for delegation of sediment and stormwater program components, and model sediment and stormwater ordinances for use by Conservation Districts, counties, State agencies, and municipalities;

4.1.3 Review the implementation of all components of the statewide sediment and stormwater management program that have been delegated to either the Conservation Districts, counties, municipalities, or other State agencies in reviews to be accomplished at least once every three years;

4.1.4 Require that appropriate sediment and stormwater management provisions be included in all new erosion and sediment control plans developed pursuant to these regulations;

4.1.5 Cooperate with appropriate agencies of the United States or other states or any interstate agency with respect to sediment control and stormwater management;

4.1.6 Conduct studies and research regarding the causes, effects, and hazards of stormwater and methods to control stormwater runoff;

4.1.7 Conduct and supervise educational programs with respect to sediment control and stormwater management;

4.1.8 Require the submission to the Department of records and periodic reports by Conservation Districts, tax ditch organizations, county, and municipal agencies as may be necessary to carry out these regulations;

4.1.9 Review and approve designated watersheds;

4.1.10 Establish a maximum life of three years for the validation of approved plans. These regulations shall specify variances which expand this time limitation in specific situations; and

4.1.11 Establish a means of communication, such as a newsletter, so that information regarding program development and implementation can be distributed to interested individuals.

4.2 Matters of policy, procedures, standards, criteria, approvals, inspection, or enforcement relating to the Sediment and Stormwater Chapter shall be established by the Department subject to the jurisdiction of the Secretary of the Department. Sediment and stormwater programs or portions of programs which are delegated to the Conservation Districts, counties, municipalities, or State agencies shall include sediment and stormwater criteria consistent with the standards, procedures, and regulations of the Department.

A variation of requirements by the delegated agency on a specific watershed will not be valid unless

approved by the Department. All State and federal development in the watershed shall be reviewed subject to the same variations and requirements by the delegated State agency or Department as appropriate.

4.3 In situations where public notification and comment are required before an action is taken by the Department, the Regulatory Advisory Committee shall have an opportunity to review the proposed Departmental action and provide input to the Department regarding the action.

5.0 Criteria for Delegation of Program Elements

5.1 Conservation Districts, counties, municipalities, and State agencies may seek delegation of four program elements relating to the implementation of the statewide sediment and stormwater program. Delegation may be granted by the Secretary for review and approval of sediment and stormwater management plans, inspection during construction, subsequent maintenance inspection, and education and training. Program elements that are delegated shall be implemented according to Chapter 40 and these regulations.

5.2 The Secretary, or his designee, shall grant delegation of one or more program elements to any Conservation District, county, municipality, or State agency seeking delegation that is found capable of providing compliance with Chapter 40 and these regulations. The final decision regarding delegation shall be made only after an opportunity has been provided for public review and comment. Initial consideration regarding delegation of program elements shall be given to the Conservation Districts. The Conservation Districts, having unique capabilities and area wide responsibilities are in ideal positions to coordinate and implement local sediment and stormwater programs.

5.3 Requests for delegation of more than one program element may be accomplished by the submission of one request for all the elements requested. A concern by the Department over one element will not jeopardize delegation of other requested program elements.

5.4 To be considered capable of providing compliance with Chapter 40 and these regulations, applications for delegation of program elements shall contain the following requisite items.

5.4.1 Requests for delegation of plan approval responsibility shall include the following information:

5.4.1.1 Ordinance or program information detailing the plan approval process,

5.4.1.2 Plan review check lists and plan submission requirements,

5.4.1.3 Sediment and stormwater criteria, including waiver and variance procedures, that meet minimum standards established by these regulations,

5.4.1.4 Assurance of adequate personnel allocations and expected time frames for plan review which meet the requirements of Section 8(9), and

5.4.1.5 Assurance that plan reviewers will attend Departmental training programs in related fields such as wetlands identification, subaqueous permits requirements, etc.

5.4.2 Requests for delegation of inspection during construction shall include the following information:

5.4.2.1 Inspection and referral procedures,

5.4.2.2 Time frames for inspection of active land disturbing activities,

5.4.2.3 Inspection forms,

5.4.2.4 Assurance of adequate personnel allocations or a timetable to obtain adequate personnel,

5.4.2.5 Criteria for the Certified Construction Reviewer if utilized, and

5.4.2.6 Procedures and time frames for processing complaints.

5.4.3 Requests for delegation of maintenance inspection responsibility shall include the following information:

5.4.3.1 Inspection and referral procedures,

5.4.3.2 Inspection forms,

5.4.3.3 Time frames, not exceeding one year, for inspection of completed stormwater management structures, and

5.4.3.4 Assurance of adequate personnel allocation or a timetable to obtain adequate personnel.

5.4.4 Requests for delegation of education and training responsibility shall include the following information:

5.4.4.1 Types of educational and training activities to be accomplished,

5.4.4.2 Frequency of activities,

5.4.4.3 Names and backgrounds of those individuals conducting the training, and

5.4.4.4 Procedures and timetables to notify the Department of educational programs.

5.5 A Conservation District, county, municipality, or State agency which has been granted delegation of one or more program elements may establish alternative requirements which are compatible with or are more stringent than Departmental requirements. These alternative requirements may be implemented only when prior Departmental approval has been granted. These alternative requirements shall apply in lieu of the provisions of these regulations in the specific program element that has been delegated. Alternative requirements shall be implemented only after public notice has been provided which would allow for public review and comment prior to Departmental approval.

5.6 Delegation of authority for one or more program elements may be granted for a maximum time frame of three

years. After three years a new application to the Department must be made. Over the time frame for which delegation has been granted, the Department will evaluate delegation implementation, coordinate review findings with the delegated authority, and determine if the new delegation should be granted.

5.7 A Conservation District, county, municipality, or State agency requesting or renewing delegation shall submit a written request to the Secretary on or before January 1 of the year immediately preceding the fiscal year for which delegation or renewal of delegation is sought.

5.8 The Secretary shall, in writing, grant or deny delegation on or before April 1 of the year during which delegation is sought. The Secretary may not deny a requested delegation unless opportunity has been afforded to the appropriate officials to present arguments. Delegation shall be effective July 1 of that year and extend no more than three years, unless renewed. In the event that the Department does not act on the renewal request by April 1, the delegated authority submitting the request would be entitled to continue operating for a subsequent three year time period unless action is taken by the Department to suspend the program.

5.9 If the Secretary determines that a delegated program falls below acceptable standards established by these regulations, delegation may be suspended after opportunity is afforded for a hearing. During a period of suspension, the program element shall revert to the Department for implementation. Funds set aside by a delegated agency, that were collected through fees established by the plan approval agency, shall be transferred to the Department for use if delegation is suspended.

5.10A delegated authority may sub-delegate program elements, with Departmental concurrence, to a stormwater utility or other responsible entity or agency.

5.11 The Department shall maintain, and make available upon request, a listing of the current status of delegation for all jurisdictions within the State.

6.0 Plan Approval Fees, Maintenance Fees, and Performance Bonds

6.1 The establishment of plan approval fees, not involving stormwater utilities, shall be in accordance with the following items:

6.1.1 Delegation of program elements will depend, to a large extent, on funding and personnel commitments. If the delegated jurisdiction has a source of funding that is provided through State General or local revenues, then the implementation of the delegated component will not necessitate the imposition of a plan approval fee to cover the cost of the delegated program component.

6.1.2 In the event that one component of an overall sediment and stormwater management program is

not funded through the use of general or special funds, a non-refundable plan approval fee will be collected at the time that the sediment and stormwater management plan or application for waiver or variance is submitted or approved. The plan approval fee will provide for the unfunded costs of plan review, administration and management of the approval agency, construction review, maintenance inspection, and education and training. The plan review or permit approval agency, whether delegated or the Department, shall be responsible for the collection of the plan approval fee.

Unless all program elements in a county or municipality have been delegated to a single agency, the funds collected not supporting the plan review function shall be distributed to the appropriate agencies.

6.1.3 The number of needed personnel and the direct and indirect expenses associated with those personnel shall be developed by the agencies requesting delegation in a specific jurisdiction in conjunction with and with the concurrence of the Department. Those expenses will then form the basis for determining unit plan approval costs.

6.1.4 Prior to plan approval, a fee may be assessed by the appropriate plan approval agency for those activities approved prior to July 1, 1991 for which construction will initiate after July 1, 1991.

6.1.5 Where the Department becomes the designated plan approval agency, the Department may assess a plan review and construction review fee. That fee shall not exceed \$80.00 per disturbed acre per project.

6.1.6 The use of Certified Construction Reviewers for sediment control and the submission of "As Built or Record Document" certification regarding stormwater management construction may reduce the inspection requirements for the delegated agency but may not eliminate that inspection requirement. Periodic overview inspections will still be necessary to ensure construction management.

6.2 The imposition of a financial guarantee, based on existing local authority, may be required by the plan approval agency to ensure that construction of the stormwater management practices was accomplished according to the approved sediment and stormwater management plan. The developer, when required, shall submit to the plan approval agency a surety or cash bond, or irrevocable letter of credit prior to the issuance of any building or grading permit for construction of any land disturbing activity that requires a stormwater management facility.

The amount of the security shall not exceed 150% of the total estimated construction cost of the stormwater management facility. The financial guarantee so required shall include provisions relative to forfeiture for failure to complete work specified in the approved stormwater management plan, compliance with all the provisions of these regulations, and other applicable laws and regulations,

and any time limitations. The financial guarantee, fully or partially, shall not be released without a final inspection of the completed work and, when required, after submission of "As Built or Record Document" plans, and after written confirmation by the design engineer that construction was accomplished according to the approved plans. A partial release of the financial guarantee shall be allowed only to the extent that the work already accomplished would warrant such release.

6.3 A maintenance fee may be required on approvals granted for stormwater management structures that will be maintained by a Conservation District, county, or municipality. A fee mechanism shall be established prior to the final release of any required financial guarantee or final approval of the completed stormwater management structure by the designated construction review agency.

8 DE Reg. 1172 (2/01/05)

7.0 Criteria for Implementation of a Stormwater Utility

The implementation of a stormwater utility will necessitate the development of a local utility ordinance prior to its implementation. There are essential components that an ordinance must contain to function as a funding mechanism for stormwater management and those components shall include, but not be limited to, the following items:

7.1 The financing of a stormwater utility with a user charge system must be reasonable and equitable so that each user of the stormwater system pays to the extent to which the user contributes to the need for the stormwater system, and that the charges bear a substantial relationship to the cost of the service. The use of county and municipal taxpayer rolls and accounting systems are allowed for the assessment and collection of fees.

7.2 The intent of the utility must be clearly defined regarding program components that are to be funded through the utility. Those components may include but not be limited to the following activities:

7.2.1 Preparation of long range watershed master plans for stormwater management,

7.2.2 Annual inspections of all stormwater management facilities, both public and private,

7.2.3 Undertaking regular maintenance, through contracting or other means, of stormwater management structures that have been accepted for maintenance,

7.2.4 Plan review and inspection of sediment control and stormwater management plans and practices, and

7.2.5 Retrofitting designated watersheds, through contracting or other means, to reduce existing flooding problems or to improve water quality.

7.3 The authority for the creation of the stormwater utility and the imposition of charges to finance sediment and stormwater activities is conferred in 7 Del.C. Ch. 40. The application of a stormwater utility by means of a local

ordinance shall not be deemed a limitation or repeal of any other powers granted by State statute.

7.4 The creation of a stormwater utility shall include the following components:

7.4.1 The boundaries of the utility, such as watersheds or jurisdictional boundaries as identified by the local governing body,

7.4.2 The creation of a management entity,

7.4.3 Identification of stormwater problems,

7.4.4 Method for determining utility charges,

7.4.5 Procedures for investment and reinvestment of funds collected, and

7.4.6 An appeals or petition process.

7.5 As established by local ordinance, the local governing agency shall have responsibility for implementing all aspects of the utility including long range planning, plan implementation, capital improvements, maintenance of stormwater facilities, determination of charges, billing, and hearing of appeals and petitions. The local agency also will have responsibility for providing staff support for utility implementation

In the event that an agency or department other than the one in which the utility is located is best equipped to undertake a particular task, the local governing agency shall ensure that appropriate interagency charges are determined such that all costs of stormwater management are reflected in the utility budget and that utility charges finance all aspects of stormwater management.

7.6 With respect to new stormwater management facilities constructed by private developers, the local governing agency shall develop criteria for use in determining whether these will be maintained by the utility or by the facility owner. Such criteria may include whether the facility has been designed primarily to serve residential users and whether it has been designed primarily for purposes of stormwater management. In situations where it is determined that public maintenance is not preferable, standards shall be developed to ensure that inspection of facilities occurs annually and that facilities are maintained as needed.

7.7 The use of charges is limited to those purposes for which the utility has been established, including but not limited to: planning; acquisition of interests in land including easements; design and construction of facilities; maintenance of the stormwater system; billing and administration; and water quantity and water quality management, including monitoring, surveillance, private maintenance inspection, construction inspection, and other activities which are reasonably required.

8.0 Plan Application and Approval Process

8.1 After July 1, 1991, unless a particular activity is exempted by these regulations, a person may not disturb land without an approved sediment and stormwater management

plan from the appropriate plan approval agency. A grading or building permit may not be issued for a property unless a sediment and stormwater management plan has been approved that is consistent with the following items:

8.1.1 7 Del.C. Ch. 40, relating to erosion and sediment control and stormwater management, and;

8.1.2 These regulations, or duly adopted county or municipal ordinances that are adopted as a part of the delegation process and relate to the intent of these regulations.

8.2 A sediment and stormwater management plan or an application for a waiver shall be submitted to the appropriate plan approval agency by the developer for review and approval for a land disturbing activity, unless otherwise exempted. The sediment and stormwater management plan shall contain supporting computations, drawings, and sufficient information describing the manner, location, and type of measures in which stormwater runoff will be managed from the entire development. The appropriate plan approval agency shall review the plan to determine compliance with the requirements of these regulations prior to approval. The approved sediment and stormwater management plan shall serve as the basis for water quantity and water quality control on all subsequent construction.

8.3 The sediment and stormwater management plan shall not be considered approved without the inclusion of an approval stamp with signature and date, on the plans by the appropriate plan approval agency.

8.4 All sediment and stormwater management plans submitted for approval shall contain certification by the owner or developer that clearing, grading, construction, or development will be accomplished pursuant to the plan and that responsible personnel involved in the land disturbance will have a Certification of Training at a Departmental sponsored or approved training program for the control of erosion and sediment control before initiation of the project. The Certification of Training for responsible personnel requirement may be waived by the appropriate plan approval agency on any project involving silviculture or fewer than four residential homes.

8.5 All sediment and stormwater management plans shall contain certification by the owner or developer of the right of the Department or delegated inspection agency to conduct on-site inspections.

8.6 A grading or building permit issued by a local jurisdiction may be suspended or revoked after written notice is given to the permittee by the responsible delegated agency or the Department for any of the following reasons:

8.6.1 Violations of the conditions of the sediment and stormwater management plan approval;

8.6.2 Changes in site runoff characteristics upon which a waiver was granted;

8.6.3 Construction not in accordance with the approved plans;

8.6.4 Noncompliance with correction notice or stop work order issued for the construction of the sediment control practices or the stormwater management facilities;

8.6.5 An immediate danger exists in a downstream area in the opinion of the appropriate plan approval or inspection agency, or the Department; or

8.6.6 Failure to submit stormwater management "As Built or Record Document" plans, when required, at the completion of the project.

8.7 Approved plans remain valid for 3 years from the date of an approval, unless specifically extended or renewed by the appropriate plan approval agency. The basis for extension or renewal may include, but not limited to, the following items:

8.7.1 Failure to initiate the approved project for reasons acceptable to the appropriate plan approval agency such as funding or other agency permit delays; or

8.7.2 Time duration for a type of activity that typically exceeds three years.

8.8 Projects which have been approved prior to July 1, 1991, and where site clearing has not been initiated on the project within two years, shall be resubmitted to the appropriate plan approval agency for review and approval subject to the requirements of these regulations.

8.9 Upon receipt of a completed application for sediment and stormwater management, the appropriate plan approval agency shall accomplish its review within 30 calendar days, and have either the approval or review comments transmitted to the applicant. If that 30 day time frame cannot be met, the appropriate plan approval agency shall notify the applicant of the reasons for delay, and an expected time frame not to exceed an additional 30 days, when that review will be accomplished.

8 DE Reg. 1172 (2/01/05)

9.0 Criteria for Designated Watersheds

The concept of designated watersheds is intended, not only to prevent existing water quantity and water quality problems from getting worse, but also to reduce existing flooding problems and to improve existing water quality or meet State Water Quality Standards in selected watersheds. Criteria is established for designated watersheds and that criteria will depend on whether the specific problems of the watershed are water quantity or water quality oriented. Water quantity and water quality concerns will be considered in all designated watersheds, but the overall emphasis for each designated watershed will depend on its existing and anticipated problems.

9.1 To initiate consideration of a watershed for Designated Watershed or Subwatershed status, a watershed shall be recommended by a Conservation District, county, municipality, or State agency, to the Department. Upon recommendation to the Department, all involved agencies at

the local level will be contacted and their input received prior to any watershed study being initiated.

9.2 Included with the recommendation of a watershed for Designated Watershed or Subwatershed status to the Department shall be an identification of the specific problems that exist in the watershed so that the pursuit of a watershed study is warranted. Inclusion in these regulations as a Designated Watershed or Subwatershed requires approval by the Department that a significant water quantity or water quality problem exists that would necessitate this joint State, District, and local government involvement. Also, inclusion of a watershed as a Designated Watershed or Subwatershed will necessitate a public hearing process. The process of problem identification shall be based on the following information:

9.2.1 To initiate a watershed study based on water quality considerations the following information must be submitted:

9.2.1.1 Existing water quality data that has been collected as a result of the overall statewide water quality inventory process, or

9.2.1.2 Other water quality data collected through specific sampling that was accomplished in the watershed, or

9.2.1.3 Submission of a water quality assessment that was accomplished using a qualitative collection method of benthic macroinvertebrates.

9.2.2 To initiate a watershed study based on flooding or water quantity considerations the following information must be submitted:

9.2.2.1 Estimated annual flood damage to either private, residential, commercial, industrial, or public properties, or

9.2.2.2 Number of residences or industries in the floodplain, or

9.2.2.3 The history of flooding in the watershed, or

9.2.2.4 Measures already taken to minimize or reduce flooding, or

9.2.2.5 Dangers to public health and welfare.

9.3 Upon modification of these regulations to include a watershed as a Designated Watershed or Subwatershed an advisory group will be established that will guide the overall watershed study. The advisory group will be appointed by the Secretary and will include State, District, and local representatives in addition to representatives of the regulated community and others affected by the results of the study.

9.4 The general components contained in the actual watershed studies shall be the following items:

9.4.1 Stormwater quantity or water quality problem identification,

9.4.2 The overall needs of the watershed including the additional impacts of new development activities,

9.4.3 Alternative approaches to address the existing and future problems,

9.4.4 A selected approach that includes the overall costs and benefits,

9.4.5 Schedule for implementation,

9.4.6 Funding sources that are available for the actual implementation of study recommendations, and

9.4.7 A public hearing process prior to final Departmental approval.

9.5 The following goals are to be obtained through the implementation of the Designated Watershed or Subwatershed program:

9.5.1 Reduction of existing flooding or water quality impacts,

9.5.2 Prevention of future flooding or water quality impacts, and

9.5.3 Minimization of economic and social losses.

9.6 Specific plan components of a water quality watershed study shall include, but not be limited to, the following items:

9.6.1 The limits of the watershed,

9.6.2 An inventory of existing water quality data,

9.6.3 An inventory of areas having significant natural resource value as defined in existing State or local studies as they may be impacted by the construction or location of stormwater control structures,

9.6.4 An inventory of areas of historical and archaeological value identified in existing State or local studies as they may be impacted by the construction or location of stormwater control structures,

9.6.5 A map or series of maps of the watershed showing the following information:

9.6.5.1 Watershed topography,

9.6.5.2 Significant geologic formations,

9.6.5.3 Soils information,

9.6.5.4 Existing land use based on existing zoning,

9.6.5.5 Proposed land use based on expected zoning or comprehensive plans,

9.6.5.6 Location of tidal and nontidal wetlands, and

9.6.5.7 Locations where water quality data were obtained.

9.6.6 An evaluation of water quantity concerns so that flooding does not become a problem in the watershed.

9.7 Specific components of a water quantity based study shall include, but not be limited to, the following items:

9.7.1 The limits of the watershed,

9.7.2 An inventory of historic flood damage sites, including frequency and damage estimates,

9.7.3 An inventory of areas of significant natural resource value as noted in existing State and local studies as they may be impacted by the construction or location of stormwater control structures,

9.7.4 An inventory of areas of historical and archaeological value identified in existing State and local studies as they may be impacted by the construction or location of stormwater control structures,

9.7.5 A map or series of maps of the watershed showing the following information:

9.7.5.1 Watershed topography,

9.7.5.2 Soils information,

9.7.5.3 Existing land use based on existing zoning,

9.7.5.4 Proposed land use based on expected zoning or comprehensive plans,

9.7.5.5 Locations of tidal and nontidal wetlands,

9.7.5.6 Locations of existing flooding problems including floor and corner elevations of structures already impacted, and

9.7.5.7 100 year floodplain delineations, water surface profiles, and storm hydrographs at selected watershed location.

9.7.6 An evaluation of water quality concerns so that water quality degradation does not become a problem in the watershed.

9.8 The initiation of studies for Designated Watersheds or Subwatersheds depends on the availability of funding for the study. Once a watershed has been designated, the Department will make every effort to secure funding through federal, State, or local means.

9.9 The Department is designated as the agency responsible for administering designated watershed or subwatershed studies with the advice of the advisory group appointed by the Secretary. Recommendations based on the results of the watershed study will only be made with the overall consent of the advisory group.

9.10 The formal results of the Designated Watershed or Subwatershed study will require formal acceptance by the local Conservation District Board of Supervisors and the local governing body of the appropriate county or municipality.

9.11 Implementation of the results of the Designated Watershed or Subwatershed study will necessitate the development and implementation of a dedicated funding source such as a stormwater utility to ensure design, construction, and maintenance of needed structures is accomplished.

9.12 Those watersheds or subwatersheds designated due to existing water quantity or water quality problems include the following:

9.12.1 Dover/Silver Lake/St. Jones River and all drainage areas upstream of the Silver Lake dam.

10.0 Specific Design Criteria and Minimum Standards and Specifications

10.1 General submission requirements for all projects requiring sediment and stormwater management approval include the following information:

10.1.1 A standard application form,

10.1.2 A vicinity map indicating north arrow, scale, and other information necessary to locate the property or tax parcel,

10.1.3 A plan at an appropriate scale accompanied by a design report and indicating at least:

10.1.3.1 Name and address of:

10.1.3.1.1 The owner of the property where the project is proposed;

10.1.3.1.2 The land developer; and

10.1.3.1.3 The applicant.

10.1.3.2 The existing and proposed topography, as required on a case by case basis.

10.1.3.3 The proposed grading and earth disturbance including:

10.1.3.3.1 Surface area involved; and

10.1.3.3.2 Limits of grading including limitation of mass clearing and grading whenever possible.

10.1.3.4 Stormwater management and stormwater drainage computations, including:

10.1.3.4.1 Pre- and post-development velocities, peak rates of discharge, and inflow and outflow hydrographs of stormwater runoff at all existing and proposed points of discharge from the site,

10.1.3.4.2 Site conditions around points of all surface water discharge including vegetation and method of flow conveyance from the land disturbing activity, and

10.1.3.4.3 Design details for structural controls.

10.1.3.5 Erosion, sediment control, and stormwater management provisions including:

10.1.3.5.1 Provisions to preserve top soil and limit disturbance;

10.1.3.5.2 Details of site grading, and;

10.1.3.5.3 Design details for structural controls which includes diversions and swales.

10.1.4 Federal Emergency Management Agency flood maps and federal and State protected wetlands, where appropriate.

10.1.5 The appropriate plan approval agency shall require that plans and design reports be sealed by a qualified design professional that the plans have been designed in accordance with approved sediment and stormwater ordinances, regulations, standards and criteria. The appropriate plan approval agency may waive this requirement on a case by case basis.

10.1.6 Additional information necessary for a complete project review may be required by the appropriate plan approval agency as deemed appropriate. This additional information may include items such as public sewers, water lines, septic fields, wells, etc.

10.2 Specific requirements for the erosion and sediment control portion of the sediment and stormwater management plan approval process include, but are not limited to, the following items. The appropriate plan approval agency may modify the following items for a specific project or type of project. Modification for a specific type of project will require the concurrence of the Department before that modification may be applied and that modification shall be subject to public review and comment prior to adoption.

10.2.1 All plans shall include details of temporary and permanent stabilization measures including placement of the following statement on all plans submitted for approval. Following soil disturbance or redisturbance, permanent or temporary stabilization shall be completed within 14 calendar days as to the surface of all perimeter sediment controls, topsoil stockpiles, and all other disturbed or graded areas on the project site.

These requirements do not apply to those areas which are shown on the plan and are currently being used for material storage, or for those areas on which actual earth moving activities are currently being performed.

10.2.2 All plans shall be consistent with the standards and specifications contained in the Delaware Erosion and Sediment Control Handbook, and approved supplements. The supplements shall be subject to public review and comment prior to their incorporation in the Erosion and Sediment Control Handbook.

10.2.3 A sequence of construction shall be contained on all plans describing the relationship between the implementation and maintenance of sediment controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction. The sequence of construction shall, at a minimum, include the following activities:

10.2.3.1 Clearing and grubbing for those areas necessary for installation of perimeter controls;

10.2.3.2 Construction of perimeter controls;

10.2.3.3 Remaining clearing and grubbing;

10.2.3.4 Road grading;

10.2.3.5 Grading for the remainder of the site;

10.2.3.6 Utility installation and whether stormdrains will be used or blocked until after completion of construction;

10.2.3.7 Final grading, landscaping, or stabilization; and

10.2.3.8 Removal of sediment controls.

10.2.4 The plans shall contain a description of the predominant soil types on the site, as described by the appropriate soil survey information available through the local Conservation District.

10.2.5 Unless an exception is approved on a case by case basis or an exception is approved for a specific type of activity by the appropriate plan approval agency, not more than 20 acres may be cleared at any one time. Once grading is initiated in one 20 acre section, a second 20 acre section may have stumps, roots, brush, and organic material removed. This will necessitate the phasing of construction on sites in excess of 20 acres to minimize areas exposed of ground cover and reduce erosion rates. Grading of the second 20 acre section may not proceed until temporary or permanent stabilization of the first 20 acre section is accomplished.

10.3 Specific requirements for the permanent stormwater management portion of the sediment and stormwater management plan approval process include, but are not limited to, the following items. The appropriate plan approval agency may modify the following items for a specific project or type of project. Modification for a specific type of project will require the concurrence of the Department before the modification may be applied and the modification for a type of project shall be subject to public review and comment.

10.3.1 It is the overall goal of the Department to utilize stormwater management as a means to minimize water quantity and water quality impacts due to land disturbing activities and to mimic pre-development hydrology, to the maximum extent practicable, in regards to the rate, volume and duration of flow. These regulations will provide general design requirements that must be adhered to in the absence of Designated Watershed or Subwatershed specific criteria.

10.3.2 All hydrologic computations shall be accomplished using the methodologies from the most recent U.S.D.A. Natural Resources Conservation Service Technical Releases 20 or 55, or other methods as approved by the Department. The storm duration for computational purposes shall be the 24 hour rainfall event. For projects south of the Chesapeake and Delaware Canal, the Delmarva Unit Hydrograph shall be incorporated into the design procedure.

10.3.3 Stormwater management requirements for a specific project shall be based on the entire area to be developed, or if phased, the initial submittal shall control that area proposed in the initial phase and establish a procedure and obligation for total site control.

10.3.4 Water quantity control is an integral component of overall stormwater management. Control of peak discharges will, to some extent, prevent increases in flooding. The following design criteria for peak flow control is established for water quantity control purposes, unless a waiver is granted based on a case-by-case basis:

10.3.4.1 Projects in New Castle County that are located north of the Chesapeake and Delaware Canal shall not exceed the post-development peak discharge for the 2, 10, and 100 year frequency storm events at the pre-development peak discharge rates for the 2, 10, and 100 year frequency storm events.

10.3.4.2 Projects in New Castle County that are located south of the Chesapeake and Delaware Canal, Kent County, and Sussex County shall not exceed the post-development peak discharge for the 2 and 10 year frequency storm events at the pre-development peak discharge rates for the 2 and 10 year frequency storm events.

10.3.4.3 Watersheds, other than Designated Watersheds or Subwatersheds, that have well documented water quantity problems may have more stringent, or modified, design criteria that is responsive to the specific needs of that watershed. Modified criteria for that watershed must receive Departmental approval, and all projects reviewed and approved by the appropriate plan approval agency shall meet or exceed the modified criteria. Proposed modification of criteria for a watershed shall be subject to public review and comment prior to implementation.

10.3.5 Water quality control is also an integral component of stormwater management. Control of runoff from small, frequent rainfall events on-site will minimize further degradation of downstream water quality and habitat. The following design criteria are established for water quality protection unless a waiver or variance is granted on a case-by-case basis.

10.3.5.1 In general, the preferred option for water quality protection shall be those practices collectively referred to as "Green Technology BMP's". Other practices shall be considered only after preferred practices have been eliminated for engineering or hardship reasons as approved by the appropriate plan approval agency.

10.3.5.2 Water quality practices shall be designed to manage the rate and volume of flow from the 2.0" NRCS Type II rainfall event, up to a maximum of 1.0" of runoff.

10.3.5.3 Alternative stormwater quality practices may be acceptable to the Department and/ or the plan approval agency if the removal efficiency for suspended solids meets or exceeds 80% as demonstrated by scientifically independent evaluation and monitoring performance data.

10.3.5.4 The Department and/or the plan approval agency may require other acceptable stormwater quality practices if a receiving waterbody has been identified as impaired, or designated with a specific pollutant reduction target necessary to meet State of Delaware water quality regulations.

10.3.5.5 Water quality practices may also be acceptable to the Department and/or the plan approval agency if they are designed to reduce pollutant loading from

a specific post-development source. The Department and/or the plan approval agency will determine if this criterion for water quality Best Management Practices is appropriate.

10.3.5.6 The Department will develop policy and maintain documentation related to the performance of water quality practices. The Department will also provide guidance for the design, appropriate use and required maintenance of water quality practices. These shall include structural and non-structural practices in addition to source reduction management strategies.

10.3.5.7 The Department and/or the plan approval agency will review the specific water quality practices proposed in a Sediment and Stormwater Management Plan, and review, approve or deny approval of the plan based on the criteria specified in Section E. of these regulations.

10.3.6 All ponds that are constructed for stormwater management shall be designed and constructed in accordance with the U.S.D.A. Soil Conservation Service Small Pond Code 378, dated September, 1990, as approved for use in Delaware.

10.3.7 Any pond utilized for water supply purposes, or for irrigation, must obtain approval from the Department for that use pursuant to Chapter 60.

10.3.8 Where ponds are the proposed method of control, the developer shall submit to the approving agency, when required, an analysis of the impacts of stormwater flows downstream in the watershed for the 100 year frequency storm event.

The analysis shall include hydrologic and hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed development, with and without the pond, on downstream dams, highways, structures, or natural points of constricted streamflows past which the timing effects would be considered negligible. The results of the analysis will determine the need to modify the pond design or to eliminate the pond requirement. Lacking a clearly defined downstream point of constriction, the downstream impacts shall be established, with the concurrence of the approving agency, downstream of a tributary of the following size:

10.3.8.1 The first downstream tributary whose drainage area equals or exceeds the contributing area to the pond; or

10.3.8.2 The first downstream tributary whose peak discharge exceeds the largest designed release rate of the pond.

10.3.9 Where existing wetlands are intended as a component of an overall stormwater management system, the following criteria shall be adhered to:

10.3.9.1 The only disturbance to the wetland, for the purposes of these regulations, shall be that disturbance caused by the stormwater management pond embankment placement and construction; or

10.3.9.2 The applicant can demonstrate that the intended or functional aspects of the stormwater management facility and wetlands are maintained or enhanced, or the construction in the wetland for stormwater management is the only reasonable alternative.

10.3.9.3 All other necessary State and federal permits can be obtained.

10.3.10 Designs shall be in accordance with standards developed or approved by the Department, which are subject to public review and comment.

10.3.11 Ease of maintenance must be considered as a site design component. Access to the stormwater management structure must be provided for in the design, and land area adjacent to the structure must be set aside for disposal of sediments removed from the structure when maintenance is performed. The land set aside for pond maintenance shall be sized as follows:

10.3.11.1 The set aside area shall accommodate at least 2% of the stormwater management basin volume to the elevation of the 2 year storage volume elevation;

10.3.11.2 The maximum depth of the set aside volume shall be one foot;

10.3.11.3 The slope of the set aside area shall not exceed 5%; and

10.3.11.4 The area and slope of the set aside area may be modified if an alternative area or method of disposal is approved by the appropriate plan approval agency.

10.3.12 A clear statement of defined maintenance responsibility shall be established during the plan review and approval process.

10.3.13 All ponds shall have a forebay or other design feature to act as a sediment trap. A reverse slope bench must be provided one foot above the normal pool elevation for safety purposes and all embankment ponds, having a normal pool, shall have a drain installed to facilitate maintenance.

10.3.14 The use of infiltration practices for the disposal of stormwater runoff is classified by the USEPA as an underground injection control practice, class V injection well. The appropriate plan approval agency shall forward a copy of all such approvals and the results of all construction inspections to the Department's Underground Injection Control program manager.

10.3.15 Infiltration practices have certain limitations on their use on certain sites. These limitations include the following items:

10.3.15.1 Areas draining to these practices must be stabilized and vegetative filters established prior to runoff entering the system. Infiltration practices shall not be used if a suspended solids filter system does not accompany the practice. If vegetation is the intended filter, there shall be,

at least, a 20 foot length of vegetative filter prior to stormwater runoff entering the infiltration practice;

10.3.15.2 The bottom of the infiltration practice shall be at least three feet above the seasonal high water table, whether perched or regional, determined by direct piezometer measurements which can be demonstrated to be representative of the maximum height of the water table on an annual basis during years of normal precipitation, or by the depth in the soil at which mottling first occurs;

10.3.15.3 The infiltration practice shall be designed to completely drain of water within 48 hours.

10.3.15.4 Soils must have adequate permeability to allow water to infiltrate. Infiltration practices are limited to soils having an infiltration rate of at least 1.02 inches per hour.

Initial consideration will be based on a review of the appropriate soil survey, and the survey may serve as a basis for rejection. On-site soil borings and textural classifications must be accomplished to verify the actual site and seasonal high water table conditions when infiltration is to be utilized.

10.3.15.5 Infiltration practices greater than three feet deep shall be located at least 20 feet from basement walls;

10.3.15.6 Infiltration practices designed to handle runoff from impervious parking areas shall be a minimum of 150 feet from any public or private water supply well;

10.3.15.7 The design of an infiltration practice shall provide an overflow system with measures to provide a non-erosive velocity of flow along its length and at the outfall; and

10.3.15.8 The slope of the bottom of the infiltration practice shall not exceed five percent. Also, the practice shall not be installed in fill material as piping along the fill/natural ground interface may cause slope failure.

10.3.15.9 Unless allowed on a specific project, infiltration practices will be used primarily for water quality enhancement only.

10.3.15.10 An infiltration practice shall not be installed on or atop a slope whose natural angle of incline exceeds 20%.

10.3.16 A regional approach to stormwater management is an acceptable alternative to site specific requirements. As a substitute control practice, regional stormwater management structures shall be required to meet the following items:

10.3.16.1 They shall have a contributory drainage area not in excess of 400 acres unless, on a case by case basis, a larger drainage area is approved by the appropriate plan approval agency;

10.3.16.2 They shall have a permanent pool of water and provide for 24 hour detention of the first inch of stormwater runoff from the entire upstream watershed; and

10.3.16.3 All other necessary approvals have been obtained that could be cause for site rejection.

10.3.17 The pre-development peak discharge rate shall be computed assuming that all land uses in the site to be developed are in good hydrologic condition.

8 DE Reg. 1172 (2/01/05)

11.0 Standard Plan Criteria

11.1 Approval under this section involves submission of a standard plan by a land owner, developer, or agent to the appropriate plan approval agency. The minimum criteria for the standard plan will be developed by the Department, and may be expanded upon by the appropriate plan approval agency. The standard plan will contain standard conditions for erosion and sediment control that must be implemented on sites where a detailed plan is not required. The appropriate plan approval agency shall approve or deny standard plan requests within 14 calendar days of receipt.

11.2 The inclusion of an activity into the standard plan classification does not relinquish that activity from the requirements of Chapter 40. Rather, the standard plan precludes that activity from the necessity of a detailed plan review for each individual project.

11.3 Approval of a standard plan does not relieve the applicant from the conditions that are a part of the standard plan approval regarding the implementation of control practices as required by the standard plan. Failure to implement control practices pursuant to conditions included in the general permit standard plan may necessitate appropriate enforcement action as provided in Chapter 40 and these regulations.

11.4 Those activities eligible for standard plans include the following, when the stormwater management requirements have been waived in accordance with Section 3 of these Regulations:

11.4.1 Individual detached residential home or agricultural structure construction where the disturbed area for construction will be less than one acre in size. Two or more contiguous lots being developed concurrently by the same land developer will not be eligible for the standard plan.

11.4.2 Highway shoulder and side swale maintenance.

11.4.3 The repair, maintenance, and installation of above and underground utilities.

11.4.4 Minor Commercial, Institutional, and industrial projects where the total disturbed area will be less than one acre.

11.4.5 Modification or reconstruction of a tax ditch by a tax ditch organization when that tax ditches not intended to serve new development, and which will not increase water quantity or adversely impact water quality, or

change points of discharge so as to adversely affect the waters of the State.

11.5 The appropriate plan approval agency may place more restrictive conditions upon the standard plan approval including the requirement for detailed plans for any standard plan category. The imposition of more specific requirements for categories of projects shall be approved by the Department, and shall be subject to public review and comment prior to their imposition.

8 DE Reg. 1172 (2/01/05)

12.0 Certified Construction Reviewer Requirements

12.1 Projects reviewed and approved by the Department for sediment control and stormwater management, in general, shall have a certified construction reviewer when the disturbed area of the project is in excess of 50 acres. In addition any project, regardless of its size, may be required by the Department, or the appropriate plan approval agency, to have a certified construction reviewer on a case by case basis.

12.2 The Department or the appropriate inspection agency may require that any project, already under construction, have on site a certified construction reviewer if, on that project, significant sediment control or stormwater management problems necessitate more frequent inspections.

12.3 The certified construction reviewer shall function under the direction of a registered professional engineer licensed to practice engineering in the State of Delaware.

12.4 Individuals designated as certified construction reviewers shall attend and pass a Departmental sponsored or approved construction review training course. The course content will contain, at a minimum, information regarding the following items:

12.4.1 Basic hydrology and hydraulics;

12.4.2 Soils information including texture, limitations, erodibility, and classifications;

12.4.3 Types of vegetation, growing times, and suitability;

12.4.4 Erosion, sediment control, and stormwater management practices;

12.4.5 Inspection and problem referral procedures;

12.4.6 Aspects of State law, regulations, local ordinances, and approval procedures: and

12.4.7 Sediment and stormwater management plan content.

12.5 The time frame for certification shall not exceed five years unless extended by the Department.

12.6 The responsibility of the certified construction reviewer will be to ensure the adequacy of construction pursuant to the approved sediment and stormwater management plan.

12.7 The certified construction reviewer shall be responsible for the following items:

12.7.1 Provision of a construction review of active construction sites on at least a weekly basis;

12.7.2 Within five calendar days, informing the person engaged in the land disturbing activity, and the contractor, by a written construction review report of any violations of the approved plan or inadequacies of the plan. The plan approval agency shall be informed, if the approved plan is inadequate, within five working days. In addition, the appropriate construction review agency shall receive copies of all construction review reports; and

12.7.3 Referral of the project through the delegated inspection agency to the Department for appropriate enforcement action if the person engaged in the land disturbing activity fails to address the items contained in the written construction review report. Verbal notice shall be made to the Department within two working days and written notice shall be provided to the Department within five working days.

12.8 If the Secretary or his designee determines that a certified construction reviewer is not providing adequate site control or is not referring problem situations to the Department, the Secretary or his designee may suspend or revoke the certification of the construction reviewer.

12.9 In any situation where a certified construction reviewer's approval is being suspended or revoked, an opportunity for hearing before the Secretary or his designee shall be provided. During any suspension or revocation, the certified construction reviewer shall not be allowed to provide construction reviews pursuant to these regulations. The minimum time of suspension or revocation shall be 6 months.

13.0 Contractor Certification Program

13.1 The Department shall require certification of responsible personnel for any foreman or superintendent who is in charge of on-site clearing and land disturbing activities for sediment and stormwater control associated with a construction project. Responsible personnel are not required on any project involving silvaculture or fewer than four residential homes. Responsible personnel shall obtain certification by completing a Department sponsored or approved training program. Enrollment of existing and future responsible personnel is the responsibility of employers. Response to a Department notice of training and certification in accordance with the provisions of item 3 of this section shall serve as an application for training. The Department shall notify employers of responsible personnel as to the date and location of training programs for attendance by responsible personnel and other interested persons.

13.2 After July 1, 1991, any applicant seeking sediment and stormwater plan approval shall certify to the

appropriate plan approval agency that all responsible personnel involved in the construction project will have a certificate of attendance at a Departmental sponsored or approved training course for the control of sediment and stormwater before initiation of any land disturbing activity. The certificate of attendance shall be valid until the Department notifies the individual or announces in local newspapers that recertification is required due to a change in course content.

13.3 After July 1, 1991, employers of responsible personnel may receive interim certification for responsible personnel during the period before attendance at a Departmental sponsored or approved training course by submitting an enrollment form to the Department. Interim certification shall be valid until the scheduled date of attendance for training of responsible personnel. These enrollment forms are available from the Department and the Conservation Districts.

14.0 Construction Review and Enforcement Requirements

14.1 The land developer shall request, at least 24 hours ahead of time, that the appropriate inspection agency approve work completed at the stages of construction outlined in the sequence of construction contained on the approved plans. Any portion of the work which does not comply will be promptly corrected by the developer after written notice by the appropriate inspection agency. The notice shall set forth the nature of corrections required and the time frame within which corrections must be made.

14.2 The land developer shall notify the appropriate inspection agency before initiation of construction and upon project completion when a final inspection will be conducted to ensure compliance with the approved sediment and stormwater management plan.

14.3 The responsible inspection agency shall, for inspection purposes, do all of the following items:

14.3.1 Ensure that the approved sediment and stormwater management plans are on the project site and are complied with;

14.3.2 Ensure that every active site is inspected for compliance with the approved plan on a regular basis;

14.3.3 Prepare and leave on site, or forward to the contractor, a written report after every inspection that describes:

14.3.3.1 The date and location of the site inspection;

14.3.3.2 Whether the approved plan has been properly implemented and maintained;

14.3.3.3 Approved plan or practice deficiencies; and

14.3.3.4 The action taken.

14.3.4 Notification of on-site personnel or the owner/developer in writing when violations are observed, describing the:

14.3.4.1 Nature of the violation;

14.3.4.2 Required corrective action; and

14.3.4.3 Time period for violation correction.

14.4 The Department may investigate complaints or refer any complaint received to the local inspection agency if the activity is located in a jurisdiction that has received delegation of sediment and stormwater management inspection. In conjunction with a referral, the Department may also initiate an on-site investigation after notification of the local inspection agency in order to properly evaluate the complaint. The Department shall take enforcement action when appropriate, and notify the local inspection agency in a timely manner of any enforcement actions taken.

14.5 The Department, at its discretion and upon notification to either the owner, developer, or contractor, may visit any site to determine the adequacy of sediment and stormwater management practices. In the event that the Department conducts site inspections, the appropriate inspection agency shall be notified prior to the initiation of any enforcement action. The appropriate inspection agency shall establish a time frame to obtain site compliance. This notification shall, in no way limit the right to the Department to take action subsequent to any provision of these regulations or Chapter. Formal procedures for interaction between the Department and the appropriate inspection agency on site inspection and referral will be developed on an individual basis.

14.6 The appropriate plan approval agency may require a revision to the approved plans as necessary due to differing site conditions. The appropriate plan approval agency shall establish guidelines to facilitate the processing of revised plans where field conditions necessitate plan modification. Where changes to the approved plan are necessary those changes shall be in accordance to the following:

14.6.1 Major changes to approved sediment and stormwater management plans, such as the addition or deletion of a sediment basin, shall be submitted by the owner/developer to the appropriate plan approval agency for review and approval.

14.6.2 Minor changes to sediment and stormwater management plans may be made in the field if approved by the construction reviewer and documented in the field review report. The appropriate inspection agency shall develop a list of allowable field modifications for use by the construction reviewer.

14.7 Stormwater management construction shall have inspections accomplished at the following stages:

14.7.1 Infiltration practices shall be inspected at the commencement, during, and upon completion of construction;

14.7.2 All ponds shall be inspected at the following stages:

14.7.2.1 Upon completion of excavation to sub-foundation and where required, installation of structural supports or reinforcement for structures, including, but not limited to;

14.7.2.1.1 Core trenches for structural embankments,

14.7.2.1.2 Inlet-outlet structures and anti-seep structures, watertight connectors on pipes, and

14.7.2.1.3 Trenches for enclosed storm drainage facilities.

14.7.2.2 During placement of structural fill, concrete, and installation of piping and catch basins;

14.7.2.3 During backfill of foundations and trenches;

14.7.2.4 During embankment construction; and

14.7.2.5 Upon completion of final grading and establishment of permanent vegetation.

14.8 The agency responsible for construction review may, in addition to local enforcement options, refer a site violation to the Department for additional enforcement action.

14.9 Referral of a site violation to the Department may initiate a Departmental construction review of the site to verify site conditions. That construction review may result in the following actions:

14.9.1 Notification through appropriate means to the person engaged in a land disturbing activity and the contractor to comply with the approved plan within a specified time frame; and

14.9.2 Notification of plan inadequacy, with a time frame for the person engaged in a land disturbing activity to submit a revised sediment and stormwater plan to the appropriate plan approval agency and to receive its approval with respect thereto.

The Department shall notify the local inspection agency in a timely manner of what enforcement action is taken on the site.

14.10 Failure of the person engaged in the land disturbing activity or the contractor to comply with Departmental requirements may result in the following actions in addition to other penalties as provided in Chapter 40.

14.10.1 The Department shall have the power to issue a cease and desist order to any person violating any provision of Chapter 40 and these regulations by ordering such person to cease and desist from any site work activity other than those actions necessary to achieve compliance with any administrative order.

14.10.2 The Department may request that the appropriate plan approval agency refrain from issuing any further building or grading permits to the person having

outstanding violations until those violations have been remedied.

15.0 Maintenance Requirements

15.1 For erosion and sediment control, all practices shall be maintained in accordance with requirements specified in the Delaware Sediment and Erosion Control Handbook dated 1989 or as directed by the construction reviewer.

15.2 Prior to the issuance of any building or grading permit for which stormwater management is required, the responsible plan approval agency shall require the applicant or owner to execute an inspection and maintenance agreement binding on all subsequent owners of land served by the private stormwater management facility. Such agreement shall provide for access to the facility at reasonable times for regular inspection by an inspection agency and for an assessment of property owners to ensure that the stormwater management structure is maintained in proper design working condition.

15.3 The Department encourages, and will provide technical assistance to, any Conservation District or local jurisdiction who chooses to assume the maintenance responsibility for stormwater management structures on, at least, residential lands. Public maintenance provides a reasonable assurance that maintenance will be accomplished on a regular basis.

15.4 The owner or person responsible shall perform or cause to be performed preventive maintenance of all completed stormwater management practices to ensure proper functioning. The responsible inspection agency shall ensure preventive maintenance through inspection of all stormwater management practices. The inspections shall occur at least once each year.

15.5 Inspection reports shall be maintained by the responsible inspection agency on all detention and retention structures and those inspection reports shall include the following items:

15.5.1 The date of inspection;

15.5.2 The name of the inspector;

15.5.3 The condition of:

15.5.3.1 Vegetation,

15.5.3.2 Fences,

15.5.3.3 Spillways,

15.5.3.4 Embankments,

15.5.3.5 Reservoir area,

15.5.3.6 Outlet channels,

15.5.3.7 Underground drainage,

15.5.3.8 Sediment load, or

15.5.3.9 Other items which could effect the

proper function of the structure.

15.5.4 Description of needed maintenance.

15.6 Responsible inspection agencies shall provide procedures to ensure that deficiencies indicated by

inspections are rectified. The procedures shall include the following:

15.6.1 Notification to the person responsible for maintenance of deficiencies including a time frame for repairs;

15.6.2 Subsequent inspection to ensure completion of repairs; and

15.6.3 Effective enforcement procedures or procedures to refer projects to the Department if repairs are not undertaken or are not done properly.

16.0 Penalties

16.1 Any person who violates any rule, order, condition imposed in an approved plan or other provision of these regulations shall be fined not less than \$200 or more than \$2,000 for each offense. Each day that the violation continues shall constitute a separate offense. The Justice of the Peace Courts shall have jurisdiction of offenses brought under this subsection.

16.2 Any person who intentionally, knowingly, and after written notice to comply, violates or refuses to comply with any notice issued pursuant to these regulations shall be fined not less than \$500 or more than \$10,000 for each offense. Each day the violation continues shall constitute a separate offense. The Superior Court shall have jurisdiction of offenses brought under this subsection.

17.0 Hearings

The conduct of all hearings conducted pursuant to these regulations shall be in accordance with the relevant provisions of **7 Del.C. Ch. 60**.

18.0 Severability

If any section, subsection, sentence, clause, phrase, or portion of these regulations are for any reason held invalid or unconstitutional by any court or competent jurisdiction, such provision and such holding shall not affect the validity of the remaining portions of these regulations.

7 DE Reg. 1147 (3/1/04)

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
2100 Board of Examiners in Optometry
Statutory Authority: 24 Delaware Code,
Section 2104(a)(1) (24 **Del.C.** §2104(a)(1))**

PUBLIC NOTICE

The Delaware Board of Examiners in Optometry is proposing an amendment to Rule 3.4 of its rules and regulations pursuant to 24 **Del.C.** §2104(a)(1) and 29 **Del.C.** §10115. The Board proposes to amend Rule 3.4 to strike the limitation on the number of interns or externs permitted in a practice at any period of time.

A public hearing will be held on May 12, 2005 at 6:45 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed amendment to the rules and regulations may obtain a copy from the Delaware Board of Optometry, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

The proposed amendment to Rule 3.4. is as follows:

3.0 Internship

3.1 An internship is a course of study in which applicants receive part of their clinical training in a Board approved private practice setting in Delaware, or other Board approved setting, under the supervision of a licensed optometrist or ophthalmologist. An active, licensed Optometrist or Ophthalmologist may act as a supervisor. Any applicant's participation in such an internship program must be approved by the Board and is subject to the following terms and conditions:

3.1.1 A letter from the practitioner with whom the applicant will be interning stating the goals, duties and the number of hours he/she will be working. If the applicant is not doing his/her internship with a therapeutically certified optometrist or ophthalmologist, he/she must also complete an additional one hundred (100) hours of clinical internship with a therapeutically certified Optometrist, Medical doctor or Osteopathic physician.

3.1.2 Each applicant who will be participating in the internship program must provide the name and address of the supervisor and the dates of the internship for approval by the Board before the internship may begin provided that, in the event an applicant has made a good faith effort to submit all necessary licensure materials for approval of the internship, and in the event that the Board is unable to meet to review said licensure materials due to the absence of a sufficient number of statutorily appointed Board members, as occurred in July-August, 2003, the Board may approve said internship starting as of the date when the applicant has submitted all licensure materials.

3.1.3 A letter must be received by the Board from the supervisor verifying the completion of the internship.

3.1.4 For purposes of this Section and 29 Del.C. §2110, the term “duration” shall be defined as “a period of no less than six (6) months and no greater than the period ending on the date of the next Board meeting following the end of the six (6) month period.” No intern may practice on a temporary license beyond the duration of the internship.

3.2 Subject to the approval requirements stated above, a candidate’s internship requirements may be satisfied while the candidate is a member of the Armed Forces if he/she:

3.2.1 Functions as a fully credentialed therapeutically certified optometric practitioner; and (for purposes of this Section equivalent to the Air Force regulations).

3.2.2 Performs his optometric duties on a full-time basis in a completely equipped eye clinic.

3.3 Full-time: minimum of 35 hours per week.

3.4 All supervisors must supervise the interns on a one-to-one basis whenever an applicant performs a task which constitutes the practice of optometry. No supervisor may be a supervisor for more than one intern, or student extern, ~~at a time: during the period of the internship or externship. Only one intern shall be permitted in any practice for any period of time.~~

3.5 All acts which constitute the practice of optometry under 24 Del.C. §2101(a) may be performed by the intern only under the following conditions:

3.5.1 The supervisor shall be on the premises and immediately available for supervision at all times;

3.5.2 All intern evaluations of any patient shall be reviewed by the supervisor prior to final determination of the patient’s case before the patient leaves the premises; and

3.5.3 A supervisor shall at all times effectively supervise and direct the intern.

3.6 A violation of any of the conditions enumerated in this rule may be grounds for the Board to revoke their approval of an internship program. The Board may also revoke its approval of an internship program if it determines that either the supervising optometrist or the intern has engaged in any conduct described by 24 Del.C. §2113(a). Furthermore, any violation of the terms of this rule by a supervising optometrist who is a licensed optometrist shall be considered unprofessional conduct and a violation of 24 Del.C. §2113(a)(7).

2 DE Reg 85 (5/1/99)

7 DE Reg. 912 (1/1/04)

8 DE Reg. 536 (10/01/04)

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Examiners in Optometry is available at:**

<http://dpr.delaware.gov/boards/optometry/index.shtml>

DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code,
Section 2509 (24 Del.C. §2509)

PUBLIC NOTICE

The Delaware Board of Pharmacy in accordance with 24 Del.C. §2509 has proposed changes to its rules and regulations. The proposal makes clerical and clarification changes to Regulations 1.0, 3.0, 5.0, 9.0, and 10.0. Regulation 1.2 is modified to recognize the role of preceptors from Pharmacy Colleges when students are participating in coordinated practical experience programs in Delaware pharmacies. Regulation 1.6 regarding to re-entry is deleted. Regulation 5.0 is changed to permit students of Pharmacy College to dispense and provide counseling. The provisions for emergency use medication in Regulation 9.0 are changed to correspond to the provisions in 11.0. The reference material in Regulation 10.0 is modified.

A public hearing will be held on the proposed changes on May 11, 2005 at 10:00 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. The Board will receive and consider input from any person on the proposed changes. Written comment can be submitted at any time prior to the hearing in care of David Dryden, Executive Secretary, at the above address. In addition to publication in the *Register of Regulations*, copies of the proposed regulation can be obtained from David Dryden, Executive Secretary, by calling (302)739-4798. Notice of the hearing and the nature of the proposal are also published in two Delaware newspapers of general circulation.

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

Proposed Rules and Regulations

1.0 Pharmacist Licensure Requirements

1.1 Examination Requirements

1.1.1 In order to be eligible for examination for licensure, an applicant must provide proof of completion of all requirements for graduation from an approved school or college. An approved school or college of pharmacy is an institution which has established standards in its undergraduate degree program which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education. Provided, however, that graduates of schools or colleges of pharmacy located outside of the United States, which have not established standards in their respective undergraduate degree programs which are at least equivalent to the

minimum standards for accreditation established by the American Council on Pharmaceutical Education, shall be deemed eligible for examination for licensure by providing evidence satisfactory to the Board of Pharmacy of graduation from such school or college and by successfully passing an equivalency examination recognized by the Board of Pharmacy. Certification by the National Association of Boards of Pharmacy (NABP) Foreign Pharmacy Graduate Examination Committee (FPGEC) meets the equivalency examination requirement.

1.1.2 Candidates must obtain a passing grade as determined by the National Association of Boards of Pharmacy (NABP) on the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination for Delaware (MPJE) to be eligible for a license to practice. A candidate must take an examination within 365 days of the determination of eligibility by the Board. The Secretary will supply the grades obtained to the candidate upon receipt of a written request from that person.

1.1.3 The Board will re-confirm the eligibility of an applicant who fails the NAPLEX. The applicant shall be entitled to take a re-examination at least ninety-one (91) days following the date of the failure. If an applicant has failed the examination three times, he/she shall be eligible to re-take the NAPLEX, provided that he/she produces evidence of working full-time as an intern for a period of six months or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be.

1.1.4 The Board will re-confirm the eligibility of an applicant who fails the MPJE. The applicant shall be entitled to re-take the MJPE at least thirty-one (31) days following the date of the failure. If an applicant has failed the examination three times, he or she shall be eligible to re-take the examination, provided that he or she produces evidence of working full-time as an intern for a period of three months or has completed a one semester college course on jurisprudence.

1.2 Practical Experience Requirements

1.2.1 An applicant for registration as an intern must submit an application for registration of Internship after entering the first professional year of college of pharmacy which includes an "Affidavit of Class Standing" and "Affidavit of Preceptor." This application must be obtained from the Board of Pharmacy. If the applicant is a graduate of a foreign pharmacy school, he/she must produce evidence that he/she has passed an equivalency examination by the Board.

1.2.2 Persons who register as interns in the State of Delaware shall, in accordance with the requirements of 24 Del.C. §2515, complete not less than 1500 hours of Board

approved practical experience under the supervision of a licensed pharmacist. ~~The total 1500 hours of internship may be acquired in the community or hospital settings.~~ A minimum of 1000 hours shall be obtained in the community or hospital settings. The remaining 500 hours may be obtained in other recognized fields of practice, e.g.: Industrial Pharmacist, Drug Information Pharmacist, Military Pharmacist, Mail Order Pharmacist, HMO Pharmacist, Consultant Pharmacist (Nursing Home, Infusion, Medicaid DUR, Etc.), Home Health Care Pharmacist (may include Durable Medical Equipment, etc.), Nuclear Pharmacist, Compliance Pharmacist, Government Pharmacist, Clinical Pharmacist, Contracted Pharmacy Services.

~~1.2.3 The hours accrued during the College of Pharmacy Practical Experience Program may be applied to the 1500 hours total. These hours shall be recorded on the College Practical Experience Affidavit supplied by the Board. Additional practical experience acquired in the State of Delaware must be submitted to the Board on the Affidavit of Intern Experience form provided by the Board of Pharmacy Office. Practical experience acquired in another State is acceptable if the State Board in which the applicant acquired the hours submits a letter of certification, or if the applicant's preceptor completes the Delaware State Board of Pharmacy's Affidavit of Intern Experience form. Applicants who have not completed all the practical experience requirements, but who have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes and Regulations are completed.~~

1.2.4 1.2.3 Practical experience must be acquired under the supervision of a licensed pharmacist known as a Preceptor. The Preceptor must be a pharmacist licensed in this State or any other State and must have a minimum of two years of pharmacy practice. A pharmacist employed by a College of Pharmacy shall serve as the preceptor for a student participating in the coordinated practical experience program. The Preceptor must certify that the intern has successfully completed all the requirements outlined in the Responsibilities of the Intern professional assessment form.

1.2.4 Practical experience acquired in another State is acceptable if the State Board in which the applicant acquired the hours submits a letter of certification, or if the applicant's preceptor completes the Delaware State Board of Pharmacy's Affidavit of Intern Experience form. Applicants who have not completed all the practical experience requirements, but who have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully

licensed until all the requirements of the Statutes and Regulations are completed.

~~1.2.5 An intern must notify the Board of Pharmacy in writing within ten (10) days of a change of preceptor. A change of preceptor affidavit must be completed and filed with the Board. The hours accrued during the College of Pharmacy Practical Experience Program may be applied to the 1500 hours total. These hours shall be recorded on the College Practical Experience Affidavit supplied by the Board. Registration as an intern in this State is not required for school experience.~~

~~1.2.5~~ 1.2.6 An intern must notify the Board of Pharmacy in writing within ten (10) days of a change of preceptor. A change of preceptor affidavit must be completed and filed with the Board.

1.3 Continuing Education Requirements

1.3.1 A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted.

1.3.2 Hardship - Hardship exemptions may be granted by the Board of Pharmacy upon receipt of evidence that the individual was unable to complete the requirements due to circumstances beyond his control.

1.3.3 Criteria for Hardship Exemption as Recommended by the Board of Pharmacy:

1.3.3.1 Applicant must notify the Board in writing concerning the nature of the hardship and the time needed for an extension. In case of medical disability, a letter from the physician with supporting documentation to corroborate the condition and the length of time of extension needed.

1.3.3.2 The Board of Pharmacy will review requests.

1.3.3.3 The Board will notify the registrant of its decision.

1.3.4 Persons who are newly licensed after the registration period begins, must complete continuing education units proportional to the total number of continuing education units required for the biennial licensure renewal. (1.25 hours/per month).

1.4 Continuing Professional Educational Programs

1.4.1 Topics of Study

Topics of study shall be subject matter designed to maintain and enhance the contemporary practice of pharmacy.

1.4.2 Approved Provider

1.4.2.1 Any provider approved by ACPE.

1.4.2.2 In-state organization which meets criteria approved by the Board.

1.4.3 Application for Delaware State Provider

1.4.3.1 Any in-state organization may apply to the Board on forms provided by the Board for initial qualification as an approved provider. The Board shall

accept or reject any such application by written notice to such organization within 60 days after receipt of its application. If an organization is approved, the Board will issue a certificate or other notification of qualification to it, which approval shall be effective for a period of two years and shall be renewable upon the fulfillment of all requirements for renewal as set forth by the Board.

1.4.3.2 The Board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the standards and specifications required. The Board shall serve written notice on the provider by mail or personal delivery at its address as shown on its most current application specifying the reason for suspension, revocation, or failure to renew. The provider so affected shall, upon written request to the Board within ten days after service of the notice, be granted a prompt hearing before the Board at which time it will be permitted to introduce matters in person, or by its counsel, to defend itself against such revocation, suspension, or failure to renew, in accordance with the provisions set forth in the State's Administrative Procedures Act.

1.4.4 Criteria for Approval of Delaware State Providers. Only applicants who are located within the State of Delaware are eligible. Such Continuing Education providers shall provide evidence of ability to meet the following criteria or approval as a Continuing Pharmaceutical Education Provider. Other persons must apply through ACPE for approval or be acceptable to other Boards of Pharmacy that certify continuing education for relicensure.

1.4.4.1 Administration and Organization

1.4.4.1.1 The person who is in charge of making sure that the program meets the quality standards must have a background in the administration of education programs.

1.4.4.1.2 There shall be an identifiable person or persons charged with the responsibility of administering the continuing pharmaceutical education program.

1.4.4.1.3 Such personnel shall be qualified for such responsibilities by virtue of experience and background.

1.4.4.1.4 If an approved provider presents programs in co-sponsorship with other non-approved provider(s), the approved provider has the total responsibility for assurance of quality of that program. If more than one approved provider co-sponsors a program, they have the joint responsibility for assuring quality.

1.4.4.1.5 Administrative Requirements include:

1.4.4.1.5.1 The development of promotional materials which state:

1.4.4.1.5.1.1 Educational objectives.

- audience. 1.4.4.1.5.1.2 The target participants. All programs of approved providers should pertain to the general areas of professional pharmacy practices which should include, but not be limited to:
- schedule of the activities. 1.4.4.1.5.1.3 The time 1.4.4.3.1.1 The social, economic, behavioral, and legal aspects of health care,
- participant/covered items. 1.4.4.1.5.1.4 Cost to the 1.4.4.3.1.2 the properties and actions of drugs and drug dosage forms,
- C.E. credit which will be awarded. 1.4.4.1.5.1.5 Amount of 1.4.4.3.1.3 the etiology, characteristics, therapeutics and prevention of the disease state,
- the faculty, presenters, and speakers. 1.4.4.1.5.1.6 Credentials of 1.4.4.3.1.4 pharmaceutical monitoring and management of patients.
- instruments. 1.4.4.1.5.1.7 Self-evaluation 1.4.4.3.2 All ancillary teaching tools shall be suitable and appropriate to the topic.
- 1.4.4.1.5.2 Compliance with a quantitative measure for C.E. credit. 1.4.4.3.3 All materials shall be updated periodically to include up-to-date-practice setting.
- 1.4.4.1.5.2.1 The number of C.E.U.'s to be awarded for successful completion shall be determined by the provider and reported in the promotional materials. 1.4.4.3.4 It is the responsibility of the provider to be sure that the programs are continuously upgraded to meet educational objectives of the Practice of Pharmacy. The needs of the pharmacist participant must be considered in choosing the method of delivery. Innovation in presentations is encouraged within the limits of budget resources and facilities. Whatever method of delivery is used, it must include the participation of the pharmacist as much as possible within the program, i.e. questions and answers, workshops, etc.
- 1.4.4.1.5.2.2 In cases where the participants' physical presence is required, C.E. credit will only be awarded for that portion of the program which concerns itself with the lecture(s), evaluation and question and answer segments. 1.4.4.4 Facilities. The facilities shall be adequate for the size of the audience, properly equipped (all appropriate audio/-visual media materials), well lighted and ventilated to induce a proper learning experience.
- 1.4.4.1.5.2.3 The measure of credit shall be a fifty-minute contact hour. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format. 1.4.4.5 Evaluation. Effective evaluation of programs is essential and is the responsibility of both the provider and participant.
- 1.4.4.1.5.2.4 The provider must provide the Board upon request with appropriate records of successful participation in previous continuing education activities. 1.4.4.5.1 Participant - Some evaluation mechanisms must be developed by the provider to allow the participant to assess his/her own achievement per the program.
- 1.4.4.1.5.2.5 The provider must present to the participant a form or certificate as documentation of the completion of the program. The form must be at least 4" x 6" and no larger than 8 1/2" x 11". That certificate must show the name, address, and license number of the participant, the name of the provider, the title and date of the program, the number of credits earned, and an authorized signature from the provider. 1.4.4.5.2 Provider evaluation - a provider shall also develop an instrument for the use of the participant in evaluating the effectiveness of the program including the level of fulfillment of stated objectives.
- 1.4.4.2 Program Faculty. The selection of program faculty must be based upon proved competency in the subject matter and an ability to communicate in order to achieve a learning experience. 1.4.5 Criteria for Awarding Continuing Education Credits. Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an application provided by the Board for approval of individual programs.
- 1.4.4.3 Program Content Development 1.4.5.1 In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a post test must be presented. An automatic 25% deduction if no post test presented.
- 1.4.4.3.1 Such programs shall involve effective advance planning. A statement of educational goals and/or behaviors must be included in promotional materials. Such objectives and goals must be measurable and accessible to evaluation. In determining program content, providers shall involve appropriate members of the intended audience in order to satisfy the educational needs of the 1.4.5.2 In order to receive full credit for non-ACPE approved programs of three or more hours in length,

evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.

1.4.5.3 Credit will be assigned only for the core content of the program which explicitly relates to the contemporary practice of Pharmacy.

1.4.5.4 A maximum of 2 credit hours will be awarded for First Aid, attendance at a Board of Pharmacy meeting and CPR/BCLS courses one time only per registration period.

1.4.5.5 Credit for Instructors of Continuing Education

1.4.5.5.1 Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Delaware Board of Pharmacy.

1.4.5.5.2 Any pharmacist whose primary responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.

1.4.5.5.3 Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

1.4.5.5.4 A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

1.4.5.6 Credit for On the Job Training:

1.4.5.6.1 The Board of Pharmacy does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an individual basis.

1.4.5.6.2 All programs that are submitted for credit must meet the criteria for continuing pharmacy education.

1.4.5.6.3 No credit shall be awarded for programs required by an employer for continued employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)

1.4.5.6.4 A maximum of 4 hours (0.4 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

1.5 The Verification of Continuing Education - ~~A pharmacist shall complete the required continuing education and submit the signed renewal form with appropriate fees to the Board of Pharmacy.~~ A pharmacist shall retain the supporting documentation, such as certification of completion for a minimum of six years. The Board will randomly audit the documentation of at least 10% of licensed pharmacists every biennial term. Supporting documentation may be requested for up to six years. Pharmacists who were not selected for audit do not send supporting documentation to the Board. Submitting a false documentation may constitute grounds for discipline under 24 **Del.C.** §2518 (a)(1).

~~1.6 Re-Entry - A pharmacist may have his/her license reinstated by completing the following requirements:~~

~~1.6.1 Payment of any back fees;~~

~~1.6.2 Successfully obtaining a grade of 75 on an examination on the Practice of Pharmacy if the pharmacist has not practiced in three years;~~

~~1.6.3 Submission of evidence of completion of at least 20 hours of approved C.E. from the date of application for reinstatement if the pharmacist has practiced within the last three years.~~

1.7 Reciprocal Requirements

1.7.1 An applicant for licensure by reciprocity shall be of good moral character and shall:

1.7.1.1 submit proof that he or she was qualified for licensure in Delaware at the time of initial licensure by examination;

1.7.1.2 submit proof of licensure in good standing from each state where he or she is or has been licensed; and

1.7.1.3 obtain a passing score on the MPJE on the laws applicable in this State as provided in Regulation 1.1.

1.7.2 Reciprocity applicants who took examinations after June 1, 1979, must have passed the NAPLEX or an examination deemed equivalent by the Board and obtained scores required for applicants for licensure by examination.

1.7.3 Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/per month beginning with the month of licensure.

Regulation 1.2 revised 10/11/96

Regulation 1.3.2 revised 2/6/97

Regulation 1.3.2 deleted, 1.3.3.1 amended, 1.4 amended
Effective date 10/11/98

1 DE Reg. 1965 (6/1/98)

2 DE Reg. 683 (10/1/98)

4 DE Reg. 163 (7/1/00)

4 DE Reg. 1501 (3/1/01)

6 DE Reg. 488 (10/1/02)

7 DE Reg. 309 (9/1/03)

3.0 Pharmacy Requirements

3.1 Pharmacist in Charge

3.1.1 Application for permit to operate a pharmacy in the State of Delaware must be on a form approved by the Board. The form shall include the statement to be signed by the pharmacist in charge, "I understand that I am responsible for conducting and managing the prescription department in compliance with applicable State and Federal laws."

3.1.2 The Board interprets the responsibilities of the Pharmacist-in-Charge to include, but not be limited to the following:

3.1.2.1 Maintain necessary pharmaceutical equipment and reference texts in accordance with the State Board of Pharmacy requirements.

3.1.2.2 Maintain records required by the Uniform Controlled Substances Act and other relevant State and Federal regulations.

3.1.2.3 Maintain proper security of particular pharmacy operation during and after normal business hours.

3.1.2.4 Establish procedures within operation that maintain standard of practice as it relates to the dispensing of pharmaceuticals. These procedures shall include proper supervision of supportive personnel and delegation of authority to another pharmacist when not on duty.

3.1.2.5 The pharmacist on duty is directly responsible for his own actions.

3.1.2.6 Notify the Board of Pharmacy in writing within 10 days of termination as pharmacist-in-charge.

3.2 Owner's Affidavit. The owner or owners and, in the case of a corporation, an authorized official of the corporation must present an affidavit properly notarized containing the statement, "I hereby swear or affirm that the foregoing statements are correct and do hereby agree to abide by the pharmacy laws of the State of Delaware and to all rules and regulations of the Delaware State Board of Pharmacy." The Board must be notified within 10 days of change of ownership.

3.3 Equipment and Reference Materials. Each pharmacy shall have the following equipment and maintain a library of the latest edition and supplements of current reference sources (either hard copy or electronically accessible) appropriate to the individual pharmacy practice and to the care of the patients served. The reference sources must:

3.3.1 References:

3.3.1.1 Provide information on the therapeutic use, dosing, pharmacology, adverse effects, and interactions of drugs dispensed to patient.

3.3.1.2 Provide information helpful in the counseling of patients on the use of drugs dispensed.

3.3.1.3 Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.

3.3.1.4 Include a listing of therapeutic equivalents for drugs dispensed.

3.3.1.5 Include current Delaware and federal laws and regulations governing pharmacy and controlled substances.

3.3.1.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.

3.3.2 Equipment

3.3.2.1 Prescription Scale, Class A

Set of Metric Weights if balance is used

3.3.2.2 Graduates, (must be glass) Metric

One of Each:

30 ml

60 ml

125 ml

500 ml

(or Set with both metric and Apothecary

Graduations may be used)

3.3.2.3 Mortars and Pestles

+ One 8 ounce glass

+ One 8 ounce wedgewood

3.3.2.4 Filter Paper

3.3.2.45 Prescription/physician Order Files

3.3.2.56 Two Spatulas

3.3.2.67 One Glass Funnel

3.3.2.78 One Glass Stirring Rod

3.3.2.89 Ointment Slab or Papers

3.3.2.910 ~~Purified~~ Distilled Water

Each Pharmacy shall have such additional equipment as is necessary to perform a specific procedure.

All equipment must be clean and must be maintained in such a manner that allows the pharmacist to accurately weigh, measure and compound ingredients.

3.4 Physical Facilities. Have sufficient size, space, sanitation, and environmental control for adequate distribution, dispensing and storage of drugs and devices. Such facilities shall include:

3.4.1 A dispensing area of adequate size and space for proper compounding, dispensing and storage of drugs and devices, to ensure the safety and well being of the public and pharmacy personnel.

3.4.2 Sufficient environmental control, i.e. lighting, ventilation, heating and cooling to maintain the integrity of drugs and devices. The area in which drugs and devices are stored shall be accurately monitored using control devices to maintain room temperature between ~~59*~~ 59 degrees and 86 degrees Fahrenheit.

3.4.3 The pharmacy department or prescription area must contain a sink with hot and cold running water. It must be large enough to accommodate the equipment

required by the Board so that the utensils can be properly washed and sanitized.

3.4.4 Suitable refrigeration with appropriate monitoring device. Refrigerators and freezers (where required) will be maintained at within the USP/NF range:

Refrigerator - ~~36° to 46°~~ 36 degrees to 46 degrees Fahrenheit

Freezer - ~~plus 4° to minus 14°~~ Minus 13 degrees to plus 14 degrees Fahrenheit.

A sign with letters not less than 3/4" in height in the vicinity of the prescription department visible to the public which shows the name of the pharmacists employed at that pharmacy or the name of the pharmacist on duty.

3.5 Building Standards. An application to operate a new pharmacy must include (3) copies of floor plans drawn to scale of the proposed prescription department. The floor plans must include the following:

3.5.1 The requirements listed in §2534(~~F~~) through (4).

3.5.2 ~~A partitioned~~ An area which assures patient privacy will be provided to facilitate counseling. This area must afford the patient privacy from auditory detection by any unauthorized person or persons. ~~The minimum requirement would be a 9 square foot partitioned area.~~ An area partitioned by a 5 foot divider on 2 sides with a minimum of 9 square feet would satisfy this requirement in most settings.

3.5.3 The floor plans shall include the location of the sink, all doors, storage room, approved Schedule II controlled substance safe or cabinet, and the method of securing the prescription department from floor to ceiling, when the prescription department is closed and the remainder of the store is open.

3.5.4 The floor plans must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of Narcotics and Dangerous Drugs.

3.5.5 The above requirements shall also apply for any remodeling or change of location of the prescription department. The pharmacist-in-charge or applicant for permit must submit the floor plans requirements to the Delaware Board of Pharmacy and the Office of Narcotics and Dangerous Drugs prior to any construction and at least 15 days prior to the next scheduled Board of Pharmacy meeting for its review.

3.6 Security. When the pharmacist is ~~off-duty~~ not physically present and the operation is open for business, the pharmacy department shall be physically or electronically secured from floor to ceiling. The partitioned off section required by 24 **Del.C.** §2534 must be five feet high measured from the floor. A conspicuous sign with letters not less than three inches in height, reading "PRESCRIPTION

LABORATORY TEMPORARILY CLOSED, NO PROFESSIONAL SERVICES RENDERED," or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned off section where it can be seen by the public.

3.7 Board Interview. Applicants for permit to operate a pharmacy in the State of Delaware must appear before the Board for an interview. The owner or authorized official must be present in addition to the pharmacist-in-charge. Whenever there is a change of pharmacist-in-charge, if that person has never held that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming the position.

Regulation 3.5.2 revised 6/16/97

Regulation 3.5.6 revised Effective date 10/11/98

2 DE Reg. 683 (10/1/98)

6 DE Reg. 488 (10/1/02)

7 DE Reg. 309 (9/1/03)

7 DE Reg. 1666 (6/1/04)

5.0 Dispensing

5.1 Definitions

"Agent" An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.

"Automated Data Processing System (ADP)" A system utilizing computer software and hardware for the purposes of recordkeeping.

"Cell" Any container which holds the medication for automatic dispensing.

"Common Data Base" A file or data base created by ADP that enables authorized users to have common access to this file regardless of physical location.

"Compounding" The art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, including the reconstitution of powders for administration and the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns. Pharmaceutical compounding must be in compliance with FFCA Section 503A and any regulations promulgated by FDA concerning compounding, pertaining to this section.

"Computer" Programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.

"Controlled Substance" Those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

"CRT" Cathode Ray Tube used to impose visual information on a screen.

"Delivery" The transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.

“Dispensing” To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that delivery.

“Downtime” That period of time when a computer is not operable.

“Facsimile (FAX) Prescription” A facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).

“Final Container” is that which holds the article, designed to hold a quantity of drug product intended for administration as a single dose, multiple dose, or a single finished device intended for use promptly after the container is opened.

“New Medication” A medication not previously dispensed by the pharmacy for the ultimate user.

“Patient Counseling” The offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face-to-face communication with the patient or his/her agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.

“Pertinent Patient Medication Information” Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

“Prescriber” A practitioner authorized to prescribe and acting within the scope of this authorization.

“Prescription” An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.) A written order from a practitioner authorized to prescribe and acting within the scope of this authorization, (other terminology: prescription order) or a telephone order reduced to writing by the pharmacist.

“Printout” A hard copy produced by computer that is readable without the aid of any special device.

“Reduced to Writing” For new prescriptions this means the preparation of a paper document containing all the information required for a written prescription including the State requirement (Section 2553) for drug product selection;

For a refill authorization, it may be handled as a new prescription as in above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no instance,

shall the refill authorizations exceed the legal limits established by State and Federal laws.

If the prescriber authorizing additional refills differs from the Prescriber whose name appears on the signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described above.

“Regulatory Agency” Any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.

“Stop Date” A date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.

“Supportive personnel” A person who is not registered as an intern or pharmacist with the Board who may perform tasks as authorized by this Regulation.

5.2 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program.

5.2.1 Receive oral prescriptions and reduce them immediately to writing.

5.2.2 Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

5.2.3 ~~Record refill dates and initials of the dispensing pharmacist on the prescription (or on another appropriate uniformly maintained readily retrievable record such as the medication records)~~ The pharmacist, intern or student who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the individual verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the individual.

5.3 Patient Counseling

5.3.1 Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist, or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of the pharmacist, shall conduct a prospective drug review. A pharmacist or pharmacy intern may conduct a A prospective drug review may be conducted before refilling a prescription to the extent deemed appropriate. ~~by the pharmacist or pharmacy intern in his/her professional judgment. Such~~ A prospective drug review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease

is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

5.3.2 ~~Except when a prescriber requests that information regarding a prescribed drug not be given to a specific patient, a~~ A pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist shall, with each new medication dispensed, provide verbal counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

5.3.2.1 the name and description of the prescribed drug;

5.3.2.2 the dosage and the dosage form;

5.3.2.3 the method and route of administration;

5.3.2.4 the duration of the prescribed drug therapy;

5.3.2.5 any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;

5.3.2.6 common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;

5.3.2.7 patient techniques for self-monitoring of the drug therapy;

5.3.2.8 proper storage;

5.3.2.9 prescription refill information;

5.3.2.10 the action to be taken in the event of a missed dose; and

5.3.2.11 current over-the-counter medication use.

5.3.3 This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.

5.3.4 Nothing in this section requires a pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling. ~~The record must indicate who made the offer to counsel.~~

5.3.5 If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/

her agent shall be informed that the pharmacist will be available for consultation.

~~5.3.6 The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use.~~

~~5.3.7 The pharmacist who dispenses the original prescription shall hand sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the pharmacist verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand signed and dated by the pharmacist.~~

5.4 Supportive personnel

5.4.1 Qualifications and training

5.4.1.1 The pharmacist-in-charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.

5.4.1.2 The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the supportive personnel. Areas of training shall include:

5.4.1.2.1 general drug and dosage form knowledge

5.4.1.2.2 medical terminology

5.4.1.2.3 pharmaceutical calculations

5.4.1.2.4 prescription labeling

requirements

5.4.1.2.5 general filling/dispensing responsibilities

5.4.1.2.6 patient profile record system requirements

5.4.1.2.7 requirements for patient counseling

5.4.1.2.8 confidentiality

5.4.1.2.9 safety practices

5.4.1.2.10 inventory functions

5.4.1.2.11 knowledge of applicable

State and Federal Statutes and Regulations

5.4.1.2.12 other site-specific parameters

5.4.1.3 The general content of the training program must be maintained in the policy and procedure manual.

5.4.1.4 Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.

5.4.2 Supervision. Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

5.4.3 Activities allowed

5.4.3.1 Supportive personnel will be allowed to perform only those duties permitted by this regulation.

5.4.3.2 Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:

5.4.3.2.1 Obtaining the medication from stock.

5.4.3.2.2 Typing the label after the pharmacist has interpreted the directions.

5.4.3.2.3 Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient. There will be a final check by a licensed pharmacist prior to dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.

5.4.3.3 Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision of the pharmacist. All compounding must be in compliance with FFDCA Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of supportive personnel if the following is performed:

5.4.3.3.1 The formulation is developed by the pharmacist before proceeding with the compounding.

5.4.3.3.2 The compounding ingredients are checked by the pharmacist before proceeding with the compounding.

5.4.3.3.3 Every weight and measurement is checked by the pharmacist before proceeding with the compounding.

5.4.3.3.4 The finished product is checked by the pharmacist before dispensing.

5.4.3.3.5 A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.

5.4.3.4 Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation.

5.5 Automatic Dispensing Devices. If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the

expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.

5.6 Authorization for renewal of prescriptions. A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

5.7 Mandatory Patient Profile Record System

5.7.1 A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.

5.7.2 The following information shall be recorded by a pharmacist or designee:

5.7.2.1 The family name and first name of the person for whom the medication is intended (the patient);

5.7.2.2 The address of the patient and phone number;

5.7.2.3 The patient's age, or date of birth, and gender;

5.7.2.4 The original date the medication is dispensed pursuant to the receipt of a physician's prescription;

5.7.2.5 The number or designation identifying the prescription;

5.7.2.6 The prescriber's name;

5.7.2.7 The name, strength, quantity, directions and refill information of the drug dispensed;

5.7.2.8 The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;

5.7.2.9 If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.

5.7.2.10 Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

5.7.3 The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

5.7.4 Upon receipt of a new prescription, a pharmacist or pharmacy intern under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the physician.

5.7.5 A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.

5.8 Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

5.8.1 Verbal Exchange of Prescriptions - When a pharmacy receives a verbal request for a prescription transfer, it may be honored provided that:

5.8.1.1 The request comes from a registered pharmacist.

5.8.1.2 The copy is immediately reduced to writing and contains the information required on a written prescription as listed in Regulation 5.0, and includes the first and last name of the pharmacist transmitting the information.

5.8.1.3 The prescription used for refills must be clearly identified as a copy.

5.8.1.4 The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.

5.8.1.5 The copy shows the last date of dispensing.

5.8.1.6 Only the actual number of refills remaining are indicated.

5.8.1.7 A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.

5.8.2 A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.

5.8.3 Written copies of prescriptions are for information only and are not valid for refilling.

5.9 Automated Data Processing Systems

5.9.1 Profiles. When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation 5.0 must be met.

5.9.2 Prescription (Drug Order) Information. Prescription information (drug order) shall include, but not be limited to:

5.9.2.1 Original dispensing date

5.9.2.2 Name and address of patient (patient location if in an institution)

5.9.2.3 Name of prescriber

5.9.2.4 DEA number of prescriber in the case of a controlled substance

5.9.2.5 Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed

5.9.2.6 Renewals authorized

5.9.2.7 Directions of use for patient

5.9.3 Records of Dispensing. Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The information shall include, but not be limited to:

5.9.3.1 Quantity dispensed

5.9.3.2 Date of dispensing

5.9.3.3 Serial Number (or equivalent if an institution)

5.9.3.4 The identification of the pharmacist responsible for dispensing

5.9.3.5 Record of renewals to date

5.9.3.6 Name and strength of medicine

5.9.4 Record Retrieval (Documentation of Activity). Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:

5.9.4.1 Serial number of prescription (equivalent if an institution)

5.9.4.2 Date of processing

5.9.4.3 Quantity dispensed

5.9.4.4 The identification of the pharmacist responsible for dispensing

5.9.4.5 Medication dispensed

5.9.5 Auxiliary Recordkeeping System. An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.

5.9.6 Common Data Base. Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain

complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation 5.0 for non-controlled substances.

5.9.7 Transfer of Prescriptions via ADP. A pharmacist may transfer a prescription electronically (ADP) for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section ~~1306.26~~ 1306.25. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.

5.9.7.1 Any pharmacy using ADP must comply with all applicable State and Federal regulations.

5.9.7.2 A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.

5.9.7.3 The computer record shall reflect the fact that the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.

5.9.7.4 The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:

5.9.7.4.1 Write the word "TRANSFER" on the face of the transferred prescription.

5.9.7.4.2 Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.

5.9.7.5 To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.

5.10 Electronic Transmission Of Prescriptions

5.10.1 All Prescription Drug Orders communicated by way of Electronic Transmission shall:

5.10.1.1 be transmitted directly to a Pharmacist in a licensed Pharmacy of the patient's choice with no intervening Person having access to the Prescription Drug Order;

5.10.1.2 identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by Federal or State law;

5.10.1.3 be transmitted by an authorized Practitioner or his designated agent; and

5.10.1.4 be deemed the original Prescription Drug Order provided it meets the requirements of this subsection.

5.10.2 The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.

5.10.3 The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

5.10.4 All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.

5.10.5 Persons other than those bound by a confidentiality agreement pursuant to Section 2.A. (2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy's patients.

5.10.6 Controlled substance prescriptions may only be electronically transmitted via a facsimile.

5.10.7 Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.

5.10.7.1 The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and electronic number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

5.10.7.2 Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.

5.10.7.3 A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

5.10.7.4 The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.

5.10.7.5 Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

5.11 Return of Medications and Supply

5.11.1 Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.

5.11.2 Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in customized patient medication package. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.

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1 DE Reg. 1965 (6/1/98)

3 DE Reg. 431 (9/1/99)

4 DE Reg. 163 (7/1/00)

4 DE Reg. 682 (10/1/00)

9.0 Hospital Pharmacy

9.1 Definition:

A hospital pharmacy is defined as a pharmacy registered with the Board located in a hospital facility. "Hospital pharmacy" shall not include a pharmacy operated by a hospital facility at a location other than the site of a permanent facility at which in-patient care and medical services are rendered.

9.2 Personnel

9.2.1 Director of Pharmacy. The storage, compounding, repackaging, dispensing and distribution of drugs by a hospital pharmacy shall be under the direction, supervision and responsibility of the pharmacist-in-charge, hereinafter referred to as the Director of Pharmacy, who shall be responsible for operating the pharmacy in compliance with appropriate State and Federal Statutes and Regulations. Written policies and procedures will be established defining the operation and scope of services provided by the hospital pharmacy. The Manual shall include policy and procedures concerning:

9.2.1.1 Preparation and sterilization of parenteral medications if done within the hospital pharmacy.

9.2.1.2 Establishment of specifications for procurement of drugs, chemicals and biologicals. The procedures are subject to the approval of the appropriate committee of the hospital.

9.2.1.3 Maintaining readily available inventory of emergency drugs both in the pharmacy and patient care areas. Current antidote information and telephone numbers of regional poison control centers must also be available.

9.2.1.4 Participation in the development of a Formulary or drug list for the hospital.

9.2.1.5 The filling and labeling of all containers from which drugs are to be administered in compliance with applicable Statutes and Regulations.

9.2.1.6 The records of the transactions of the pharmacy that are required by applicable law and that are necessary for accurate control and accountability. This should include procedures for wastage of controlled substances in all areas of the hospital.

9.2.1.7 Policies and procedures shall specify the duties to be performed by pharmacy personnel.

9.2.1.8 Discontinued drug procedures to insure that discontinued drugs and containers with worn, illegible or missing labels are returned to the pharmacy for proper disposition or disposal. All outdated products should be removed from all areas and stored in a separate section in the pharmacy for proper disposition or disposal.

9.2.1.9 A recall procedure that can be implemented to insure proper disposition of the recalled materials.

9.2.1.10 A policy for drugs brought in by patients.

9.2.1.11 A policy for the proper handling of investigational drugs must be in compliance with FDA and State requirements.

9.2.1.12 The pharmacist shall be involved with the utilization review process as it pertains to drug therapy.

9.2.2 Registered Pharmacists. The Director of Pharmacy may be assisted by additional registered pharmacists who are also responsible for compliance with the applicable laws.

9.2.3 Supportive Personnel. Supportive personnel may be utilized in assisting the pharmacist. These persons must be supervised by a registered pharmacist who is present within the hospital and is responsible for the activities of those persons.

9.3 Absence of Pharmacist. When a pharmacist is not on duty, drugs may be provided for use by physicians and other authorized staff via night cabinets or other areas designated by the hospital, and in emergency circumstances by access to the pharmacy. A pharmacist shall be available to provide professional services.

9.4 Night Cabinets or Other Designated Areas

9.4.1 These drug storage areas must be securely locked and substantially constructed in a manner which prevents easy entry.

9.4.2 Access must be limited to authorized personnel.

9.4.3 Contents and use procedures should be determined by the pharmacy and those departments with access to the night cabinet or other designated areas in accordance with the hospital's policies and procedures.

9.4.4 Drugs must be properly labeled and prepackaged in sufficient quantities as defined by the hospital.

9.4.5 Accountability records documenting withdrawal and replacement of controlled drugs must be readily available.

9.4.6 The transaction shall be reviewed by the pharmacy when it reopens and incorporated into the hospital pharmacy's medication recordkeeping system.

9.5 Access to Pharmacy. When a pharmacist is not available and medications cannot be obtained immediately from any other source, authorized persons may enter the pharmacy and obtain drugs per procedures established by the hospital. The procedures must include the following stipulations:

9.5.1 Entry shall be by two persons; registered nurse or physician with another nurse, physician, or security person present approved by the hospital.

9.5.2 Persons authorized to enter the pharmacy shall indicate the name and strength and amount of drug removed, the date, time and their signature, and the name and location of the patient. The transaction shall be reviewed by the pharmacy when it reopens and incorporated into the hospital pharmacy's medication recordkeeping system.

9.6 Emergency Drugs. Emergency drugs must be available for use by authorized personnel at strategic locations throughout the hospital. The drugs must be available to authorized personnel and must be stored in a manner to preserve the integrity of the contents.

9.6.1 Emergency Drugs Defined - Emergency drugs are those drugs which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients.

9.6.2 Emergency drug supplies shall be clearly identified for emergencies. A list showing the contents and the strength and quantity of each item shall be attached to the exterior.

9.6.3 Removal of Drugs - Drugs shall be removed from an emergency drug supply only pursuant to a valid physician's order or by authorized personnel.

9.6.4 Notification - Whenever an emergency drug supply is accessed, the pharmacy or its designee shall be notified within 24 hours, and the pharmacy or its designee shall restock and reseal or replace the kit or cart within forty-eight hours.

9.7 Equipment and Texts. Each hospital pharmacy shall have the equipment and texts required by Board Regulation 3.0 and Regulation 10.0.

9.8 Drug Storage. Drugs must be stored in compliance with State and Federal Statutes and Regulations and according to USP/NF requirements.

9.9 Labeling

9.9.1 The drug dispensed for inpatient use shall contain a label, shall show the brand or established name and the strength of the medication. If the medication is prepacked, it must also show the source, lot number and expiration date, in compliance with the Board's prepacking regulation.

9.9.2 All drugs dispensed for outpatients must be labeled in compliance with the Pharmacy Statutes.

9.9.3 Admixtures in parenteral bags and bottles shall be labeled in accordance with Regulation 10.0.

9.10 Abbreviations. The hospital should establish a standard list of abbreviations to be used whenever medications are prescribed.

9.11 Outpatient Orders. Medication dispensed for outpatients via prescriptions are governed by applicable State and Federal Statutes Regulations. A patient profile must be maintained and counseling must be provided for each person according to Regulation 5.0.

9.12 Suspected Adverse Drug Reaction. When an adverse reaction is documented, the pharmacy department shall receive a copy.

9.13 Maintenance of Medication Orders. Patient Profile - A patient medication profile must be maintained for each inpatient whose medication is directly dispensed from the pharmacy. It must show the patient's name, location, age, allergies and diagnosis(es) as available. The profile must show the name, strength and quantity of the drug dispensed and appropriate directions and the initials of the dispenser. Prior to administration of the first dose, the pharmacist must examine the profile to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a significant potential for harm, the pharmacist should notify the prescriber and other appropriate persons. The profile must be retained and readily retrievable for 30 days after discharge.

9.14 Medication Error. Medication error as defined by the hospital shall be documented and reported immediately to the pharmacy. It should also be reported to the attending physician.

9.15 Monthly Inspections. A member of the pharmacy staff shall conduct monthly inspections of each nursing station and patient care areas where medications are dispensed, administered or stored. Such documented inspections shall verify that:

9.15.1 Disinfectants and drugs for external use are stored separately.

9.15.2 Drugs are stored under proper conditions.

9.15.3 No outdated drugs are present.

9.15.4 Distribution, administration, and disposition of controlled substances audits indicates proper recordkeeping and administration.

9.15.5 Emergency drug supplies and floor stock drug levels are properly maintained.

9.15.6 Drugs are properly secured.

9.16 Hospital Operating with an Off-site Pharmacy Provider.

9.16.1 Definition. A hospital operating with an off-site pharmacy is one that obtains pharmacy services from another hospital, community pharmacy, or infusion

pharmacy that can provide services as necessary for operation.

9.16.2 Personnel.

9.16.2.1 There must be a Director of Pharmacy or Consultant Pharmacist available on an on-call procedure 24 hours per day. The storage, compounding, repackaging, dispensing and distribution of drugs by an off-site Provider Pharmacy shall be under the direction, supervision and responsibility of a Pharmacist-in-Charge or Director of Pharmacy. This person shall be responsible for operating the pharmacy in compliance with appropriate State and Federal Statutes and Regulations.

9.16.2.2 The Director of Pharmacy or Pharmacist-in-Charge may be assisted by additional registered pharmacists who are also responsible for compliance with the applicable laws. Any of these registered pharmacists may act as the Consultant Pharmacist for the institution if he/she is licensed to practice pharmacy in the State of Delaware. Additional supportive personnel may be utilized as required.

9.16.2.3 The Director of Pharmacy or Pharmacist-in-Charge must provide written policies and procedures establishing the operation and scope of services provided by the off-site Pharmacy Provider. The Policy and Procedure Manual shall include all items as outlined in "~~B~~" 9.2 of this section. In addition, the manual shall include a written statement of pharmaceutical services provided and the responsibilities of the off-site Provider Pharmacy.

9.16.3 Monthly Inspections. The Director of Pharmacy or Consultant Pharmacist must perform monthly medication area inspections as outlined in "~~O~~" 9.15 of this section.

9.16.4 Storage

9.16.4.1 Drugs must be stored at the off-site Pharmacy Provider in compliance with State and Federal Statutes and Regulations and according to USP/NF requirements.

9.16.4.2 The Pharmacy Provider must also provide any special handling and/or packaging and/or storage conditions for compounded sterile preparations when delivering from the pharmacy to the institution as necessary to maintain the sterility and stability of the preparation. This includes any product that is frozen or that requires refrigeration.

9.16.5 Patient Profiles. The off-site Pharmacy Provider must maintain complete patient profiles as outlined in Regulation 5.0.

9.16.6 Medication Errors or Adverse Reactions

9.16.6.1 Any medication errors or adverse drug reactions, as defined by the hospital, shall be documented and reported to the off-site Pharmacy Provider.

9.16.6.2 This information shall also be reported to the Director of Pharmacy, Pharmacist-in-Charge,

or Consultant Pharmacist for their review and documentation for the patient profile.

9.16.7 Emergency Medications

~~9.16.7.1 All legend drugs not dispensed in patient name shall be approved by the Board of Pharmacy in order for those emergency medications to be kept as "stock" at the institution.~~

~~9.16.7.2 The procedure for approval of emergency medications must be followed as outlined in Regulation 11.3.~~

9.16.7 Emergency Use Medications

9.16.7.1 Emergency use medications are those which may be required to meet the immediate therapeutic needs of patients, as determined by the prescriber, and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.

9.16.7.2 It is the responsibility of the facility and provider pharmacy to determine the supply of emergency use medication that are to be stocked as well as documenting their locations within the facility. A list of current contents must be attached to the medication supply.

9.16.7.3 Accountability for emergency use medications.

9.16.7.3.1 The pharmacy provider must be contacted within 24 hours after medication is used from the supply and the pharmacy must restock the supply within a reasonable time to prevent harm to patients.

9.16.7.3.2 The provider pharmacy is responsible for the accuracy of all emergency use medications at the time of the filling of the medication. This check must also include any medication that became available when the medication is accessed. Records documenting use of an emergency medication must be kept for a minimum of 2 years at the provider pharmacy and must be readily available for inspection by the Board.

9.16.7.3.3 Failure to comply with these procedures can result in the suspension or denial of the use of emergency use medications.

9.16.7.3.4 Violations of accountability procedures for emergency use medications may result in review proceedings before the Board.

10.0 Sterile Pharmaceuticals and Antineoplastic Agents

This regulation contains minimum pharmacy practices for the preparation, compounding and dispensing of sterile preparations and antineoplastic agents by licensed pharmacies.

10.1 Definitions. As used in this part, the following terms shall have the meanings specified:

"Admixture" A solution for parenteral administration to which one or more additional drugs have been added.

“Antineoplastic Agent” A drug used to treat various forms of cancer.

“Aseptic Technique” A procedure for compounding sterile preparations designed to minimize/prevent contamination during the compounding procedure.

“Class 100” A classification of an airflow unit capable of producing an environment containing no more than 100 airborne particles of a size 0.5 micron and larger per cubic foot (3.5 particles/liter) of air.

“Enteral Nutrition” The administration into the gastro-intestinal tract of calories, nitrogen, and/or other nutrients to achieve tissue synthesis and anabolism for patients requiring medically prescribed, defined formula, liquid diets.

“HEPA” (High-efficiency particulate air) Filter - A filter that provides a minimum-efficiency of 99.97% in removal of particles 0.3 micron or larger from the effluent air.

“Laminar Airflow” An entire body of air moving with uniform velocity along parallel flow lines.

“Parenteral” A sterile preparation intended for injection and used in the diagnosis, cure, mitigation, or treatment of disease or modification of physiological functions in human beings, but not including blood or blood products or as otherwise defined in the current United States Pharmacopeia.

“Sterile Pharmaceutical” A dosage form free from living microorganisms.

“Total Parenteral Nutrition” The intravenous administration of calories, nitrogen, and other to achieve tissue synthesis and anabolism.

10.2 General Requirements. A licensed pharmacy in the State of Delaware desiring to compound and dispense prescriptions or physician's orders for sterile pharmaceuticals and antineoplastic agents shall meet the following requirements:

10.2.1 Facilities and Equipment

10.2.1.1 The environment for the preparation of such prescriptions shall be set in a low traffic area, clean and free of contaminants and dust, and equipped to permit controlled aseptic/antineoplastic compounding.

10.2.1.2 The area for preparing sterile/antineoplastic prescriptions shall be segregated from general non-aseptic work and storage areas and shall be used solely for sterile pharmaceutical/anti-neoplastic compounding. The area shall be maintained at controlled room temperatures as defined by the United States Pharmacopeia.

10.2.1.3 The area(s) shall provide space for a minimum of one class 100 environment. Additionally, the space shall be of a size to accommodate equipment as required herein and sufficient space to allow personnel working therein to safely and accurately fulfill their duties.

10.2.1.4 Minimum requirements for equipment, supplies and publications are as follows:

10.2.1.4.1 Minimally, a class 100 air flow unit

10.2.1.4.1.1 The air flow unit must be in compliance with recommendations from OSHA guidelines.

10.2.1.4.2 Refrigerator

10.2.1.4.3 Sink and wash area easily accessible to the sterile preparation/antineoplastic compounding area(s)

10.2.1.4.4 Appropriate waste containers for:

10.2.1.4.4.1 Used needles and syringes

10.2.1.4.4.2 All antineoplastic wastes including apparel used in their preparation

10.2.1.4.5 Supplies:

10.2.1.4.5.1 Disposable needles and syringes and other supplies needed for sterile pharmaceutical/antineoplastic compounding

10.2.1.4.5.2 Disinfectant cleaning agents

10.2.1.4.5.3 Single-use lint free towels or air-driers

10.2.1.4.5.4 Handwashing materials with bactericidal action

10.2.1.4.5.5 Equipment and materials for cleaning antineoplastic agent spills

10.2.1.4.6 References: In addition to compliance with the reference requirements as set forth in Delaware Board Regulation 3.0, the pharmacy must have the following texts (~~items b and e required~~ if chemotherapy agents are prepared):

~~10.2.1.4.6.1 Handbook of Injectable Drugs by the American Society of Hospital Pharmacists.~~

10.2.1.4.6.2 1 Procedures for handling Antineoplastic Drugs Technical Bulletin - most current edition published by the American Society of ~~Hospital Health Systems~~ Pharmacists.

10.2.1.4.6.3 2 Most current edition of OSHA Guidelines for the handling of antineoplastic agents.

~~10.2.1.4.6.4 The Policy and Procedures Manual prepared under Section F of this Regulation.~~

10.2.1.4.7 Drug Components: All drug components that are received, stored, or used in compounding prescriptions shall meet official compendial requirements. If this cannot be met, pharmacists shall use their professional judgment to procure alternatives.

10.3 Personnel

10.3.1 The compounding of sterile pharmaceuticals/anti-neoplastic agents shall be under the control and supervision of a licensed pharmacist. The licensed pharmacist-in-charge or licensed pharmacist

designee shall be on duty and on premises during all hours of operation of said pharmacy.

10.3.2 A pharmacist shall be accessible by telephone 24 hours a day to answer questions and to provide consultation regarding the dispensed preparation.

10.3.3 Supportive Personnel: The pharmacist managing the section of the pharmacy providing sterile/anti-neoplastic product pharmacy services may be assisted by supportive personnel. These personnel must have specialized training in this field, and shall work under the supervision of a licensed pharmacist. The training provided to these personnel must be described in writing in a training manual. The duties and responsibilities of these personnel must be consistent with their training and experience.

10.4 Storage, Preparation, Dispensing, and Handling

10.4.1 A pharmacy shall provide any special handling and/or packaging and/or storage conditions for compounded sterile/antineoplastic preparations when delivering from the pharmacy to the patient or institution as necessary to maintain sterility and stability of the preparation.

10.4.2 Each pharmacy shall develop product sampling plans and shall have the ability to determine or know where to readily procure services to assure the quality of the products compounded or prepared.

10.4.3 Delivery service. The pharmacist managing the section of the pharmacy providing sterile/antineoplastic product pharmacy services is responsible for the environmental control of all products shipped. Therefore, any compounded, sterile parenteral product or antineoplastic agent that is frozen, or that requires refrigeration, must be shipped or delivered to a patient in appropriate coolers and stored appropriately in the patient's home.

10.5 Labeling

10.5.1 Each compounded preparation shall bear a label indicating the date beyond which it should no longer be administered and the temperature or conditions under which it should be stored.

10.5.2 If the preparation is an antineoplastic product, it must be labeled with a warning label clearly identifying the product as such.

10.5.3 The following "beyond use" dates shall be used: Admixtures in parenteral bags and bottles shall be labeled with a distinctive supplementary label, indicating the name and amount of the drug added, date, expiration date of the container and name or initials of the person preparing the solution.

10.5.3.1 Admixtures: Maximum of seventy-two hours when stored under refrigerated conditions from the time of compounding unless the manufacturer's recommendation is to store at room temperature and/or

longer storage times can be substantiated with documentation.

10.5.3.2 If medications with expiration periods of less than forty-eight hours are added to a parenteral solution, or if the manufacturer indicates an expiration period of less than forty-eight hours, the "beyond use" date of the solution shall be the shorter expiration period and shall appear on the label.

10.6 Policy and Procedures Manual

10.6.1 A Policy and Procedures Manual shall be prepared and be available at each pharmacy site where sterile pharmaceuticals/antineoplastic agents are prepared for inspection by authorized agents of the Board of Pharmacy. The Policy and Procedures Manual shall contain the objectives, operational guidelines and standard operating procedures of the pharmacy pertaining to sterile products/antineoplastic agents. A procedure shall be included that addresses how a contaminated product is detected, recall measures and follow up.

10.6.2 The manual shall include procedures to be used by the pharmacy to prevent contamination of the products during preparation, storage, and dispensing.

10.6.3 The manual shall include written policies and procedures for cleaning and maintenance of the sterile pharmaceutical compounding/antineoplastic agent area(s) with records kept in the pharmacy department for one year.

10.6.4 Documentation of the following shall be included:

10.6.4.1 Replacement of filters and prefilters.

10.6.4.2 Certification of clean air source by an outside agency at least once a year.

10.6.4.3 Cleaning and maintenance of the equipment.

10.6.5 If antineoplastic agents are compounded in the pharmacy, protection shall be provided for its personnel by utilizing the proper equipment and protective garb and having a Policy and Procedures Manual for said antineoplastic agents. The Manual shall include, among the other requirements, the following special requirements outlined in sections 10.2 - 10.5 the following special requirements:

10.6.5.1 Procedures for disposal of all unused drugs and materials used in the preparation of antineoplastic agents in accordance with accepted professional standards, such as the most current OSHA Guidelines, regarding the handling of antineoplastic agents.

10.6.5.2 Safety standards which stress proper technique in handling antineoplastic agents and which include:

10.6.5.2.1 A certified vertical laminar air flow hood.

10.6.5.2.2 Protective garb, i.e., gloves, face and eye protection, and gowns.

10.6.5.3 In the event that antineoplastic agents and other parenterals are prepared within the same air flow unit, procedures shall be provided for a thorough scrub down and air purge of at least twenty minutes after compounding of the antineoplastic agent(s).

10.6.6 The Policy and Procedures Manual shall be maintained on a current basis. It shall be reviewed at least annually and changes shall show the effective date.

Revised Effective Date: April 14, 1997 (10.2 General Requirements revised)

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Pharmacy is available at:**

<http://dpr.delaware.gov/boards/pharmacy/index.shtml>

DIVISION OF PROFESSIONAL REGULATION

3600 Board of Geology

Statutory Authority: 24 Delaware Code,
Section 3606 (24 Del.C. §3606)

PUBLIC NOTICE

The Delaware Board of Geologists in accordance with 24 Del.C. §3606 has proposed changes to Rule 7.0 of its rules and regulations to clarify that the ASBOG Fundamentals Of Geology (FG) exam may be taken at any time after the applicant meets the educational requirements set forth in the statute. This rule clarifies that the ASBOG Fundamentals Of Geology (FG) exam and ASBOG Practice of Geology (PG) may be taken at separate times allowing the Fundamentals exam to be taken immediately after graduation if an applicant so desires.

A public hearing will be held on May 6, 2005 at 10:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Geologists, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

7.0 ASBOG Examination

7.1 An applicant ~~for~~ wishing to sit for any portion of the ASBOG examination and qualification required 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.~~

7.1.1 An applicant wishing to sit for the ASBOG Fundamentals of Geology (FG) Exam may do so provided they meet the minimum educational requirements set forth in 24 Del.C. §3608(a)(1). To apply, the applicant must fill out the request to sit for the fundamentals application and submit their transcripts [to date] to the Board for approval. Once taken, the applicants score will be held on file indefinitely by ASBOG.

7.1.2 An applicant wishing to sit for the ASBOG Practice of Geology (PG) must have acquired 5 years of professional work experience as defined in Rule 1.0 and must submit a full application for licensure to the Board for review. Approval to sit for the PG will be dependant upon the applicant providing sufficient evidence, satisfactory, to the Board that he/she meets the qualifications for licensure set forth in 24 Del.C. §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 either part of the ASBOG exam shall be valid for a period not to exceed two years.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Geology is available at:**

<http://dpr.delaware.gov/boards/geology/index.shtml>

PUBLIC SERVICE COMMISSION

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

IN THE MATTER OF THE]
ADOPTION OF REGULATIONS]
GOVERNING THE MINIMUM] PSC
STANDARDS FOR SERVICE PROVIDED] Regulation
BY PUBLIC WASTEWATER UTILITIES] Docket
SUBJECT TO THE JURISDICTION OF] No. 55
THE DELAWARE PUBLIC SERVICE]
COMMISSION]
(OPENED FEBRUARY 22, 2005)]

ORDER NO. 6581

AND NOW, this 22nd day of February, 2005;

WHEREAS, on July 6, 2004, legislation was enacted by the Delaware General Assembly, found at 74 Delaware Laws, Chapter 317, which granted the Delaware Public Service Commission ("the Commission") jurisdiction to regulate Wastewater Utilities having more than fifty customers (hereinafter collectively "Wastewater Utilities"), including the jurisdiction to grant and revoke Certificates of Public Convenience and Necessity ("CPCNs"); and

WHEREAS, in connection with the implementation of this new jurisdiction over Wastewater Utilities, the Commission deems it appropriate, advisable, and in the public interest to promulgate regulations intended to govern the minimum standards for service provided by Wastewater Utilities; and

WHEREAS, the Commission has considered proposed regulations prepared by the Commission's Staff; now, therefore,

IT IS ORDERED THAT:

Pursuant to 26 Del.C. §209(a), and 29 Del.C. §§10111 et seq., the Commission promulgates proposed Regulations Governing the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission ("Regulations").

The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register the notice and the proposed Regulations attached hereto as Exhibits "A" and "B" respectively.

The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in The News Journal and the Delaware State News newspapers on or before April 1, 2005.

The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be sent by United States mail to all Wastewater Utilities currently operating under a CPCN in Delaware, all persons who have an application for a CPCN for a wastewater system pending before the

Commission, and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

Ruth A. Price is designated as the Hearing Examiner for this matter pursuant to 26 Del.C. §502 and 29 Del.C. Ch. 101, and is authorized to organize, classify, and summarize all materials, evidence, and testimony filed in this docket, to conduct the public hearing contemplated under the attached notice, and to make proposed findings and recommendations to the Commission concerning Staff's proposed regulations on the basis of the materials, evidence, and testimony submitted. Hearing Examiner Price is specifically authorized, in her discretion, to solicit additional comment and to conduct, on due notice, such public hearing(s) as may be required to develop further materials and evidence concerning any later-submitted proposed regulations or amendments thereto.

Francis J. Murphy, Esquire, is designated Staff Counsel for this matter.

The public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 Del.C. §114.

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

EXHIBIT "A"

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

IN THE MATTER OF THE]
ADOPTION OF REGULATIONS]
GOVERNING THE MINIMUM] PSC
STANDARDS FOR SERVICE PROVIDED] Regulation
BY PUBLIC WASTEWATER UTILITIES] Docket
SUBJECT TO THE JURISDICTION OF] No. 55
THE DELAWARE PUBLIC SERVICE]
COMMISSION]
(OPENED FEBRUARY 22, 2005)]

PUBLIC NOTICE

The Delaware General Assembly has enacted legislation granting the Delaware Public Service Commission ("the Commission") jurisdiction over Wastewater Utilities serving

fifty or more customers in the aggregate. The law is found at 74 **Delaware Laws**, Chapter 317.

In connection with the exercise of jurisdiction over Wastewater Utilities, the Commission is promulgating proposed new regulations governing the Minimum Standards For Service Provided by Wastewater Utilities subject to the jurisdiction of the Commission. The first regulation sets forth: (a) the Commission's authority to promulgate the regulations; (b) the applicability of the regulations; and (c) the definitions used in the regulations. The second regulation addresses: (a) the records and reports to be maintained by wastewater utilities; (b) information to be filed with the Commission; (c) the complaint records that are to be maintained; and (d) customer billing. The third regulation governs engineering subjects, including: (a) the authorization needed for operation or construction of a wastewater system; (b) wastewater plant operation; and (c) wastewater plant inspection. The fourth regulation deals with wastewater system safety programs. The fifth regulation governs customer relations, including: (a) applications for service; and (b) billing statement adjustment. The sixth regulation governs front-end capital contributions.

Copies of the proposed Regulations are available for public inspection at the Commission's address set out below during normal business hours. The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 *et seq.*

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before May 5, 2005.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before April 5, 2005.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801 and will also be available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may

be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to karen.nickerson@state.de.us.

E X H I B I T " B "

PROPOSED REGULATIONS GOVERNING THE MINIMUM STANDARDS FOR SERVICE PROVIDED BY PUBLIC WASTEWATER UTILITIES SUBJECT TO THE JURISDICTION OF THE DELAWARE PUBLIC SERVICE COMMISSION

1.0 General

1.1 Authorization For Regulations. Title 26 of the Delaware Code vests in the Delaware Public Service Commission the authority to formulate standards for such wastewater services and facilities as it deems necessary to carry out the provisions of this law. (26 **Del.C.** § 209)

1.2 Application Of Regulations. These regulations shall apply to any public wastewater utility operating within the State of Delaware, under the jurisdiction of the Delaware Public Service Commission. These regulations shall become effective ninety (90) days after adoption by the Commission.

1.2.1 Purpose. These regulations are intended to insure adequate service to the public, to provide standards for uniform and fair charges and requirements by the utilities and their customers, and to establish the rights and responsibilities of both utilities and customers.

1.2.2 Duties Under Other Statutes. These regulations shall in no way relieve any utility from any of its duties under the laws of this State or regulations promulgated by other State or Federal agencies or authorities.

1.2.3 Exemption. If the application of these regulations will cause a utility unreasonable hardship, or if unreasonable difficulty is involved in compliance, the utility may apply to the Commission for a temporary or permanent exemption, provided that the utility shall submit with such application a full and complete statement of the reasons for the application. Applications for exemptions will be determined by the Commission upon due notice to the affected customers and after a hearing.

1.2.4 Modification. The adoption of these regulations shall in no way preclude the Commission, upon complaint, upon its own motion, or upon the application of any utility, from altering or amending them, in whole or in part, or from requiring any other or additional equipment, facility, or standard, or from making such modifications with respect to the utility's application as may be necessary to meet exceptional conditions. Any modification of these

regulations shall be subject to the provisions of 29 Del.C. Ch. 64.

1.3 Definitions. The following words or terms, when used in these regulations, shall have the meaning indicated, unless the context otherwise requires:

“Collection System”. Consists of service lines, mains, manholes, customer facilities such as service lines, pump stations, lift stations, and appurtenances, owned and operated by the utility that conveys wastewater from customers to the treatment facilities.

“Commission”. The Public Service Commission of Delaware.

“Complaint”. A complaint shall mean any specific objection to charges on the utility billing statement, facilities, practices, or services of a utility.

“Customer”. Any person, including any individual, corporation, partnership, firm, association, company, proprietorship, cooperative, joint stock company, or other form of business enterprise or legal entity of any kind, or any government agency or entity served by a wastewater utility.

“Dwelling Unit”. One or more rooms arranged for the use of one or more individuals as a single housekeeping unit, with cooking, living, sanitary, and sleeping facilities.

“Equivalent Dwelling Unit EDU”. Is a measurement of the volume of wastewater for a single dwelling unit and is used as a means to compare wastewater flows from customers for other classes of wastewater service.

“Main”. Any wastewater pipe, owned, operated, or maintained by a wastewater utility, which is used for the collection or conveyance of wastewater, excluding service lines.

“Meter”. Without other qualifications, any device or instrument which is used by the utility in measuring the quantity of wastewater discharged from a customer or service area for recording or billing purposes.

“Premises”. A tract of land or real estate, including buildings and other appurtenances thereon.

“Service Line”. The pipe that runs from the main to the customer's premises.

“Shall”. The use of the word "shall" in these regulations expresses a mandatory requirement.

“Should”. The use of the word "should" in these regulations expresses suggestion or guidance and is not mandatory.

“Utility”. Any person, including any individual, corporation, firm, partnership, association, company, proprietorship, cooperative, joint stock company, or other form of business enterprise or legal entity of any kind, that provides wastewater services, including collection, transport, or treatment of wastewater, and is subject to regulation by the Commission.

“Wastewater Plant”. Equipment, stations, and property owned or operated by a utility, used in its business operations to render wastewater service to its customers.

2.0 Records And Reports

2.1 Availability Of Records. All documents, including books, accounts, papers, records, computer files, electronic data, maps of service area indicating location of mains, pumping stations, and treatment facilities, and memoranda required by these regulations or necessary for the administration thereof, shall be open and available for examination by the Commission or its authorized representatives at all times.

2.2 Retention Of Records. All documents, including books, accounts, papers, records, computer files, electronic data, and memoranda required by these regulations shall be preserved for a minimum period of five (5) years.

2.3 Location. All documents, including books, accounts, papers, records, computer files, electronic data, and memoranda required by these regulations shall be kept in an office within this State, and shall not be removed from this State, except upon such terms and conditions as may be prescribed by the Commission. This provision shall not apply if the utility is engaged in interstate commerce, and its accounts are kept at its principal office outside this State. However, such utility, when requested by the Commission, shall furnish to the Commission, certified copies of all documents, including its books, accounts, papers, records, computer files, electronic data, and memoranda relating to the business done by such public utility.

2.3.1 All wastewater utilities shall maintain their accounts and records in compliance with the Uniform System of Accounts as promulgated in 1996 by the National Association of Regulatory Commissions.

2.3.2 Observance of the system of accounts applicable to the utility by appropriate class is obligatory upon all persons having direct charge of the books and accounts of the utility. For the purpose of securing uniformity in the applications of this system, all questions of doubtful interpretation of accounting rules are to be submitted to the Commission for consideration and decision.

2.4 Information To Be Filed With The Commission. Each utility shall file with the Commission, and keep current, a copy of its approved tariff.

2.4.1 Rates. The tariff shall include each schedule of rates for service.

2.4.2 Rules. The tariff shall include the utility's rules and regulations, or terms and conditions describing the utility's policies and practices in rendering service, and in its relations with customers or prospective customers.

2.4.3 Bill Forms. Each utility shall file with the Commission a sample of each type of customer billing statement, which shall include the information normally shown on a customer's bill for service.

2.4.4 Persons to Contact. Each utility shall file with the Commission and shall notify its customers, upon request, of the name, title, business address, and telephone number of the person(s) who should be contacted in connection with the following areas of operation:

2.4.4.1 management;

2.4.4.2 customer relations (complaints and billing inquiries);

2.4.4.3 engineering; and

2.4.4.4 emergencies during non-office hours and regular hours; and shall notify the Commission promptly of any changes.

2.4.5 Accident Notification. In the event of a fatal or serious accident, prompt notice shall be given to the Commission by telephone or such other means of communication designed to assure prompt notice to the Commission, followed by a full written report of such accident. A full written report is also required when the utility suffers any serious property damage. These reports shall be treated confidentially pursuant to 26 Del.C. §213(b).

2.4.6 Reports of Service Interruption. Each utility shall file with the Commission a report of any system failures or service interruption within ten (10) days after such an event has occurred. Reports shall include:

2.4.6.1 location and time of failure or interruption;

2.4.6.2 time that failure or interruption was remedied;

2.4.6.3 estimated number of customers affected; and

2.4.6.4 cause of the failure or interruption. Utilities shall make all possible efforts to re-establish service in the shortest time practicable with due regard to safety.

When service is interrupted for scheduled repairs or maintenance, such work should be done at a time that will cause the least inconvenience to customers. The customers who would be affected shall be notified prior to the scheduled interruption.

2.4.7 Annual Reports. Each utility shall file an annual financial statement based upon the accounts set out in the Uniform System of Accounts, or such other requirement as prescribed by the Commission. This annual report shall be filed with the Commission on or before April 30th of the following year.

2.5 Complaints.

2.5.1 Each utility shall keep a record of each complaint received. The complaint record shall contain:

2.5.1.1 complainant's name, address, and telephone number;

2.5.1.2 nature of the complaint;

2.5.1.3 date complaint was received;

2.5.1.4 when, how, and by whom the complaint was handled; and

2.5.1.5 disposition and findings of the complaint.

2.5.2 Resolution. All complaints should be handled promptly, courteously, and include a full investigation prior to any conclusion.

2.5.3 Disputes. After the Commission or the Company have completed an investigation of a customer's complaint concerning a bill, and when the issue is resolved in favor of the utility, the customer shall be afforded a reasonable time, not less than twenty (20) days, to pay the bill as finally determined.

2.6 Customer Billing. Billing for wastewater service may be based on the following:

2.6.1 Flat rate per EDU; and

2.6.2 Volume measured by water meters serving customer premises. In cases where a significant volume of water does not enter the sanitary sewer, or where water from another source enters the sanitary sewer, the measured water meter volume may be adjusted to more accurately reflect the volume of wastewater discharged. Any such adjustment is to be based on meter readings associated with increased or decreased billable volume. Any supplemental meters are to be provided at the expense of the customers and to be maintained in good operating condition subject to testing by the utility.

Wastewater flow measuring devices shall be maintained in good working order.

In cases where water meters are used as a basis for billing wastewater service, the terms and conditions for testing meters and billing adjustments shall be as provided in PSC Order No. 2076, relating to service governing water utilities.

3.0 Engineering

3.1 Authorization For Operation Or Construction. No person, including any individual, corporation, firm, partnership, association, company, proprietorship, cooperative, joint stock company or association, or other form of business enterprise or legal entity of any kind shall commence any construction of a wastewater system for public use without having been granted a Certificate of Public Convenience and Necessity, and such other permits as may be required by law. System expansion, even within the certificated area, shall not commence without approval of the plans by the Department of Natural Resources and Environmental Control (DNREC Reg. 4.06).

If the construction of an extension involves the acquisition of a private right-of-way, then the prospective customer or developer shall attempt to secure the right-of-way and deliver it to the utility free of cost before construction of the extension is started. If, however, it is not reasonably possible for the prospective customer or developer to secure the right-of-way, and the construction of the extension involves the utility's

incurring expenses for right-of-way easements, such costs shall be added to the total cost of the extension.

Utilities are required to incorporate the terms and conditions applicable to contributions in-aid-of construction and refundable advances in their tariff rules and regulations.

3.2 Wastewater Plant Operation. The utility's wastewater plant shall be constructed, installed, maintained, and operated in accordance with current engineering practices in the wastewater industry, to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property, in compliance with relevant DNREC and Health Department regulations and policies.

3.3 Wastewater Plant Inspection. Each utility must adopt and file with the Commission a program of inspection of its wastewater plant in order to develop a capital improvement plan. The frequency of the various inspections shall be based on the utility's experience and accepted good practice. Each utility shall keep sufficient records to give evidence of compliance with its inspection program.

4.0 Operation

4.1 System Safety Program. Each utility shall exercise reasonable care to reduce the hazards to which its employees, customers, and the general public may be subjected. A safety program should be adopted by each utility, fitted to the size and type of its operations.

4.1.1 "Miss Utility". All wastewater utilities are required to belong to and participate in the "Miss Utility" program to minimize third-party damage to other utilities as well as their own.

4.1.2 Promote Safe Work Methods. Each utility shall require its employees to use suitable tools and equipment in order that they may perform their work in a safe manner. The utility's employees who are subject to the hazards of asphyxiation, chemical handling, electrical shock, or drowning in the course of performing their work shall be properly instructed in the accepted methods of artificial respiration, including CPR (cardio-pulmonary resuscitation).

5.0 Customer Relations

5.1 Application For Service.

5.1.1 Rate Schedules. If applicable, each utility shall assist the customer or applicant in selecting the most economical rate schedule. If, after the selection of a service line diameter, the customer determines that a different size service is needed, the full cost of the new service or other facilities requested by the customer will be the responsibility of the customer.

5.1.2 Customer Notification. Customers affected by a change in rates or service schedule classification shall be notified by the utility.

5.1.3 Tariff Notice. Each utility shall keep in each office of the utility where applications are received, a

copy of its currently approved tariff available for public inspection at any reasonable time.

5.1.4 Meter Reading. Every customer served by a wastewater utility shall be informed of the method of meter reading if meters are in place for billing purposes.

5.1.5 Interest on Deposits. When a utility's tariff requires or permits the collection of a deposit from customers, the utility shall pay interest on all such deposits at the rate of six percent (6%) annual simple interest. Interest shall be computed from the date of receipt of the deposit by the utility.

5.1.5.1 Interest on deposits shall be credited to the account of the depositor annually, at the time the deposit is returned, or when service is terminated, whichever is sooner; and

5.1.5.2 Deposits shall cease to draw interest on the date service is terminated, on the date the deposit is returned, or on the date that notice is sent to the depositor's last known address that the deposit is no longer required.

5.2 Billing Statement Adjustment. If wastewater service is billed on the basis of metered water usage, billing adjustments shall be calculated on the premise that the meter should be 100% accurate. For the purpose of a billing adjustment, the error in registration of the meter shall be calculated and applied as specified in the meter test rules of the wastewater utility tariff or PSC Order No. 2076 governing minimum service standards provided by public water companies.

6.0 Front-end Capital Contributions

Front-end capital contributions shall be required from all new connections to recover, at least in part, the cost of constructing conveyance, treatment, and disposal facilities incurred by the utility where applicable.

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Statutory Authority: 29 Delaware Code
Section 4815(b)(3)b.2.D
(29 Del.C. §4815(b)(3)b.2.D)

PUBLIC NOTICE

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 Del.C. §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act, 29 Del.C. §10115. The proposed amended regulations constitute a clarification of two existing

regulations. The first is an amendment which will allow a wider participation by stallions seeking to register with the Fund's Program. The second is a clarification of the term "Satisfactory Performance Line" that was at issue in a recent Delaware lawsuit.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*.

Any such submissions should be mailed or delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by May 1, 2005.

502 Delaware Standardbred Breeders Fund Regulations

2.0 Definitions.

The following words and terms, when used in this part for purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise. Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder's Fund Program.

"Bred" means any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desiccated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a Delaware sire through interstate semen transportation when such semen is not frozen or desiccated in any way or at any time, provided that owners of mares that produce foals from Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for bonuses paid to owners of mares under the Delaware Standardbred Breeder's Program set forth in Section 4 herein. A foal conceived through embryo transplantation is not eligible for nomination to the Delaware Standardbred Breeder's Program under any circumstances.

"Breeder" means the owner of the dam at the time of breeding through foaling.

"Breeding Season" is the season during which reproduction occurs and which runs from February 1st to August 1st of the calendar year.

"Delaware-bred Horse" means a Standardbred by a Delaware sire and registered with the Administrator by May 15th of the yearling year.

"Delaware Resident" means a person as defined in 3 Del.C. §10032.

"Delaware Sire" means a Standardbred stallion that regularly stands for a breeding season in Delaware; ~~does not compete for purses during that period;~~ and is registered with the Administrator of the Breeder's Program. A Delaware sire may be: a) owned by a resident of the State of Delaware and standing the entire breeding season in the State of Delaware; or b) owned by a resident of a state other than Delaware, but standing the entire breeding season in Delaware, verified by a copy of a lease filed with the Administrator of the Program at the time of registration for the Program, as provided in section 1.1 above; or c) owned jointly by a resident (or residents) and a non-resident (or non-residents) of Delaware and standing the entire breeding season in Delaware with the same lease requirements as in b) above. A Delaware Sire may compete for purses within the State of Delaware at any time. However, a Delaware sire may compete for purses outside the State of Delaware, or enter claiming races within or without the State of Delaware, only after the breeding season in Delaware ends. A violation of this regulation will disqualify the Standardbred stallion from being registered with the Breeders' Program for the breeding season of the year following the violation.

"Private Treaty" No stallion participating in the Program may be offered for service under private treaty. Each stallion registered in the Program must make public the breeding fee.

"Registrant" is a horse owner, the horse owner's agent of record or trainer of record, or the lessee of a horse.

"Satisfactory Performance Line" means the path of the Standardbred on the racetrack as charted by the licensed charter at Dover Downs and/ or Harrington Raceway during which the horse does not break stride for any reason.

6 DE Reg. 1497 (5/1/03)

8 DE Reg. 336 (8/1/04)

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Harness Racing Commission is available at:

<http://www.state.de.us/research/AdminCode/title3/500/index.shtml#TopOfPage>

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10103 (3 Del.C. §10103)

PUBLIC NOTICE

The Delaware Thoroughbred Racing Commission, pursuant to 3 Del.C. §10103, proposes to amend rules 15.0 and 19.3.1.1 to permit the Commission to blood gas test,

outlining quarantine procedures for positive tests, clarifying the current rules regarding furosemide, and to raise the appeal bond from \$250 to \$400 to cover the increased administrative costs including court reporter costs associated with appeals brought before the commission. The Commission will hold a public hearing on the proposed rule change on Saturday, April 30, 2005. Written comments should be sent to John Wayne, Administrator of Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

The proposed rule changes are as follows:

15.0 Medication; Testing Procedures

15.1 Prohibition and Control of Medication:

~~15.1.1 It shall be the intent of these Rules to protect the integrity of horse racing, to guard the health of the horse and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs and medications or substances foreign to the natural horse. Horses should not compete under the influence of drugs or therapeutic medications. However, horses, in training, like all athletes, may require the administration of therapeutic medications at times to diagnose or treat illness or injury. Certain drugs have no therapeutic use in horses in training, and these drugs should not be administered to horses in training, nor should they be permitted at any concentration in post-race samples. In this context:~~

15.1.1.1 No horse participating in a race shall carry in its body any substance foreign to the natural horse, except as hereinafter provided.

15.1.1.2 No foreign substance shall be administered to a horse (entered to race) by injection, oral administration, rectal infusion or suppository, or by inhalation within twenty-four (24) hours prior to the scheduled post time for the first race, except as hereinafter provided.

15.1.1.3 No person other than a veterinarian shall have in his possession any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which can be administered internally to a horse by any route, except for an existing condition as prescribed by a veterinarian.

15.1.1.4 Notwithstanding the provisions of Rule 15.1.1.3 above, any person may have in his possession within a race track enclosure, any chemical or biological substance for use on his own person, provided that, if such chemical substance is prohibited from being dispensed by any Federal law or law of this State without a prescription, he is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to him.

15.1.1.5 Notwithstanding the provisions of Rule 15.1.1.3 above, any person may have in his possession

within any race track enclosure, any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to himself, provided that he has notified the Stewards: (1) of his possession of such device; (2) of the size of such device; and (3) of the chemical substance to be administered by such device and has obtained written permission for possession and use from the Stewards.

15.1.2 Definitions:

The following terms and words used in these Rules are defined as:

15.1.2.1 Hypodermic Injection shall mean any injection into or under the skin or mucous, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection and intraocular (intraconjunctival) injection.

15.1.2.2 Foreign Substances shall mean all substances except those which exist naturally in the untreated horse at normal physiological concentration, and shall also include substances foreign to a horse at levels that cause interference with testing procedures.

15.1.2.3 Veterinarian shall mean a veterinary practitioner authorized to practice at the race track.

15.1.2.4 Horse includes all horses registered for racing under the jurisdiction of the Commission and for the purposes of these Rules shall mean stallion, colt, gelding, ridgling, filly or mare.

15.1.2.5 Chemist shall mean the Commission's chemist.

15.1.2.6 Test Sample shall mean any body substance including, but not limited to, blood or urine taken from a horse under the supervision of the Commission's Veterinarian and in such manner as prescribed by the Commission for the purpose of analysis.

15.1.2.7 Race Day shall mean the 24-hour period prior to the scheduled post time for the first race.

15.1.3 Foreign Substances:

15.1.3.1 No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.1.3.1.3:

15.1.3.1.1 A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.

15.1.3.1.2 A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.1 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.

15.1.3.1.3 A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission. Aminocaproic acid may be present in a horse's body while it is participating in a race, subject to all the provisions of these Rules.

15.1.3.1.4 The only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxyphenbutazone in the level stated in 15.1.3.1.5 or 15.1.3.1.6. The presence of any other NSAID at any test level is forbidden.

Revised: 1/6/92.

15.1.3.1.5 The test level of phenylbutazone under this Rule shall not be in excess of two point five (2.5) micrograms (mcg) per milliliter (ml) of plasma without penalties in the following format:

| Micrograms per milliliter | Penalties |
|---------------------------|---|
| 0 to 2.5 | No action |
| 2.6 to 4.9 | First Offense-\$250.00 fine |
| 2.6 to 4.9 | Second Offense within 365 days |
| | \$500.00 fine |
| 2.6 to 4.9 | Third Offense within 365 days \$500.00 |
| | fine and/or Suspension and/or Loss of Purse |
| 5.0 and Over | Fine, Suspension, Loss of Purse |

15.1.3.1.6 The test level for oxphenbutazone under this Rule shall not be in excess of two (2) micrograms (mcg) per milliliter (ml) of plasma.

| Micrograms per milliliter | Penalties |
|---------------------------|--|
| 0 to 2.5 | No action |
| 2.6 to 4.9 | First Offense-\$250.00 fine |
| 2.6 to 4.9 | Second Offense within 365 days |
| | \$500.00 fine |
| 2.6 to 4.9 | Third Offense within 365 days \$500.00 |
| | fine and/or Suspension and/or |
| | Loss of Purse |
| 5.0 and Over | Fine, Suspension, Loss of Purse |

15.1.3.1.7 No bleeder medication otherwise permissible under this Rule may be administered to a horse within one hour of the scheduled post time of the horse's race. The administration of salix to a horse on race day will be governed by Rule 15.2.

15.1.3.1.8 If a horse is to receive one or more bleeder medications, aminocaproic acid and/or salix, the trainer shall declare said use at the time of entry.

15.1.3.1.9 A veterinarian administering bleeder medications shall report the administration of such medications on the same form that is used to report the administration of salix.

15.1.3.1.10 The race program shall denote what medication(s) have been administered to a horse in the race and the past performance lines in the program, if any, shall denote any medications administered to said horse in those races.

15.1.3.1.11 Any horse running on permissible bleeder medication under these Rules shall remain on the medication for a period of not less than sixty (60) days before being permitted to race without the permissible bleeder medication.

15.1.3.1.12 The detection of permissible bleeder medications (salix and/or aminocaproic acid) in a horse following the running of a race which was not declared or reported to the Stewards, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian. Conversely, the absence of bleeder medication following the running of a race in which was declared and reported by a trainer and/or veterinarian, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian.

15.1.3.1.13 Erythropietin (EPO)

A finding by the official chemist that the antibody of Erythropietin (EPO) was present in a post-race test specimen of a horse shall be promptly reported in writing to the Stewards. The Stewards shall notify the owner and trainer of the positive test result for Erythropietin antibodies. The Stewards shall notify the Commission Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 5.32, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO antibodies from a laboratory approved by the Commission provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

Notwithstanding any inconsistent provision of these Rules, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be

subject to application of trainer's responsibility based on the finding by the laboratory that the antibody of Erythropoietin was present in the sample taken from that horse.

15.2 Bleeder Medication:

15.2.1 Notwithstanding anything in the Rules of Racing to the contrary, the Stewards may permit the administration of Furosemide (~~Lasix~~ Salix) to control epistaxis (bleeding) to horses under the following conditions:

15.2.1.1 A horse which, during a race or workout at a duly licensed race track in this State or within the first hour immediately following such a race or workout, is observed by the Commission's Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Commission's Veterinarian at the detention barn within one (1) hour of workout or race.)

15.2.1.2 A horse which has been certified as a bleeder in another jurisdiction may be placed on the bleeder list provided that the other jurisdiction qualified it as a bleeder using criteria satisfactory to the Commission's Veterinarian and the Stewards. It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Commission's Veterinarian or Stewards on official forms from that State prior to entry.

15.2.1.3 The Commission's Veterinarian shall be responsible to maintain an up-to-date "bleeder" list and the list shall be available in the Racing Secretary's office.

15.2.1.4 A horse in the Bleeder Program shall be required to be brought to an area designated by the Licensee and approved by the Commission not later than three and one-half (3 ½) hours before post time for the race in which it is entered. During the 3 ½ hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

15.2.1.5 (Deleted.)

15.2.1.6 A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have

passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. A positive endoscopic examination shall be classed as a first time bleeder.

Revised: 6/19/92.

15.2.1.7 Dosage. Furosemide (~~Lasix~~ Salix) shall be administered intravenously, or intramuscularly as permitted under Rule 15.02.1.8, to horses in the Bleeder Program by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

15.2.1.8 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

15.2.1.9 Restrictions. No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (~~Lasix~~ Salix) in oral or intramuscular form, except that the stewards may approve intramuscular administration for a horse based on written documentation from the Commission veterinarian and the trainer's veterinarian.

15.2.1.10 Post-Race Quantification. As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of furosemide (~~Lasix~~ Salix) per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower.

15.2.1.10.1 If post-race analysis indicates that the specific gravity of a horse's urine is less than 1.010 and the concentration of furosemide in the blood plasma is greater than 100 nanograms per milliliter, the stewards shall take the following action (for each horse):

15.2.1.10.1.1 If such overage is the first violation of this rule for this horse, the trainer and/or attending veterinarian shall be issued a warning and be required to participate in a review of all pertinent Commission rules and subsequent penalties at a time scheduled by the stewards. If the trainer wishes to contest the overage, the trainer shall follow a specific procedure under which all of the following conditions must be met:

15.2.1.10.1.2 the horse in question must report to the detention barn four hours prior to post time.

15.2.1.10.1.3 the same handler/groom must stay with the horse at all times.

15.2.1.10.1.4 a blood sample shall be taken by the Commission veterinarian before the administration of furosemide.

15.2.1.10.1.5 the trainer's veterinarian must administer furosemide at a dosage not to exceed 500 milligrams.

15.2.1.10.1.6 the Commission veterinarian must witness the administration of furosemide.

15.2.1.10.1.7 the horse must return to the detention barn after the race for the taking of post-race blood and urine testing by the Commission veterinarian or assistant, no matter how the horse finishes in the race.

15.2.1.10.2 If, after all of the above conditions are met, the post race tests reveal that the specific gravity of the horse's urine is again below 1.010 and the concentration of furosemide in the blood plasma is greater than 100 nanograms per milliliter of plasma, and the blood sample taken in the detention barn before the administration of furosemide tests negative for furosemide, the horse will be placed on an "exempt" list and the first offense will be removed, provided further that any horse on the "exempt" list will be required to have all future pre-race ~~Lasix~~ Salix treatments administered pursuant to the procedure set forth in Rules 15.2.1.9.1.2 through 15.2.1.9.1.7 set forth above. Any horse that is placed on the "exempt" list and later fails to follow the pre-race procedure for ~~Lasix~~ Salix administration set forth in Rules 15.2.1.9.1.2 through 15.2.1.9.1.7 above will be removed from the "exempt" list, disqualified from the race, and subject to the penalties in this Rule for subsequent offenses.

15.2.1.10.3 If such overage is the second violation of this rule for the same horse, the trainer and/or attending veterinarian shall be fined a minimum of \$100.00 and a maximum of \$500.00.

15.2.1.10.4 If such overage is the third violation of this rule for the same horse, the trainer and/or attending veterinarian shall be issued a minimum suspension of seven (7) days and a maximum suspension of fifteen (15) days and shall be fined a minimum of \$100.00 and a maximum of \$1,000.00, and the stewards in their discretion may order loss of purse as an additional penalty.

15.2.1.10.5 If such overage is the fourth violation for the same horse, the trainer and/or attending veterinarian shall be issued a suspension of fifteen (15) days to thirty (30) days, and shall be fined \$250.00 to \$1,000.00, and the stewards will order loss of purse as a mandatory penalty.

15.3 Responsibility for Prohibited Administration:

15.3.1 Any person found to have administered or authorized a medication, drug or substance which caused or could have caused a violation of Rules 15.1 or 15.2, or caused, participated or attempted to participate in any way in such administration, shall be subject to disciplinary action.

15.3.2 The registered Trainer of a horse found to have been administered a medication, drug or substance in violation of Rules 15.1 or 15.2 shall bear the burden of proof to show freedom from negligence in the exercise of a high degree of care in safeguarding such horse from being tampered with and, failing to prove such freedom from

negligence (or reliance on the professional ability of a licensed Veterinarian), shall be subject to disciplinary action.

15.3.3 The Assistant Trainer, groom, stable watchman or any other person having the immediate care and custody of a horse found to have been administered a medication, drug or substance in violation of Rules 15.1 or 15.2, if found negligent in guarding or protecting such horse from being tampered with, shall be subject to disciplinary action.

15.3.4 A licensed Veterinarian shall be responsible for any medication, drug or substance that he administers, prescribes or causes to be administered by his direction on a horse. If found to have made an error in type or quantity of same administered and if in reliance upon the correctness thereof a Trainer races such treated horse in violation of Rules 15.1 and 15.2, such licensed Veterinarian shall be subject to disciplinary action.

15.4 Reports of Administration:

15.4.1 Before a licensed Veterinarian administers or prescribes any drug or restricted substance for a horse, he shall ascertain by reasonable inquiry whether the horse has been entered to race at any track and, if the horse has been entered, he shall not administer or prescribe any drug or restricted substance within the time or manner restricted by these Rules.

15.4.2 If, however, an emergency exists involving the life or health of the horse, he may proceed to treat or prescribe for the horse but shall report the matter as promptly as practicable to the Commission Veterinarian and Stewards.

15.4.3 Any Veterinarian practicing at any Delaware race track shall file a daily report with the Stewards and the Commission Veterinarian as to any medication prescribed or administered or professional service performed. This report shall be filed in person or postmarked within a period of forty-eight (48) hours from the time of treatment. Detection of any unreported medication, drug or substance by the Commission's Chemist in a pre-race or post-race test may be grounds for disciplinary action against such Veterinarian.

15.4.4 Such daily reports shall accurately reflect the identity of the horse treated, diagnosis, time of treatment, type and dosage of medication, drug or substance and method of administration.

15.4.5 Such daily reports shall remain confidential except that the Commission's Veterinarian may compile general data therefrom to assist the Commission in formulating policies or rules and the Stewards may review the same in investigating a possible violation of these rules. See Rule 11.2.8 respecting a public list of horses declared to race on medication.

15.4.6 When making an entry, it shall be the duty of the Trainer or his representative, as required by Rule 11.02(d), to disclose and declare to the Racing Secretary or

his representative whether said horse will race on any medication permitted by these rules.

15.5 Report Prior to Race of Cessation or Reduction of Medication:

15.5.1 For any horse entered to run in a race, a timely report of the elimination or reduction since its last race in the level of Phenylbutazone and/or similar medications administered to it at the time of such last race shall be made to the Commission's Veterinarian by the horse's Owner, Trainer, attending Veterinarian and/or any other person having supervision over, or custody of, such horse.

Violation of this Rule will constitute grounds for disciplinary action.

15.6 Bettors' Safeguard:

15.6.1 To help protect against inconsistent performances, a horse which last raced after having been administered Phenylbutazone and/or similar medication shall not be permitted to race without having been administered the same or similar medication at a comparable level, unless the Commission's Veterinarian grants his prior, express approval that such horse may race notwithstanding that the medication program to which it was subjected at the time of its last race has subsequently been eliminated or reduced.

15.6.2 Violation of any aspect of this Rule by an Owner, Trainer, attending Veterinarian or any other person having supervision or custody of the horse will constitute grounds for disciplinary action as provided by these Rules.

15.7 Commission List:

15.7.1 As a guide to Owners, Trainers and Veterinarians, the Commission may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. Such list shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Rule 15.1.

15.8 Detention Area:

15.8.1 Each Licensee may provide and maintain on its grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing; such detention area shall be under the supervision and control of the Commission's Veterinarian.

15.9 Horses to be Tested:

15.9.1 The Stewards may at any time order the taking of a blood, urine, or saliva specimen for testing from any horse entered. Any Owner or Trainer may at any time request that a specimen be taken from a horse he owns or trains by Commission's Veterinarian and be tested by Commission's Chemist, provided the costs of such testing are borne by the Owner or Trainer requesting such test.

15.9.1.1 Every effort shall be made to collect both blood and urine samples from all horses selected for post-race testing. Blood samples shall be tested:

15.9.1.1.1 For determination of those drugs with regulatory thresholds:

15.9.1.1.2 For those drugs not detectable in urine; and

15.9.1.1.3 To determine, when possible, whether a positive test result is consistent with the documented administration of the drug.

15.10 Procedure for Taking Specimens:

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

15.10.1.1 Blood samples must be collected at a consistent time, preferably not later than one hour post-race.

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

15.10.2.1 Buckets and water shall be furnished by the Commission veterinarian.

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

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

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

15.10.3.1 The owner;

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

15.10.3.3 A stable representative designated by such owner or trainer.

15.10.4 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by Rule 15.10.3.

15.10.5 Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

15.10.6 Samples taken from a horse, by the Commission veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

15.10.6.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part

"identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

15.10.6.2 The Commission Veterinarian shall:

15.10.6.2.1 Identify the horse from which the specimen was taken.

15.10.6.2.2 Document the race and day, verified by the witness; and

15.10.6.2.3 Place the detached portions of the identification tags in sealed envelope for delivery only to the stewards.

15.10.6.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

15.10.6.3.1 Laboratories conducting post-race sample analysis must have access to LC/MS instrumentation for screening and/or confirmation purposes.

15.10.6.4 The "secondary" sample shall remain in the custody of the Commission veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

15.10.6.5 The Commission veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

15.10.6.6 When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

15.10.6.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission veterinarian.

15.10.6.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

15.10.6.9 Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the "primary" and one for the "secondary" sample.

15.10.6.10 In the event of an initial finding of a prohibited drug or in violation of these Rules, the Commission chemist shall notify the Commission, both orally and in writing, and an oral notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall

provide notice as soon as possible in order to allow for testing of the "secondary" sample.

15.10.6.10.1 If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

15.10.6.10.2 Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

15.10.6.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

15.10.6.11.A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

15.10.6.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to the making the test.

15.10.6.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug to the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

15.10.6.12 The Commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as the possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

15.10.6.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

15.11 Commission Chemist:

15.11.1 The Commission's Chemist, who shall be a member of the Association of Official Racing Chemists, shall conduct tests on specimens provided him in order to detect and identify prohibited substances therein and report

on such in such a manner, and according to such procedures, as the Commission from time to time may approve and/or prescribe.

15.12 Prohibited Practices

15.12.1 The following conduct shall be prohibited for all licensees:

15.12.1.1 The possession and/or use of a drug, substance, or medication, specified below, on the premises of a licensed race track under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance including but not limited to erythropoietin, darbepoietin, and perfluorocarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing.

15.12.1.2 The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the regulatory body that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

15.12.1.3 The practice, administration, or application of Intermittent Hypoxic Treatment by External Device which is performed on the premises of a facility under the jurisdiction of the Commission, and which may endanger the health, safety, and welfare of the horse or endanger the safety of the jockey, or the use of which may adversely affect the integrity of racing. Intermittent Hypoxic Treatment is the administration of hypoxic gas to a horse for the purpose of enhancing aerobic metabolism by simulating training at a high altitude.

15.12.1.4 The use of a nasogastric tube (a tube longer than six inches, inserted in a horse's nostril) for the administration of any substance within the 24-hour period considered raceday is forbidden without prior permission of the Commission.

15.12.1.5 The possession and/or use of blood doping agents, including but not limited to the following list, on the premises of a facility under the jurisdiction of the Commission is forbidden: Erythropoietin; Darbepoietin; Oxyglobin; Hemopure.

15.13 Shock Wave Therapy/Instruments

15.13.1 No person may possess on a licensee's race track an instrument used for shock wave therapy.

15.13.2 No horse may be treated with any form of shock wave therapy within ten (10) days of racing (the day of the treatment shall be considered the first day in counting the number of days).

15.13.3 The administration of shock wave therapy may only be performed by a licensed veterinarian. A veterinarian using shock wave therapy shall document and report each treatment on his daily medication report.

15.13.4 A Trainer or Veterinarian who has been found to have violated any of the above provisions of this

Rule shall be subject to appropriate disciplinary action by the stewards and/or Commission including but not limited to a maximum suspension of ninety (90) days.

15.14 Blood Gas Testing

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

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

15.14.3 A licensee has the right, pursuant to the quarantine procedure outlined at 15.15, or by such other procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels.

15.15 Quarantine Procedure For Carbon Dioxide Positive Tests (Prerace Or Postrace)

15.15.1 Detention/Quarantine of Horses: The owner or trainer must request use of the quarantine procedure by sending written notice to the Stewards within forty-eight (48) hours of notification of the positive carbon dioxide test report. The owner or trainer will then be permitted, totally at his/her own expense, to make the necessary scheduling arrangements with the Stewards and the Commission Veterinarian. The horse in question will be quarantined on the grounds for periodic blood gas testing by the DTRC (up to three days) at the trainer's expense. All caretaker activities for the horse in question will be the responsibility of the horse's trainer.

15.15.2 Procedure: The owner or trainer will be responsible for providing the DTRC with a minimum check for \$1,500.00 to cover the costs for the quarantine. A professionally trained Track Security Officer must be with the horse at all times, and the Security Officer must be knowledgeable about the importance of monitoring all activity pertaining to the quarantined horse.

15.15.3 The quarantine of a horse is subject to the following mandatory requirements:

15.15.3.1 The owner or trainer will be required to deposit sufficient funds with the DTRC Stewards to cover the costs of the quarantine of the horse. The minimum quarantine cost will be \$1,500, and this figure may be higher if additional special circumstances are required for

a particular horse. None of these procedures will be initiated until the Commission has in its possession a certified check or other method of payment acceptable to the Commission. The owner or trainer is responsible for all costs for the quarantine, including but not limited to, the costs of: stall bedding, daily cleaning of the stall, feed and hay, stall rent, hourly guard salary, portable toilet rental, veterinary charge, courier or shipping charges to the laboratory, laboratory analysis costs. Unused funds will be returned to the trainer.

15.15.3.2 The expected period of the quarantine will be seventy-two hours.

15.15.3.3 The owner or trainer is required to execute a reasonable liability waiver form if requested to do so by the track for the quarantine of the horse on track grounds.

15.15.3.4 The owner or trainer is obligated to reimburse the track if the racing association is required to purchase additional insurance to cover risks from the quarantine of the trainer's horse. The owner or trainer is also responsible for any additional costs required by the track to pad or otherwise specially equip the quarantine stall.

15.15.3.5 All activity of the quarantined horse is observed, documented, and recorded by security officers for the track and the DTRC.

15.15.3.6 The Commission will be responsible for arranging for and providing for bedding, feed, water, and daily cleaning of the stall, all of which are at the owner's expense. Feed for the horse will be purchased by DTRC officials as specified by the owner or trainer. Samples of the feed will be retained by the DTRC designated official.

15.15.3.7 Each bale of hay/straw will be intact and uncut for inspection of contraband. Four small samples of hay are to be taken from the bale of hay used to feed the animal (one from each end of the bale of hay and two from the middle of the bale of hay). These samples with the ingredient tags from the bag of feed used by the horse will be retained by the DTRC designated official.

15.15.3.8 Every trainer, groom, or caretaker is subject to continuous observation and may be searched when with the horse for contraband.

15.15.3.9 Horses may be trained, but if leg paints or salves are used, they must be new and in unopened containers, and the track Security Officer must monitor the preparation of the horse.

15.15.3.10 A Security Officer must observe the horse during training and ensure that it does not leave the track except to return to the quarantine stall.

15.15.3.11 A sick horse must only be determined ill by the Commission's Veterinarian and the quarantine of the horse will be terminated. Any bills incurred for the quarantine of the horse prior to the illness and termination of the detention will be prorated.

15.15.3.12 Stalls for the quarantine of horses are designated by the Stewards of the DTRC, in cooperation with the racetrack.

15.15.3.13 Trainers can restrict water based on previous pre-race preparation schedules.

15.15.3.14 Trainers are expected to train their horse in the same manner as the horse was trained on previous racing events. The horse will be equipped with all the items that it would normally carry, taken to the paddock, and handled in a manner similar to previous racing events.

15.15.3.15 Blood samples will be taken from the quarantined horse by the Commission Veterinarian, as he or she deems appropriate and necessary during the quarantine period. A blood sample should be taken when the horse first enters the quarantine stall and again at the pre-arranged time between sixty (60) and seventy-two (72) hours. At the discretion of the Commission, another sample may be taken between the initial sample and the sample taken at the cessation of the quarantine period. Blood samples will only be taken from the horse that is at rest for a period of time approved by the Commission Veterinarian. The owner or trainer or his/her representative must be present and witness the collection of the blood samples. Blood samples will be shipped promptly to the Commission's designated testing laboratory, pursuant to the Commission's standard chain-of-custody procedures.

15.15.3.16 At the conclusion of the quarantine period, the party requesting the quarantine will be provided timely notice of the test results from the DTRC. The trainer may present such evidence at a hearing before the Stewards if he or she attempts to prove that the horse has a naturally high carbon dioxide level.

1 DE Reg. 508 (11/1/97)

1 DE Reg. 1184 (2/1/98)

3 DE Reg. 754 (12/1/99)

4 DE Reg. 179 (7/1/00)

4 DE Reg. 1131 (1/1/01)

4 DE Reg. 1821 (5/1/01)

6 DE Reg. 641 (11/1/02)

6 DE Reg. 1205 (3/1/03)

7 DE Reg. 766 (12/1/03)

7 DE Reg. 1540 (5/1/04)

19.0 Hearings, Reviews and Appeals

19.1 Procedure Before Stewards:

19.1.1 Before holding any Stewards' hearing provided for under these Rules, notice in writing must be given to any party charged with a violation, other than a routine riding offense occurring in a race, unless such notice is waived in writing by the person charged.

19.1.2 The notice required by the preceding subsection shall include:

19.1.2.1 Identification of the specific Rule or Rules involved, the infraction for which he is charged and a brief statement of the facts supporting such charge.

19.1.2.2 The time and place of hearing.

19.1.2.3 The statement that the party charged may be represented by legal counsel or by a representative of any racing trade organization of which he is a member.

19.1.3 All Stewards' hearings shall be closed and the Stewards shall cause no public announcement to be made concerning a matter under investigation until the conclusion of the hearing and the party charged has been notified of the decision.

19.1.4 The hearing shall be conducted by no less than two of the Stewards in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence. In emergencies during the live racing meet or during periods when there is no live racing, a hearing may be conducted by only one Steward.

7 DE Reg. 316 (9/1/03)

19.1.5 All testimony at such hearings shall be given under oath. A record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript, or otherwise, if funds for such are made available from any source. The Stewards will not be required to receive testimony under oath in cases where their ruling is based upon a review of the video tapes of a race.

19.1.6 If, at the conclusion of their hearing, the Stewards find that a Rule has been violated, they promptly shall issue a written ruling which sets forth the name of every person charged with a violation, the Rule violated, their finding as to the violation of such Rule and the penalty affixed. Copies of such rulings shall be delivered to each party in interest and to the Commission and the Licensee, and posted in the Racing Secretary's office.

19.2 Review and Appeal:

19.2.1 Any party who is penalized by any order or ruling of the Stewards may apply to the Commission for a review of such Stewards' order or ruling.

19.3 Application for Review:

19.3.1 An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or oral notice and shall:

19.3.1.1 Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee of \$250 plus an additional fee of \$150 to cover the cost of administrative expenses including court reporter costs. The Commission, for just cause, may refund the \$250 portion of the filing fee. In no event shall the advance payment of the court reporter's fee be refunded.

19.3.1.2 Contain the signature of the applicant and the address to which notices may be mailed to applicant;

19.3.1.3 Set forth the order or ruling requested to be reviewed and the date thereof;

19.3.1.4 Succinctly set forth the reasons for making such application;

19.3.1.5 Request a hearing;

19.3.1.6 Briefly set forth the relief sought; and

19.3.1.7 Provide assurance to the Commission that all expenses occasioned by the appeal will be borne by the applicant; and

19.3.1.8 Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.

19.4 Disposition of Review Application:

19.4.1 After consideration of any such application for review, the Commission may grant the application, defer it or reject it. The applicant shall be advised of the Commission's disposition of his application for review.

19.5 Commission Hearing:

19.5.1 If the Commission grants any such application for review, before holding any hearing thereon, it shall:

19.5.1.1 Give written notice forthwith to the applicant and all other necessary parties personally or by mail, including:

19.5.1.1.1 Time and place of such hearing as designated by the Commission Chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing.

19.5.1.1.2 Except to applicant, a copy of the application for review.

19.5.2 The Commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a Rule violation if the matter involves a Rule violation and requires a proceeding of an adversary nature, such prosecutor being an attorney who has had no prior participation in the matter on review.

19.5.3 The Commission may request the Attorney General, or a member of his staff other than the special prosecutor, to serve as law officer for the Commission to assist the presiding officer in rendering decisions of a judicial nature.

19.5.4 The Commission shall permit all parties that so desire to be represented by counsel and, to the extent it deems necessary or appropriate, shall permit all parties to respond and present evidence and argument on all issues involved.

19.5.5 The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents, before the Commission, and may administer oaths or affirmations to the witnesses

whenever, in the judgment of the Commission, it may be necessary for the effectual discharge of its duties.

19.5.6 If any person refuses to obey any subpoena or to testify or produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or produce any books, papers or documents.

19.5.7 Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.

19.5.8 False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

19.5.9 All tape recordings or stenographic recordings taken and transcriptions made of the hearing or any part thereof shall be paid for by such parties as request that such a tape or stenographic record be made of the hearing, except that additional transcripts thereof shall be paid for by the person desiring such copies.

19.5.10 The Commission may exclude evidence that is irrelevant, immaterial or unduly repetitious and may admit evidence that would be inadmissible under the Civil Rules of Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

19.5.11 All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.

19.5.12 The Commission may take official notice of technical facts or customs or procedures common to racing.

19.5.13 The Commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order or default.

19.5.14 Upon conclusion of the hearing, the Commission shall take the matter under advisement, shall render a decision as promptly as possible and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth the name of every person charged with a Rule violation; the Rule number and pertinent parts of the Rule alleged to have been violated; a separate statement of reasons for the decision; and penalties fixed by the Commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the Racing Secretary's office of the Licensee where the matter arose and forwarded to the national office of the National Association of State Racing Commissioners.

19.5.15 The Commission, for just cause, may refund the filing fee to the applicant.

Added: 9/27/94

19.6 Continuances:

19.6.1 All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the

reasons therefor and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

19.6.2 When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

19.6.3 An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for a continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.

19.6.4 If the Commission approves the application for continuance, it shall, concurrently with such postponement, set a date for the continued hearing.

3 DE Reg. 1541 (5/1/00)

8 DE Reg. 1289 (3/1/05)

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Thoroughbred Racing Commission is available at:**

<http://www.state.de.us/research/AdminCode/title3/1000/index.shtml#TopOfPage>

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 503

**EDUCATION IMPACT ANALYSIS PURSUANT TO
14 DEL.C. Section 122(d)****503 Instructional Program Requirements****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 503 Instructional Program Requirements by removing section 5.0 Functional Life Skills Curriculum. The reference to the Standards for the Functional Life Skills was removed from 14 **DE Admin. Code** 501 State Content Standards in September 2004 because federal regulations no longer allow the use of separate functional standards that are aligned to academic content standards. In order to align 14 **DE Admin. Code** 503 Instructional Program Requirements with 14 **DE Admin. Code** 501 State Content Standards the reference to the Functional Life Skills Curriculum in 5.0 of 14 **DE Admin. Code** 503 Instructional Program Requirements must be removed.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment to the regulation simply aligns it with its companion regulation 14 **DE Admin. Code** 501 State Content Standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendment to the regulation simply aligns it with its companion regulation 14 **DE Admin. Code** 501 State Content Standards.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment to the regulation simply aligns it with its companion regulation 14 **DE Admin. Code** 501 State Content Standards.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendment to the regulation simply aligns it with its companion regulation 14 **DE Admin. Code** 501 State Content Standards.

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

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is cost to the State and to the local school boards of compliance with the regulation.

503 Instructional Program Requirements**1.0 English Language Arts**

1.1 Local school districts and each charter school shall provide instructional programs in English Language Arts for each grade K-12.

1.2 All public school students in each grade K-8 shall be enrolled in an English language arts program.

1.3 All public school students in grades 9-12 shall complete the credits in English language arts necessary to graduate from high school.

2.0 Mathematics

2.1 Local school districts and each charter school shall provide instructional programs in mathematics for each grade K-12.

2.2 All public school students in each grade K-8 shall be enrolled in a mathematics program.

2.3 All public school students in grades 9-12 shall complete the credits in mathematics necessary to graduate from high school.

3.0 Science

3.1 Local school districts and each charter school shall provide instructional programs in science for each grade K-12.

3.2 All public school students in each grade K-8 shall be enrolled in a science program.

3.3 All public school students in grades 9-12 shall complete the credits in science necessary to graduate from high school.

4.0 Social Studies

4.1 Local school districts and each charter school shall provide instructional programs in social studies for each grade K-12.

4.2 All public school students in each grade K-8 shall be enrolled in a social studies program.

4.3 All public school students in grades 9-12 shall complete the credits in social studies necessary to graduate from high school.

5.0 Functional Life Skills Curriculum

~~5.1 Local school districts and each charter school shall provide instructional programs for students for whom a functional life skills curriculum is appropriate.~~

~~5.2 Public school students in the Functional Life Skills Curriculum shall participate in health, physical education, visual and performing arts and vocational technical programs as directed by their Individual Education Program (IEP).~~

6.0 5.0 Physical Education

~~6.1 5.1~~ Local school districts and each charter school shall provide instructional programs in physical education for each grade K-12 with the exception of the James H. Groves High School program.

~~6.2 5.2~~ All public school students in each grade 1-8 shall be enrolled in a physical education program.

~~6.3 5.3~~ All public school students in grades 9-12 shall complete the credit in physical education necessary to graduate from high school.

~~6.4 5.4~~ In addition to the one credit required for high school graduation, only one additional elective credit in physical education may be used to fulfill the graduation requirements.

~~6.5 5.5~~ The physical education requirements may be waived only for students who have an excuse from a qualified physician or objections based on religious beliefs. The local school district shall have the authority to grant such waivers.

7.0 6.0 Visual and Performing Arts

~~7.1 6.1~~ Local school districts and each charter school shall provide instructional programs in the visual and

performing arts for each grade K-12 with the exception of the James H. Groves High School program.

~~7.2 6.2~~ All public school students in each grade 1-6 shall be enrolled in a visual and performing arts program.

8.0 7.0 Vocational Technical Education

~~8.1 7.1~~ Local school districts and charter schools, when consistent with the charter school's approved program, shall provide instructional programs in two or more vocational technical education areas in grades 7 and 8.

5 DE Reg. 865 (10/1/01)

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

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

PUBLIC NOTICE**Food Stamp and Cash Assistance Programs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the policies of the Food Stamp Program and the Cash Assistance Program in the Division of Social Services Manual (DSSM) as it relates to trafficking victims.

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

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

Summary Of Proposed Changes**Citation**

- The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003
- The following changes are made in DSSM 3024 and DSSM 9007.1:
 - Eligible family members of victims of severe trafficking can now receive a Derivative T Visa

and are now eligible to receive food stamp and cash benefits the same as refugees.

3024 Citizens and Aliens

[233.50]

Only U.S. citizens and qualified aliens, as defined in section 431 of PRWORA, are eligible to receive cash assistance benefits

Citizens are those persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, and Northern Mariana Islands. Children born outside of the United States are citizens if both parents are citizens.

Qualified aliens who entered the United States prior to August 22, 1996 are treated as if they were United States citizens. Qualified aliens are defined as aliens who are:

1. An alien lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under section 208 of the INA;
3. A refugee admitted to the United States under section 207 of the INA;
4. An alien paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year;
5. An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is being withheld under section 241(b)(3) of the INA;
6. An alien granted conditional entry under section 203(a)(7) of the INA as in effect prior to April 1, 1980;
7. An alien who is a Cuban or Haitian entrant; or
8. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

Qualified aliens admitted on or after August 22, 1996, are barred from receiving cash benefits for five (5) years, except for certain excepted groups described below who are not subject to the bar. The following excepted groups of aliens are exempt from the 5-year ban on benefits:

1. Qualified aliens lawfully residing in the State who are honorably discharged veterans and who fulfill minimum active-duty service requirements, or who are on non-training active duty in the U.S. Armed Forces, or who are the spouse, unmarried dependent child, or unremarried surviving spouse of such a veteran or active-duty personnel, provided that, in the latter case, the marriage satisfied the requirements of 38 U.S.C. § 1304;
2. Refugees, for a period of five years after the date they entered the U.S. as refugees;
3. Asylees, for a period of five years after obtaining such status;

4. Aliens whose deportation of removal has been withheld, for a period of five years after obtaining such status;

5. Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, for a period of five years after they obtain such status; and

6. Amerasian immigrants from Vietnam, admitted to the U.S. pursuant to section 84 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, for a period of five years after their admission.

7. Individuals who are eligible due to being lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work;

8. Victims of Severe Trafficking per Public Law 106-386 Trafficking Victims Protection Act of 2000:

Severe forms of trafficking is defined as,

- sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person inducted to perform such an act has not attained 18 years of age; or
- the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Adult victims of severe trafficking will be certified by the U. S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking are treated like refugees. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to be eligible for cash assistance; and

9. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

Documentation:

1. Lawful permanent resident status is verified by:
- INS Form I-551; or
 - Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94.
2. Refugee status is verified by:
- INS Form I-94 annotated with stamp showing admission under section 207 of the INS;

- INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(3);
 - INS Form I-766 (Employment Authorization Document) annotated "A3"; or
 - INS Form I-571 (Refugee travel Document).
3. Asylee status is verified by:
- INS Form I-94 annotated with stamp showing grant of asylum under § 208 of the INA;
 - INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(5);
 - INS Form I-766 (Employment Authorization Document) annotated "A5";
 - Grant letter from the Asylum Office of INS; or
 - Order from an immigration judge granting asylum.
4. The status of an alien whose deportation is withheld is verified by:
- INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(10);
 - INS Form I-766 (Employment Authorization Document) annotated "A10"; or
 - Order from an immigration judge showing deportation withheld under §243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under §241(b)(3) of the INA.
5. Cuban/Haitian entrant status is verified by:
- INS Form I-551 (Alien Registration Receipt Card) with the code CU6, CU7, or CH6;
 - An unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code CU6 or CU7;
 - INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" (Status Pending);
 - INS Form I-94 showing parole into the United States on or after October 10, 1980; and
 - Cuban or Haitian passport, identity card, birth certificate, or other reasonable evidence of Cuban or Haitian nationality
6. Amerasian immigrant status is verified by:
- INS Form I-551 with the code AM6, AM7, or AM8; or
 - Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code AM1, AM2, or AM3.
7. The 40 qualifying quarters of work is determined under Title II of the Social Security Act. This includes the quarters of work not covered by Title II of the Social Security Act. Quarters of work not covered by Title II of the Social Security Act is based on the sum of the following:
- quarters the alien worked;
 - quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and
 - quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased.
- NOTE: A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouse's quarters of coverage. (Beginning January 1, 19997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);
8. When a victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees **except** DSS will:
- Accept the original certification letter or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT SEND FOR SAVE VERIFICATION.)
 - Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Office of Refugee Resettlement (ORR) of the benefits for which the individual has applied.

- Note the "entry date" for the refugee benefit purposes. The individual's "entry date" for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.
- Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.
- Recertification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees; and
- Victims of trafficking are issued T visas by US Immigration and Citizenship Services.
- The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the parents and siblings of victims of severe trafficking. Under TVPRA, eligible relatives of trafficking victims are entitled to visas designated as T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible like the direct victims of severe trafficking.
- If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse, children, unmarried siblings under 18 years of age, and parents.
- If an alien is awarded a T visa and was age of 21 years or older on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse and children.

9. For aliens who (or whose child or parent) is claiming that they have been battered or subjected to extreme cruelty in the United States and otherwise meets the requirements of 8 U.S.C. 1641(c) call PPDU to determine if the documentation provided is satisfactory.

Aliens admitted as temporary residents are not eligible for public assistance benefits. Included are visitors, tourists, diplomats, and students.

Citizenship and alien status are verified at the time of application.

(Break in Continuity of Sections)

9007.1 Citizens and Qualified Aliens

[273.4]

Citizens and Qualified Aliens

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if both parents are citizens;

2. Naturalized citizens or a United States non-citizen national (person born in an outlying possession of the United States, like American Samoa or Sawin's Island, or whose parents are U.S. non-citizen nationals;

3. Individuals who are:

An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply;

A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

Lawfully residing in the U.S. and was a member of the Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or

An unmarried dependent child of such Hmong or highland Laotian who is under the age of 18 or if a full-time student under the age of 22 of such a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18th birthday.

4. Individuals who are eligible indefinitely due to being:

A lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of : quarters the alien worked; quarters credited for the work of a parent the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited

from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased. A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouses quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

lawfully living in the U. S. for five (5) years as a qualified alien beginning on the date of entry:

Qualified aliens include lawfully admitted residents (holders of green cards), those granted asylum, refugees, victims of a severe form of trafficking, those paroled in the United States under section 212(d)(5) of the INA for at least one year, those whose deportation is being withheld, those granted conditional entry under section 501(e) of the Refugee Education Assistance Act of 1980, Cuban or Haitian entrants, and under certain circumstances, a battered spouse, battered child or parent or child or battered person with a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA.

lawfully in US and is now under 18 years of age;

lawfully in US and is receiving disability or blind (payments listed under DSSM 9013.1)

lawfully in US and 65 or older on 8/22/96 (born on or before 8/22/31).

An alien with one of the following military connections:

A veteran who was honorably discharged for reasons other than alien status who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service;

A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 389 U.S.C. 107;

An individual on active duty in the Armed Forces of the U.S. other than for training; or

The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday.

5. The following aliens with a seven-year (7) time limit:

(A) refugees admitted under section 207 of the Act;

(B) asylees admitted and granted asylum under section 208 of the Act;

(C) aliens whose deportation or removal has been withheld under section 241(b)(3) and 243 (h) of the INA.

(D) Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and

(E) Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.

The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).

(F) Immigrants who are victims of severe trafficking in persons per Public Law 106-386 Trafficking Victims Protection Act of 2000. Severe forms of trafficking in persons is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Victims of trafficking are issued T visas by US Immigration and Citizenship Services.

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the parents and siblings of victims of severe trafficking. Under TVPRA, eligible relatives of trafficking victims are entitled to visas designated as T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible for food stamps like the direct victims of severe trafficking.

If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's

spouse, children, unmarried siblings under 18 years of age, and parents.

If an alien is awarded a T visa and was age of 21 years or older on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse and children.

Adult victims of severe trafficking will be certified by the U. S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking, and eligible relatives awarded a Derivative T Visa, are treated like refugees for food stamp purposes. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to receive food stamps.

When a direct victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

1. Accept the original certification letter for child in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT CALL SAVE.)

2. Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Offices of Refugee Resettlement (ORR) of the benefits for which the individual has applied.

3. Note the "entry date" for refugee benefit purposes. The individual's "entry date" for refugee benefit purposes is the certification date, which appears in the body of the certification letter or letter for children.

4. Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.

5. Re-certification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.

6. The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).

7. An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or

subjected to battery or cruelty, or an alien child whose parent has been battered.

When an eligible relative of a direct victim of severe trafficking applies for benefits:

1. Accept the nonimmigrant T-2, T-3, T-4 or T-5 Derivative Visa and follow the normal procedures for providing services and benefits to refugees.

2. Call the toll-free trafficking verification line at 1 (866) 401-5510 to notify ORR of the benefits for which the individual has applied. (NOTE: the DHS Systematic Alien Verification for Entitlements (SAVE) system does not contain information about victims of a severe form of trafficking or nonimmigrant alien family members. DO NOT CONTACT SAVE concerning victims of trafficking or their nonimmigrant alien family members.)

3. Issue benefits to the same extent as a refugee provided the Derivative T Visa holder meets other program eligibility criteria like income.

4. For an individual who is already present in the United States on the date the Derivative T Visa is issued, the date of entry for food stamp purposes is the Notice Date on the I-797, Notice of Action of Approval of that individual's Derivative T Visa.

5. For an individual who enters the United States on the basis of a Derivative T Visa, the date of entry for food stamp purposes is the date of entry stamped on that individual's passport or I-94 Arrival Record.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Long Term Care Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal gives direction on counting gifts to minors under the Uniform Gifts to Minors Act (UGMA) for the eligibility process.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program

Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by April 30, 2005.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

Summary Of The Proposed Change

Citation

- SSA Program Operations Manual - SI 01120.205
- DSSM 20330.9 - Adds a new rule that addresses Uniform Gifts to Minors Act (UGMA) and how this resource counts towards the eligibility process. The rule clarifies when UGMA assets are counted or excluded as a resource.

DSS PROPOSED REGULATION #05-14

NEW:

DSSM 20330.9 Uniform Gifts to Minors Act

Most States have adopted the Uniform Gifts to Minors Act (UGMA) which permits making gifts to minors that are free of tax burdens. The UGMA is sometimes called the Uniform Transfers to Minors Act (UTMA).

Under UGMA legislation:

- An individual makes an irrevocable gift of money or other property to a minor
- The gift, plus any earnings it generates, is under the control of a custodian until the child reaches the age of majority established by State law;
- The custodian has discretion to provide to the minor or spend for the minor's support, maintenance, benefit or education as much of the assets as he/she deems equitable; and
- The child automatically receives control of the assets upon age of majority (through his/her 18th birthday). At this time, the UGMA property becomes a countable asset.

UGMA property including any additions or earnings is not income to the minor. However, any disbursements from the UGMA account to the minor will be considered income to the minor.

Verification

Verify all allegations of existence of a UGMA gift by obtaining a copy of the document of ownership (e.g., deed, certificate of deposit, savings account, etc.) or other written document from the issuing source. If there is no document

designating a UGMA gift, then the asset is considered a countable resource.

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

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

REGISTER NOTICE SAN# 2005-07

1. Title Of The Regulations:

Tidal Finfish Regulation 3512 Winter Flounder Size Limit; Possession Limit; Seasons. (Formerly Tidal Finfish Reg. 20)

2. Brief Synopsis Of The Subject, Substance And Issues:

The Atlantic States Marine Fisheries Commission recently approved Amendment 1 to the Interstate Fishery Management Plan for inshore Stocks of Winter Flounder. In order to come into compliance with this amendment, this proposed regulation would raise the minimum size for winter flounder (*Pseudopleuronectes americanus*) from 10 inches to 12 inches, total length and would establish a possession limit of 10 winter flounder per day (a day being 24 hours) for recreational fisherman. The above referenced plan also requires that the open season for recreational fishing be no longer than 60 days and that at least 20 continuous days must be closed in the months of March and April. Therefore it is proposed that:

Option 1 (Preferred) - It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 10 in any given calendar year.

Option 2 - It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 30 in any given calendar year. Further, it shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder between 12:01 AM March 1 and 12:00 midnight March 20 in any given calendar year.

Other options for an open fishing season may be considered as long as they include the required 20-day closure during the months of March and April and a 60-day open season.

3. Possible Terms Of The Agency Action:
N/A

States Marine Fisheries Commission Winter Flounder Management Plan.

4. Statutory Basis Or Legal Authority To Act:
§903(e)(2)a of 7 Del.C.

5. Other Regulations That May Be Affected By The Proposal:
N/A

DIVISION OF FISH AND WILDLIFE
Statutory Authority: 7 Delaware Code,
Sections 903(e)(2)a; 903(f) and 1902(a)(4)
(7 Del.C. §§903(e)(2)a; 903(f) and 1902(a)(4))

6. Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302) 739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on April 27, 2005. The record will remain open for written or e-mail comments to roy.miller@state.de.us until 4:40 PM May 2, 2005.

REGISTER NOTICE
SAN# 2005-02

3512 Winter Flounder Size Limit; Possession Limit; Seasons (Formerly-Tidal Finfish Reg. 20)
(Penalty Section 7 Del.C. §936(b)(2))

1. Title Of The Regulations:

Tidal Finfish Regulation 3504 Striped Bass Possession Size Limit; Exceptions. (Formerly Tidal Finfish Reg. 7)
Tidal Finfish Regulation 3541 Atlantic Sharks. (Formerly Tidal Finfish Reg. 25)
Tidal Finfish Regulation 3566 Minimum Age For A Commercial Finfish Licensee Or A Recreational Gill Net Licensee.
Shellfish Regulation 3701 Minimum Age For A Commercial Shellfishing Licensee OR NON-COMMERCIAL CLAMMING PERMITTEE.

1.0 It shall be unlawful for any person to possess any winter flounder, (*Pseudopleuronectes Pleuronectes americanus*), that measure less than twelve (12) ~~ten (10)~~ inches, total length.

2. Brief Synopsis Of The Subject, Substance And Issues:

To clarify what the minimum size limit is for striped bass taken commercially in gill nets in the Delaware River and Bay during the extended two-week season in February and the extended season during the month of May. During these season extensions, the minimum size for striped bass taken commercially from Delaware River and Bay shall be 20 inches total length, just as it is 20 inches total length during March and April in the Delaware River and Bay. The commercial gill net minimum size during the extended two-week season in February shall also be 20 inches total length in the Nanticoke River and its tributaries.

2.0 It shall be unlawful for any recreational fisherman to have in possession more than ten (10) winter flounder per day (a day being 24 hours) at or between the place where said winter flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

To set a minimum size of 54 inches, fork length and a one shark per person per day harvest limit for shoreline and pier fishermen for any large coastal shark, any pelagic shark or any small coastal shark exclusive of dogfish sharks.

3.0 Option 1 (Preferred). It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 10 in any given calendar year.

To establish the age of 16 years as the minimum age to qualify for a commercial foodfish license and commercial foodfish equipment permits, for a recreational gill net permit, or for commercial shellfish licenses or a non-commercial clamming permit.

Option 2 It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 30 in any given calendar year. Further, it shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder between 12:01 AM March 1 and 12:00 midnight March 20 in any given calendar year.

3. Possible Terms Of The Agency Action:
N/A

Other options for an open fishing season may be considered as long as they include a 20-day closure during the months of March and April and a 60 day open season as required for compliance with Amendment 1 to the Atlantic

4. Statutory Basis Or Legal Authority To Act:
§903(e)(2)a; §903 (f); §1902 (a)(4) of 7 Del.C.

5. Other Regulations That May Be Affected By The Proposal:

N/A

6. Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on April 27, 2005. The record will remain open for written or e-mail comments to roy.miller@state.de.us until 4:40 PM May 2, 2005.

3504 Striped Bass Possession Size Limit; Exceptions.

(Formerly Tidal Finfish Reg. 7)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1) ~~or unless otherwise authorized~~, it shall be unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than twenty-eight (28) inches in total length.

2.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1) ~~or unless otherwise authorized~~, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from months of February 15 March and April through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through ~~in~~ the month of March.

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

3.1 It has affixed, a valid strap tag issued by the Department to a commercial gill net fisherman and was legally taken and tagged by said commercial gill net fisherman from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from months of February 15 March and April through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 ~~in~~ through the month of March; or

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

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

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

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

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

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

6.0 It shall be unlawful for any person to land any striped bass that measures less than twenty-eight (28) inches in total length at any time, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the period from February 15 months of March and April through May 31 or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries ~~in~~ during the period from February 15 through the month of March.

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

3541 Atlantic Sharks (Formerly Tidal Finfish Reg. 25)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 Definitions:

"**Fillet**" shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

"**Land or Landing**" shall mean to put or cause to go on shore from a vessel.

"**Management Unit**" shall mean any of the large coastal species, small coastal species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation.

“Large Coastal Species” shall mean any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
White shark, *Carcharodon carcharias*
Nurse shark, *Ginglymostoma cirratum*
Blacktip shark, *Carcharhinus limbatus*
Bull shark, *Carcharhinus leucas*
Lemon shark, *Neqapron brevirostris*
Sandbar shark, *Carcharhinus plumbeus*
Silky shark, *Carcharhinus falciformis*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*

“Small Coastal Species” shall mean any of the following species of sharks or parts thereof:

Bonnethead, *Sphyrna tiburo*
Atlantic sharpnose shark, *Rhizoprionodon terraenovae*

Blacknose shark, *Carcharhinus acronotus*
Finetooth shark, *Carcharhinus isodon*

“Pelagic Species” shall mean any of the following species of sharks or parts thereof:

Porbeagle shark, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Blue shark, *Prionace glauca*
Oceanic whitetip shark, *Carcharhinus longimanus*
Thresher shark, *Alopias vulpinus*

“Prohibited Species” shall mean any of the following species of sharks or parts thereof:

Basking shark, *Cetorhinidae maximus*
White shark, *Carcharodon carcharias*
Bigeye sand tiger, *Odontaspis noronhai*
Sand tiger, *Odontaspis taurus*
Whale shark, *Rhincodon typus*
Bignose shark, *Carcharhinus altimus*
Caribbean reef shark, *Carcharhinus perezii*
Dusky shark, *Carcharhinus obscurus*
Galapagos shark, *Carcharhinus galapagensis*
Narrowtooth shark, *Carcharhinus brachyurus*
Night shark, *Carcharhinus signatus*
Atlantic angel shark, *Squatina dumerili*
Caribbean sharpnose shark, *Rhizoprionodon*

porosus

Smalltail shark, *Carcharhinus porosus*
Bigeye sixgill shark, *Hexanchus vitulus*
Sevengill shark, *Hepranchias perlo*
Sixgill shark, *Hexanchus griseus*
Longfin mako, *Isurus paucus*
Bigeye thresher, *Alopias superciliosus*

3 DE Reg 1088 (2/1/00)

2.0 It shall be unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.

3.0 It shall be unlawful for any person to possess the fins from any shark in the management unit prior to landing said shark unless said fins are naturally attached to the body of said shark.

4.0 It shall be unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated and the head removed prior to landing said shark.

5.0 It shall be unlawful to release any shark in the management unit in a manner that will not ensure said sharks maximum probability of survival.

6.0 It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one shark in the management unit except that two Atlantic sharpnose sharks also may be on board in addition to the one shark in the management unit.

1 DE Reg. 345 (10/1/97)

3 DE Reg 1088 (2/1/00)

7.0 It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any large coastal shark, any small coastal shark or any pelagic shark in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce.

8.0 It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.

9.0 It shall be unlawful for the operator of any vessel without a commercial foodfishing license to have on board said vessel any large coastal shark, any pelagic shark or any small coastal shark that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes).

10.0 It shall be unlawful for any person without a commercial foodfishing license to take and reduce to possession any large coastal shark, any small coastal shark or any pelagic shark less than 54 inches.

11.0 It shall be unlawful for any person without a commercial foodfishing license to take and reduce to

possession more than one large coastal shark, small coastal shark or pelagic shark per day (a day being 24 hours).

3566 Minimum Age for Commercial Food Fish**Licensees**

(Penalty Section 7 Del.C. §936(b)(2))

1.0 An individual must be at least 16 years of age to qualify for a commercial foodfish license as defined in 7 Delaware Code §914 or to qualify for a food fishing equipment permit as defined in 7 Delaware Code §915, including recreational gill net permits and recreational drift gill net permits.

3701 General

1.0 An individual must be at least 16 years of age in order to qualify for any of the following licenses or permits:

- 1.1 Commercial clam tong/rake license
 - 1.2 Commercial clam dredge license
 - 1.3 Noncommercial clamming permit
 - 1.4 Commercial conch pot license
 - 1.5 Commercial conch dredge license
 - 1.6 Commercial crab pot license
 - 1.7 Commercial crab dredge license
 - 1.8 Commercial horseshoe crab collecting permit
 - 1.9 Horseshoe crab dredge permit
 - 1.10 Commercial lobster pot license
 - 1.11 Oyster harvesting license
-

Symbol Key

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

Final Regulations

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

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

**DELAWARE ECONOMIC
DEVELOPMENT OFFICE
DELAWARE COUNCIL ON
DEVELOPMENT FINANCE
29 Del.C. Ch. 11, Subch. III**

**ORDER ADOPTING AND PROMULGATING
REGULATION SETTING FORTH PROCEDURE FOR
PUBLIC COMMENT AT MEETINGS**

Procedure for Public Comment at Meetings

**ORDER ADOPTING AND PROMULGATING
REGULATION**

AND NOW this 28th day of February, 2005, in accordance with the procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C. Ch. 101 and more particularly in accordance with 29 Del.C. §10113(b) a quorum of the members of the Council on Development Finance (the "Council") hereby enter this ORDER adopting informally and promulgating the regulation set forth below in connection with the Council's Procedure for Public Comment at Meetings.

**NATURE OF PROCEEDINGS: SYNOPSIS OF THE
SUBJECT AND SUBSTANCE OF THE PROPOSED
REGULATION:**

Pursuant to 29 Del.C. §5007, the Council serves as an advisor to the Director of the Delaware Economic Development Office ("DEDO") and considers matters relating to the financing and modernization of agricultural, industrial, commercial and other facilities in Delaware and such other matters as may be referred to it by the Governor or the Director of DEDO. In addition, under 29 Del.C. §5055(d), the Council is statutorily delegated the authority and responsibility for conducting public hearings following reasonable public notice prior to the issuance by The Delaware Economic Development Authority ("DEDA") of any bond or the provision by DEDA of any other form of financing support to assisted persons. The Council desires to establish procedures to enable members of the public to make comments at the hearings that the Council conducts in a manner consistent with the fair, efficient and orderly conduct of the Council's business. In accordance with the procedures set forth in 29 Del.C. Ch. 11, Subch. III, 29 Del.C. Ch. 101, in particular, 29 Del.C. §10113(b)(2), the Council is adopting informally this regulation pertaining to the Council's Procedure for Public Comment at Meetings.

**DECISION AND ORDER CONCERNING THE
REGULATION**

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the members of the Council, ORDER that the regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the

Delaware Register of Regulations, in accordance with 29 Del.C. §10118(g).

Steven L. Biener
 Nancy W. Cook
 Andrew M. Lubin
 Donald J. Lynch
 Roger P. Roy
 Fred C. Sears, II
 Ann T. Tansey
 F. Samuel Wilcox, III
 Richelle A. Vible

**DELAWARE HOME RELOCATION
 AUTHORITY TRUST FUND
 201 Delaware Manufactured Home Relocation
 Trust Fund Regulations**

Statutory Authority: 25 Delaware Code,
 Section 7012 (25 Del.C. §7012)

ORDER

TEXT OF REGULATION

1.0 Procedure for Public Comment at Meetings

1.1 The Acting Chairperson shall call on meeting attendees from the general public so they can identify themselves for the record. This shall be done immediately following the Call to Order. Members of the general public are not allowed to participate in the meeting at this point in any way other than by identifying themselves. In the event that the Call to Order occurs before the posted Agenda start time, the Acting Chairperson shall call on attendees immediately after the posted start time or upon the entry of such attendees to the meeting room, if after the posted start time.

1.2 For each project on the respective Agenda, the Acting Chairperson shall be responsible for asking members of the general public if they would like to make comments. This shall occur after the project has been introduced but before any motion has been made and voted upon. Comments shall be limited to ten minutes or at the discretion of the Acting Chairperson. Members of the general public are not entitled to ask questions and Council members, State employees and private-sector individuals associated with the project are not obligated to answer questions. Pursuant to 29 Del.C. §10004 (d), members of the general public whose comments exceed ten minutes and/or willfully disrupt the conduct of the meeting are subject to removal.

1.3 The Council members shall vote on a project after all members of the general public have had a chance to comment.

AND NOW, this 9th day of March, 2005, the Delaware Manufactured Home Relocation Authority (the "Authority"), issues the following Order which shall be effective ten (10) days after the publication of this Order in the *Delaware Registrar of Regulations*:

1. Pursuant to its statutory authority, the Authority has proposed for adoption a comprehensive set of regulations (the "Proposed Regulations") to be used in the administration of the Delaware Manufactured Home Relocation Trust Fund ("Trust Fund"). William A. Denman (the "Hearing Examiner") was designated as the Hearing Examiner to conduct a public hearing for the purpose of receiving comments from the public on the Proposed Regulations.

2. The public hearing was held on Tuesday, November 30, 2004. A copy of the Proposed Regulations and notice of the public comment session was published in the *Delaware Registrar* on November 1, 2004, and notice of the hearing was published in both the *Delaware State News* and the *News Journal* on October 29, 2004.

3. The public hearing was presided over by the Hearing Examiner. On January 3, 2005, the Hearing Examiner submitted his Findings and Recommendations, a copy of which is attached hereto as Exhibit A.

4. The Authority considered the Proposed Regulations and the Findings and Recommendations of the Hearing Examiner at its regularly scheduled Board meetings held on January 19, 2005 and February 8, 2005. At its February 8, 2005 Board meeting, the Authority adopted a resolution pursuant to which the Authority accepted the Findings and Recommendations of the Hearing Examiner.

5. A summary of the evidence and public comments submitted on the Proposed Regulations is set forth in the Findings and Recommendations of the Hearing Examiner attached hereto as Exhibit A.

6. For the reasons set forth herein and in the Findings and Recommendations of the Hearing Examiner, the Authority, by this Order, adopts as final regulations the Regulations attached to this Order as Exhibit B.

7. At the public hearing, most of the comments focused on the maximum tenant relocation expense reimbursement rates set forth in the Proposed Regulations. The Proposed Regulations provide for a maximum relocation benefit of \$4,000 for a singlewide manufactured

home and a maximum relocation benefit of \$8,000 for a doublewide manufactured home.

8. The Delaware statute that created the Authority requires the Authority to set "maximum relocation payments" payable to tenants who are required to relocate their manufactured homes due to a change in use initiated by the owner of the manufactured home community. Pursuant to 25 **Del.C.** §7013(a), the Authority is authorized to reimburse tenants for relocation expenses in an amount equal to the lesser of: (1) the actual reasonable expenses of moving the manufactured home and existing appurtenances to a new location within a 25 mile radius of the vacated manufactured home community, or (2) the maximum relocation payment established by the Authority's Board of Directors. The Delaware Legislature contemplated the possibility that it may not be economically or fiscally responsible for the Authority to reimburse dislocated tenants for 100% of the actual expenses of moving the tenant's manufactured home.

9. Since its formation, the Authority has reviewed and approved several applications for relocation benefits by dislocated tenants. The actual cost of moving a manufactured home will depend upon numerous factors, including the size of the home, the type of amenities added by the tenant, and the distance of the move. The Authority has reviewed applications relating to manufactured homes that contain additions such as decks, fences and sheds. These additions have a major impact upon the cost of relocating the home. While the Authority might prefer in all cases to reimburse dislocated tenants for all reasonable expense incurred by the tenant in relocating the tenant's manufactured home, the Authority recognizes its responsibility to administer the Trust Fund in a fiscally responsible manner so that all applicants that come before the Authority, both now and in the future, will be treated fairly. If the maximum relocation payment is set too high, in the future the Trust Fund may not have adequate funds in place to provide any benefits to future tenants.

10. The Authority believes that the maximum relocation benefits set forth in the Proposed Regulations are reasonable. The applications for benefits that have been submitted to the Authority to date confirm that these maximum amounts are reasonable at this time. As noted in the Hearing Examiner's report, the Authority has reviewed and approved tenant applications for expense reimbursement for relocating singlewide homes where the actual expenses of relocation totaled approximately \$4,000. The Authority has also reviewed and approved applications relating to the relocation multi-section homes where the actual expenses were less than \$8,000. The Authority recognizes that there will be circumstances, as there have been, where the actual expenses of relocating a manufactured home will exceed the maximum amounts set by this Authority. Indeed, such a scenario was contemplated by the drafters of the statute that

created the Trust Fund. Nevertheless, for the reasons set forth herein and in the Hearing Examiner's report, the Authority reaffirms its decision to set the maximum rate at \$4,000 for singlewide homes and \$8,000 for doublewide homes.

11. As the Trust Fund grows, and the Authority accumulates claims experience, the Authority has the power to adjust the maximum relocation benefits as well as the monthly assessment collected by the Authority from landlords and tenants. In the meantime, the maximum limits set forth herein provide a reasonable starting point.

12. Several comments were received relating to various other matters relating to the Proposed Regulations. The Authority has considered these comments, and for the reasons set forth in the Findings and Recommendations of the Hearing Examiner, the Authority believes that all such comments have been adequately addressed by the recommended changes set forth in the Hearing Examiner's Findings and Recommendations.

NOW THEREFORE, for the reasons set forth above and in the Findings and Recommendations of the Hearing Examiner, **IT IS ORDERED**:

1. That the "Delaware Manufactured Home Relocation Trust Fund Regulations" (the "Regulations") attached hereto as Exhibit B are adopted pursuant to 25 **Del.C.** §7011, *et. seq.* The Regulations adopted herein shall become effective ten (10) days after their publication in the *Delaware Registrar of Regulations*.

2. That pursuant to 29 **Del.C.** §1134, the Authority shall transmit a copy of this Order and the Regulations to the *Delaware Registrar of Regulations* for publication in the next issue of the *Delaware Registrar of Regulations*.

3. That a copy of this Order and the Regulations shall be mailed to each entity or persons that previously filed comments to the Proposed Regulations and to each person who has made a timely request for advance notice of the Authority's regulation making proceedings.

4. That the Authority reserves the right to hereafter alter, amend, or waive the Regulations adopted herein to the extent that the same may be allowed by law.

5. That the Authority reserves the jurisdiction and power to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE AUTHORITY:

Stevan D. Class, Chairperson
Terri Rock, Vice Chairperson
Jerome S. Heisler, Jr. Board Member
Caron Thompson, Board Member
Ken Fuchs, Board Member
Susan Hehman, Board Member
William Reed, Board Member

Raymond L. Paylor, Board Member
Edwin Speraw, Board Member

Findings and Recommendations of Hearing Examiner

Dated: January 3, 2005

Pursuant to its statutory authority, the Delaware Manufactured Home Relocation Authority (the "Authority") has proposed for adoption a comprehensive set of regulations to be used in the administration of the Delaware Manufactured Home Relocation Trust Fund ("Trust Fund"). The Trust Fund was established pursuant to 25 **Del.C.** §7012. The proposed regulations adopted by the Authority would, among other things: (a) establish criteria for tenant benefits, including the maximum relocation benefit available to a tenant for a single section home and a multi-section home; (b) criteria for landlord benefits, including the maximum relocation benefit for manufactured homes that have been abandoned or determined to be non-relocatable; (c) application procedures to be followed by applicants for benefits; and (d) application review procedures.

As required by law, a public hearing was held on Tuesday, November 30, 2004, beginning at 3:30 p.m. in the Richardson Conference Room located at the Offices of the Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901. A copy of the Proposed Regulations and notice of the hearing was published in the *Delaware Registrar* on November 1, 2004. Notice of the Hearing was also published in both the *Delaware State News* and the *News Journal* on October 29, 2004.

The Hearing

The hearing started at approximately 3:30 p.m. on November 30, 2004. As the Hearing Examiner designated by the Authority for purposes of scheduling the hearing, receiving comments from the public, summarizing the evidence, and making recommendations to the Authority, I presided over the hearing.

The Hearing was well attended, with in excess of 30 persons attending the hearing. Prior to entertaining comments from the public, the Notice of the Hearing and the Proposed Regulations that were previously published in the *Delaware Registrar* on November 1, 2004 were marked as Exhibit 1. The Affidavits of Publication, documenting the publication of Notice of the Hearing in the *News Journal* and *Delaware State News* on October 29, 2004, were marked as Exhibit 2, and the attendance sign in sheet has been marked as Exhibit 4.

Fifteen members of the public appeared at the hearing and presented comments on the Proposed Regulations. In addition, the following written comments were submitted either at the hearing or subsequent to the hearing:

- (1) Presentation of Marion F. Fetterman, Vice President of the Reybold Group (Exhibit 3);
- (2) December 6, 2004 letter from Jerome S. Heisler, Jr., Managing Member of the Reybold Group (Exhibit 5);
- (3) December 7, 2004 letter from John W. Banks (Exhibit 6);
- (4) December 7, 2004 emails from Barbara Lifflander (Exhibit 7);
- (5) December 5, 2004 letter from Danny J. Skeans (Exhibit 8);
- (6) December 1, 2004 email from R. G. Giesweidt (Exhibit 9);

The following Board Members were present: Stevan Glass, Chairperson of the Authority, Terri Rock, Vice Chairperson of the Authority, Caron Thompson, Susan Hehman, Ed Speraw, Ken Fuchs, and William Reed. Ruth Briggs King, Executive Director of the First State Manufactured Housing Association, attended on behalf of the Association.

After the hearing, a verbatim transcript of the hearing, consisting of 61 pages, was prepared. The record in this matter consists of the transcript of the hearing, and Exhibits 1 through 9.

Summary of Oral Comments Submitted at the Hearing

As noted above, fifteen members of the public spoke during the hearing. A brief summary of the comments relating to the proposed regulations is set forth below. I would note however that as one would expect in such proceedings, comments and issues were discussed that did not necessarily relate to the proposed regulations. The summary set forth below does not attempt to address comments having no bearing on the proposed regulations.

1. John W. Banks

Mr. Banks expressed his belief that the proposed maximum relocation benefits available for tenants for a singlewide and doublewide home (\$4,000 and \$8,000 respectively) was "a little bit low." He noted that some old homes have been "built on" and for a mover to take those out and try to move them and retain the usability of them would be rather expensive. (TR-8)

2. Barbara Lifflander

Ms. Lifflander, a resident of Pot Nets Bayside, expressed her belief that the \$4,000/ \$8,000 maximum relocation benefits available to tenants were "entirely unrealistic." (TR-11)

3. Bobbie Hemmerich

Ms. Hemmerich, a resident of Pine Woods Circle in Lewes, Delaware, commented that she owns an older singlewide manufactured home that has a "tip out" that has been added. Her manufactured home has a porch and a deck and she commented that all of these additions would make it impossible to move. Ms. Hemmerich also expressed concern

about her ability to find a location within 25 miles of her current residence to relocate her manufactured home, if necessary. (TR-15-16)

4. Arthur Norton

Mr. Norton stated that he had difficulty in locating the address of the Authority and that his landlord had not been collecting the assessment. (TR-20-21)

5. Andy Strine

Mr. Strine stated that he owns a number of manufactured home communities in Kent County, Delaware and that his company has facilitated the move of several individuals out of Victorian Village. Based on those moves, he observed that his company was able to develop a "rough idea" of the cost that it takes to move a manufactured home. His estimate of the cost to move a 14 x 76 single section home was approximately \$3,000. His estimate of the cost of moving a 28 x 76 foot home was \$7,000. Mr. Strine noted that there will be instances where the owners of manufactured homes have built on additions and porches that will make it difficult to move the homes. (TR-27)

Mr. Strine was part of the group that helped draft the legislation that set up the Authority. Mr. Strine commented that before the adoption of the statute, the landlord could give the tenant six months notice to move and there was no compensation payable to the tenant to assist the tenant with the expense of moving. (TR-28) Mr. Strine commented that the benefits available under the statute only apply where there has been a change of use, and the benefits are not and should not be available to a tenant who is being evicted. (TR-28)

Mr. Strine stated that in enacting the legislation the drafters were looking at the legislation as a "safety net" for the people that "really needed it the most". The group was looking at people who could not afford to relocate their house if their house was not relocatable. According to Mr. Strine, the fund would give these people some funds to go out and purchase another house in another community, or give them the security deposit to move into an apartment. (TR-29) He recommended that the Authority not do anything that would end up bankrupting the fund. Mr. Strine expressed his belief that the \$4,000/\$8,000 maximum relocation benefit available for tenants was "not that far off target." (TR-29)

6. James Skeans

Mr. Skeans resides in Dover, Delaware. Regarding the comments of Mr. Strine, Mr. Skeans expressed his belief that "they may be subsidizing the price a little bit, to get someone else in their park." This latter suggestion was denied by Mr. Strine. (TR-30) Mr. Skeans expressed concern about the difficulty his mother, Geraldine Skeans, was having relocating her manufactured home. He urged people to contact their representative to push for changes in the legislation. He suggested that members of the legislature are

starting to understand that the \$4,000/\$8,000 is not enough. (TR-31-32)

7. Danny J. Skeans

Mr. Skeans presented comments on behalf of his mother, Geraldine Skeans, who is a resident of Victorian Village. He expressed concern that his mother was sending her share of the \$3.00 assessment to her landlord, but had no way of knowing if the landlord had in fact been sending the money directly to the Authority. He also expressed concern that the Authority had no "police action" to know how much money the Authority should be receiving each month.

Mr. Skeans did not believe that the \$4,000/\$8,000 maximum relocation benefit available to tenants was adequate. He presented several estimates for relocating his mother's multi-section home. The estimates presented were as follows:

(a) Messick Mobile Home - \$14,690

(b) Iplenski Mobile Home - \$11,136

(c) Marshall & Bailey Contracting - \$14,900 (exclusive of electric hookups)

(d) Ronald Graham - \$7,900 (exclusive of any utilities, plumbing or air conditioning) Mr. Skeans commented that it could cost \$3,000 just to get the electric hooked back up. (TR-34)

Mr. Skeans also expressed concern about the difficulty his mother was having finding another location. His mother has a pet that requires a fenced in yard, and according to Mr. Skeans, most manufactured home communities will not allow the tenant to erect a fence. (TR-35) He also expressed his concern that he did not want the Trust Fund to be bankrupt, but he also did not want his mother to be bankrupt. (TR-37)

8. Alma Bringham

Ms. Bringham resides at the Sweet Briar Mobile Home Park. She did not believe that the \$4,000/\$8,000 maximum relocation benefit for tenants was sufficient. (TR-39) She also commented that none of the parks in the Sussex County area are now taking singlewides, which would make her manufactured home unrelocatable. (TR-39) She also expressed concern that tenant assessments that were collected prior to the effective date of the assessment have not been properly refunded to the tenants by the community owners.

9. Charles Kolodjdski

Mr. Kolodjdski resides at High Point Park. Mr. Kolodjdski also expressed his concern that the maximum tenant relocation benefits were "a little on the low side." He commented that approximately 7 years ago he purchased his doublewide and the cost of setting up his home, including plumbing, electric, air conditioning, and footings, was in excess of \$4,000. (TR-42) He referred to a tenant in Victorian Village who has to relocate her home, and the cheapest quote she has been given to move the home was \$12,000. (TR-44)

10. John W. Paradee, Esquire

Mr. Paradee pointed out a typographical error in Section 1.2.2 of the Proposed Regulations. He suggested deleting the semicolon and the "C" in the parentheses located in Section 1.2.2.

Mr. Paradee noted that proposed Section 1.2.1 identifies certain situations where a tenant would not be entitled to relocation benefits. The Proposed Regulations provide that where the landlord at the landlord's expense moves a tenant's manufactured home by "mutual consent" to another lot in the manufactured home community, or to another manufactured home community, the tenant would not be entitled to any benefits. Mr. Paradee recommended eliminating the "mutual consent" requirement. Mr. Paradee suggested that if a landlord moved a manufactured home without the tenant's consent, under the regulations, the tenant might qualify for relocation benefits. Mr. Paradee commented that the home could only lawfully be moved without the tenant's consent if the tenant had been lawfully evicted or the home is abandoned by the tenant. (TR-47) Mr. Paradee commented that rather than create a question or an issue about whether or not the tenant qualifies for relocation benefits based on who consented to the move, the Authority should strike the phrase "by mutual consent" from the regulations. If the landlord pays for the relocation, the tenant should not be entitled to any benefits, whether the tenant consented to the move or not. (TR-48)

Mr. Maly stated that the amount that a tenant should be reimbursed toward the cost of relocating his home should be in the "\$10,000-\$15,000 area for a doublewide at the current market." (TR-48) He also suggested that whatever number is set that the rate should be keyed to a rate or index such as the prime rate so that as the economy changes and the costs change, it would not be necessary to keep revising the law. (TR-49) He also expressed concern over the provision in the statute that would allow the landlord to receive benefits. (TR-49)

11. Richard Maly12. Ruth Briggs King

Ms. King addressed comments by other speakers who had expressed concern that the Authority had not been receiving funds from one or more manufactured home communities. She indicated that some of the communities mentioned during the hearing have been contributing to the fund. (TR-50) She also commented that there are some tenants in some areas who are not contributing to the fund.

13. Ron R. Bachand

Mr. Bachand discussed some of the difficulties involved in relocating a manufactured home. He noted that it can take several days to move a home, leaving the tenant without a place to live. (TR-52-53) He also expressed concern that tenants would have difficulty in finding a place for their pet to stay while the home is being moved. He noted that there

are costs associated with properly reinstalling carpet in a manufactured home. (TR-54)

14. John Walsh

Mr. Walsh stated that the Authority needs to consider the expenses people have to pay to live somewhere else during the time it takes to relocate a home, as well as the cost associated with moving some of the outbuildings located on the property. Mr. Walsh expressed concern about the maximum benefit for homes that are deemed to be non-relocatable. He noted that there are manufactured homes in communities in the State of Delaware that have a value in excess of \$100,000.

15. Gina Miserendine

Ms. Miserendine represented the Delaware Housing Coalition. She indicated that her group was working to help tenants establish cooperatives and establishing "resident owned communities." She suggested that the Authority consider using relocation fees to enable displaced tenants to purchase an ownership interest in a community. (TR-58-59)

Summary of Written Comments Submitted at the Hearing

1. Marion F. Fetterman (Exhibit 3)

Marion F. Fetterman, Vice President of the Reybold Group, submitted written comments (Exhibit 3) with projected estimates for breakdown, transport, and reset of a single-section and multi-section home. The projected costs of moving a singlewide home a distance of 25 miles or less into a Reybold community is \$3,090, exclusive of any cost to reinstall skirting or footers. The estimated labor cost to reinstall skirting is approximately \$250. The cost of installing new skirting is estimated to be \$850. If footers are required, the estimated cost is \$1,500. For a multi-section home, the estimated cost is \$6,620, exclusive of skirting installation and footers. The costs (exclusive of skirting and footers) for moving a manufactured home into a Reybold community a distance of 25-50 miles are estimated to be \$3,200 and \$6,840 respectively. (Ex. 3)

2. John W. Banks – December 7, 2004 Letter (Exhibit 6)

Mr. Banks recommended retaining the "mutual consent" requirement in Section 1.2.1. Otherwise, according to Mr. Banks, the park owner "could put a home in a bad location." Because in his view many homes are only worth "\$0", Section 1.7.3 would result in the homeowner receiving no money. He did not agree with this. Mr. Banks noted that in his opinion Section 1.8 could cost \$300-\$500 and the home could be worth nothing because of age or condition, so the tenant would be "out 300-500 dollars". Mr. Banks also expressed his opinion that manufactured home communities will no longer accept singlewide homes, and that many of the homes in parks are singlewides. (Ex. 6)

3. Barbara Lifflander (Exhibit 7)

As noted, Ms. Lifflander submitted written comments in the form of an email. She commented that the Authority has “no policing power” at its disposal.

She also commented that the regulations are “too loosely constructed, ambiguous in some places, with loopholes which favor landlords, i.e., the \$4,000-\$8,000 sum.” She expressed concern that there was not enough input from the most severely impacted class of people and that public comment sessions should be held in local communities or their churches.

She expressed concern that the regulations cover “disparate land rent communities” ranging from trailer parks with one set of problems to six figure parks which offer attractive amenities and charge “exorbitant land rents.” According to Ms. Lifflander, they are not comparable and this is a recurring theme in the regs and therefore it is unfair and “illegal”.

She expressed concern that the section on homes which are unrelocatable is most problematic and needs work and clarification to avoid future dispute and hardship.

With respect to the provision of the regulations requiring the tenant to obtain at the tenant’s expense an appraisal prepared by a certified manufactured home appraiser, she expressed her belief that there are no experts in this area of housing. She noted that the Authority is supposed to have a list of said experts, and expressed a desire to review this list.

4. Danny Skeans – December 5, 2004 (Exhibit 8)

Mr. Skeans expressed concern about the possibility that a tenant may pay his or her share to the landlord and if the landlord does not remit the funds to the Authority this could impact the tenant’s ability to obtain benefits. He claimed that the Regulations do not address the landlord’s responsibility to also pay his or her share of the assessment. In his written comments, he reiterated his belief that the \$4,000/\$8,000 maximum benefit was not sufficient. He submitted proposed estimates to move his mother’s home ranging from a low of \$7,900 (exclusive of utility disconnections or reconnections) to a high of \$14,900 (exclusive of utility disconnections or reconnections).

5. Jerome S. Heisler – December 6, 2004 Submittal (Exhibit 5)

Mr. Heisler provided an analysis based on certain assumptions showing the relationship between relocation caps, dwelling unit buyout caps, and funds available based on various per unit assessments. The purpose of his analysis was to attempt to demonstrate several matters that the Authority has to take into consideration under the relocation and buyout cap discussions. According to Mr. Heisler, the cap for buyouts depends on the relocation reimbursement rate and the amount collected by the Authority. Additionally, according to Mr. Heisler, if more than 120 units are retired in a year the fund may be insolvent. Furthermore, Mr. Heisler opined that the \$3.00 monthly

assessment is not sufficient if something unexpected is drawn from the fund. In conclusion, Mr. Heisler states that his study is “only instructive in a sense that” the Authority’s funds are limited.

6. R. G. Geisweidt-December 1, 2004 Email (Exhibit 9)

R. G. Geisweidt submitted an email commenting that the regulations should provide for compensation for damage to a home while the home is being relocated, such as damage to water pipes.

Recommendations

Section 1.2.2

With respect to Mr. Paradee’s recommendation regarding the typographical error in Section 1.2.2, I recommend that Section 1.2.2 of the Proposed Regulations be modified by deleting the phrase “or (c) the tenant abandons the manufactured home;” and re-designating the deleted language as Section 1.2.3. I further recommend that the existing Section 1.2.3 be re-designated as “1.2.4.” The provisions in the Regulations that identify the situations under which a tenant is not entitled to compensation are statutory provisions required by 25 **Del.C.** §7013(b). Section 1.2.1

Mr. Paradee recommends deleting the phrase “mutual consent” from Proposed Regulation 1.2.1. I recommend rejecting this recommendation. The language set forth in the Proposed Regulations is, for the most part, a verbatim statement of what is specifically set forth in 25 **Del.C.** §7013(b)(1). Mr. Paradee expressed concern that by not deleting the term “mutual consent”, a tenant might be entitled to reimbursement for relocation expenses for homes moved by the landlord without the “consent of the tenant”. The Regulations and the statute make it clear that if a tenant abandons the manufactured home, the tenant would not be entitled to any relocation expense reimbursement benefits. If a tenant elects to abandon a home, the statute and the regulations do however provide for some compensation to the tenant to compensate the tenant for the loss of the home. If the landlord moves the tenant’s manufactured home without the tenant’s consent as a result of eviction proceedings, the tenant would not be entitled to any relocation benefits since the tenant would not have incurred any such expenses. I am convinced that the intent of the statute is to reimburse the tenant, subject to the condition of reasonableness and any maximum limit established by the Authority, to expenses actually incurred by the tenant in relocating the tenant’s manufactured home.

Lodging Expenses

Mr. Bachand suggested that lodging expenses should be recoverable. I recommend that no changes be made in the Proposed Regulations to provide for the reimbursement of lodging expenses. The expenses that are eligible for

reimbursement are set forth in 25 Del.C. §7013(a). Subject to the maximum benefit determined by the Authority, a tenant is only entitled to be reimbursed for **actual** reasonable expenses of **moving** the manufactured home and existing appurtenances to a new location within a 25 mile radius of the vacated manufactured home community. Because lodging expenses are not an actual expense of “moving” the manufactured home, it is my opinion that there is no statutory basis for the Authority to reimburse these expenses.

Manufactured Home Cooperatives

Ms. Miserendine suggested that the Authority consider using relocation expense payments to enable displaced tenants to apply the relocation fee toward the purchase price of an interest in a “resident owned community”. I recommend rejecting this proposal because there is no statutory basis for reimbursing a tenant for any cost associated with acquiring an interest in a “resident owned community” or any other real estate. Subject to any maximum limits set by the Authority, the intent of the statute is to provide for reimbursement of actual and reasonable relocation expenses incurred by a tenant or to compensate the tenant for the value of a manufactured home that is determined to be non-relocatable or is abandoned. If a manufactured home is determined to be non-relocatable or is abandoned by the tenant, the tenant is free to use any benefit payment made to compensate the tenant for the loss of the home in whatever way the tenant deems appropriate.

Barbara Lifflander’s Comments

Ms. Lifflander submitted written comments to the Proposed Regulations (Exhibit 7). While certainly made in good faith, the bulk of Ms. Lifflander’s comments with respect to the Regulations consist of general observations and do not contain any specific recommendation for changes. However, Ms. Lifflander’s concern about the availability in Delaware of a “certified manufactured home appraiser” is one that needs to be addressed by the Authority. However, I do not recommend any change to the Proposed Regulations, because the Delaware statute specifically requires that the fair market value of a home be based upon a “board-approved, certified manufactured home appraiser.” See 25 Del.C. §7013(c)(2). Ms. Lifflander’s other written comments (the Authority has “no policing power”, the Regulations are “too loosely constructed, ambiguous in some places, with loopholes which favor landlords”) do not in my opinion warrant any changes to the Proposed Regulations at this time.

Maximum Tenant Relocation Expense Reimbursement Rates

The Delaware statute requires the Authority to set “maximum relocation payments.” Indeed, 25 Del.C.

§7013(a) authorizes the payment of a relocation reimbursement to a tenant in an amount equal to the lesser of: (1) the actual reasonable expenses of moving the manufactured home and existing appurtenances to a new location within a 25-mile radius of the vacated manufactured home community including, but not limited to, the cost of taking down, moving, and setting up the home in a new location; or (2) the maximum relocation payment which must be established by the Authority’s Board of Directors. Clearly, the Delaware legislature contemplated the possibility that it may not be economically or fiscally responsible for the Authority to reimburse dislocated tenants for 100% of the actual reasonable expenses of moving the tenant’s manufactured home. The actual cost of moving a manufactured home will depend upon numerous factors, including the size of the home, the type of amenities added by the tenant, and the distance of the move. There are manufactured homes with additions such as decks, fences, and sheds. Some contain drywall typical of stick built houses. In an ideal world I am certain that the Authority would want to reimburse dislocated tenants for each and every reasonable expense incurred by the tenant in relocating the tenant’s manufactured home. However, the Authority must administer the Trust Fund in a fiscally responsible fashion so that all applicants that come before the Authority, both now and in the future, will be treated fairly. If the Trust Fund is not managed properly, the Trust Fund could become insolvent to the detriment of future applicants. Accordingly, in setting a maximum relocation payment amount, in my view the Authority needs to balance a tenant’s desire to receive maximum compensation for the tenant’s out of pocket costs with the need to maintain the financial stability of the Trust Fund. If the maximum payment is set too high, the Authority’s ability to provide benefits to future applicants would be jeopardized.

The Proposed Regulations would provide for a \$4,000.00 maximum relocation payment for a singlewide home and an \$8,000.00 maximum relocation payment for a doublewide home. For the reasons set forth below, I recommend that the Authority reaffirm its prior decision and retain the \$4,000.00/\$8,000.00 maximum relocation benefits set forth in the Regulations.

The bulk of the discussion at the public comment session of course focused on this issue. Several commenters expressed concern that the maximum relocation benefits were too low. A representative of the manufactured home community owners in Delaware suggested that the proposed maximum benefit amounts were “not that far off target” based upon personal experience. Danny Skeans, commenting on behalf of his mother, presented estimates for relocating his mother’s multi-section home that ranged from a low of \$7,900 (exclusive of utility relocation costs) to a high of \$14,690. With respect to Ms. Skeans’ home, it is clear that Ms. Skeans and her son, Danny Skeans, have made

reasonable efforts to obtain competitive bids in an effort to minimize the actual cost of relocating the home. It should be noted that Ms. Skeans' home, perhaps like many manufactured homes, has several built on items that were not originally a part of the manufactured home, such as a deck and a fence. Ms. Skeans' manufactured home, also contains drywall which creates problems with respect to physically transporting the manufactured home from one location to another. Setting the maximum relocation benefit at \$4,000/\$8,000 will at times result in an applicant being reimbursed for less than the actual expense incurred in relocating the home. However, the Authority has received several applications for relocation benefits. Two applications for the relocation of a singlewide home sought reimbursement for actual expenses of \$4,018 and \$4,070 respectively. Three applications for the relocation of multi-section homes requested reimbursement for actual expenses of \$7,552, \$8,125, and \$11,136 respectively. It is true, as in the case of Ms. Skeans and others, that the cost of moving a doublewide home in some cases will exceed \$8,000. Nevertheless, while the amount of claims data available at this time is not substantial, the data does suggest that setting a maximum benefit at \$4,000 for singlewides and \$8,000 for doublewides is not unreasonable. Based upon the public comments and the Authority's existing claims experience, it is my belief that the \$4,000/\$8,000 maximum benefit amount represents a reasonable amount at this time.

The Authority will soon face the difficult task of setting the maximum payment that will be available to a tenant whose manufactured home is determined to be non-relocatable. The value of a manufactured home can be substantial, and some have suggested that there are homes with values in excess of \$100,000. The Authority will have to balance the interests of those displaced homeowners whose homes are relocatable with the interest of those whose homes are not. The maximum payment for relocation expenses, as set by the Authority, will have a substantial impact on the projected funds that will otherwise be available to reimburse manufactured homeowners whose homes are determined to be non-relocatable. Hopefully, most of the homes that need to be moved due to a change in use will be "re-locatable". Setting the maximum amount for relocation expenses will assist the Authority in determining what maximum payment to set for those homes that are determined to be non-relocatable. The \$4,000.00/\$8,000.00 maximum is in my opinion a reasonable place to start. As the fund grows, and the Authority accumulates more claims experience, the Authority can adjust this amount and perhaps increase the monthly assessment if it deems appropriate.

Finally, one commentator suggested that the regulations provide for periodic increases in the maximum payment based upon changes in the "prime rate" or cost of living. I do not recommend doing so at this time. The Authority is empowered to exercise its judgment in setting the maximum

benefits. This decision should not, in my view, be based on a formula tied to some index.

Conclusion

For the reasons set forth above, I recommend to the Authority that: (1) the \$4,000/\$8,000 maximum benefit for tenant relocation expenses, as set forth in the Proposed Regulations, be retained, (2) that Section 1.2.2 of the Proposed Regulations be modified by deleting the phrase "or (c) the tenant abandons the manufactured home;" and re-designating the deleted language as Section 1.2.3, and (3) that the existing Section 1.2.3 be re-designated as "1.2.4."

As noted above, several comments were made that did not specifically relate to the regulations. I have not attempted to address these comments in this report. A copy of the transcript of the hearing and each written submittal have however been provided to the Board.

Respectfully submitted,

WILLIAM A. DENMAN
Hearing Examiner
Parkowski, Guerke & Swayze, P.A.
116 W. Water St.
PO Box 598
Dover, DE 19903

201 Delaware Manufactured Home Relocation Trust Fund Regulations

The Authority is granted authority to establish rules and regulations and establish criteria for the disbursement of benefits available to landlords and tenants under the provisions of 25 Del.C. §7011, et. seq. (the "Act"). The regulations set forth below establish criteria for benefits eligibility, pursuant to the statute, application procedures, application review procedures, and payment procedures.

1.0 Criteria for Tenant Benefits

1.1 Only "Tenants", as defined under the Act, are entitled to benefits under the Act. A Tenant is defined to mean an owner of a manufactured home who has tenancy of a lot in a manufactured home community. A manufactured home community refers to a parcel of land where two or more lots are rented or offered for rent for the placement of manufactured homes. Notwithstanding anything stated herein to the contrary, a Tenant shall not be entitled to any of the benefits described herein unless all of the statutory requirements set forth in the Act have been met.

1.2 A Tenant is entitled to relocation benefits under the Act if the Tenant is required to move due to a change in use or conversion of the land in a manufactured home community. A Tenant is not entitled for compensation for

relocation if:

1.2.1 the Landlord (at the Landlord's expense) moves the Tenant's manufactured home by mutual consent to another lot in the manufactured home community or to another manufactured home community; or

1.2.2 the Tenant is vacating the manufactured home community and so informed the Landlord before notice of the change in use was given by the Landlord; ~~for~~ ~~(e)~~

1.2.3] the Tenant abandons the manufactured home; or

~~1.2.3~~[1.2.4] the Tenant has failed to pay the Tenant's share of the Relocation Trust Fund assessment during the course of his or her tenancy.

1.3 The maximum relocation payment available to a Tenant is \$4,000.00 for a single section home or \$8,000.00 for a multi-section home.

1.4 If a Tenant is required to move due to a change in use and complies with the statutory requirements of 25 Del.C. §7013, the Tenant is entitled to payment from the Relocation Trust Fund of the lesser of:

1.4.1 the actual relocation expenses of moving the manufactured home and existing appurtenances to a new location within a 25 mile radius of the vacated manufactured home community, or

1.4.2 the maximum benefits available under Section 1.3.

1.5 Moving expenses which are eligible for reimbursement include the cost of taking down, moving and setting up the manufactured home in the new location.

1.6 In certain circumstances, a manufactured home may be considered non-relocatable. If, based upon the criteria described herein, a Tenant's manufactured home is determined by the Authority to be non-relocatable, the Tenant may qualify for compensation to reimburse the Tenant for the value of the non-relocatable home subject to the limitations set forth in the Act.

1.7. Whether or not a home can or cannot be relocated will be determined by the Authority based upon the following criteria:

1.7.1 the availability of a replacement home site within a 25 mile radius of the vacated manufactured home community;

1.7.2 the feasibility of physical relocation, including the ability of taking down, moving and setting up the home in a new location without causing significant structural damage to the manufactured home in the process;

1.7.3 the appraised value of the manufactured home in comparison to the projected cost of relocating the manufactured home to a new location.

1.8 If the Authority determines that the Tenant's manufactured home cannot be relocated, the Tenant shall obtain, at the Tenant's expense, an appraisal prepared by a certified manufactured home appraiser for purposes of

determining the fair market value of the home and any existing appurtenances. The appraisal shall exclude the value of the underlying land. The maximum benefits available to the Tenant under such circumstances shall be determined by the Board for a single section home and a multi-section home following the completion of an actuarial study to be performed under the direction of the Authority. Subject to the maximum limits, the amount of compensation that will be paid to the Tenant will be equal to the fair market value of the home based upon the appraisal.

1.9 To be eligible for compensation for a non-relocatable home, in addition to the application provided for in Section 3 hereof, the Tenant must deliver to the Authority a current State of Delaware title to the home, duly endorsed by the owner or owners of record, with valid releases of all liens shown on the title, and a tax release.

1.10 In lieu of the foregoing benefits, a Tenant may elect to abandon the manufactured home in the manufactured home community and collect from the Trust Fund, in lieu of any other benefits available under the Act, the sum of \$1,500 for a single section home or \$2,500 for a multi-section home. To qualify for this payment, the Tenant must deliver to the Authority a current State of Delaware title to the manufactured home duly endorsed by the owner or owners of record, valid releases of all liens shown on the title, and a tax release.

2.0 Criteria for Landlord Benefits

2.1 If pursuant to the Act and these regulations, a manufactured home is determined to be non-relocatable or a Tenant abandons the home, upon application by the Landlord duly submitted to the Authority, a Landlord of a manufactured home community is entitled to receive from the Relocation Trust Fund payment in an amount determined by the Authority to be sufficient to remove and/or dispose of the manufactured home. The maximum relocation payment available to a Landlord is \$4,000.00 for a single section home or \$8,000.00 for a multi-section home. To qualify for this benefit, the Landlord must submit an application pursuant to the provisions of Section 3. Notwithstanding anything stated herein to the contrary, a Landlord shall not be entitled to any of the benefits described herein unless all of the statutory requirements set forth in the Act have been met.

2.2 Upon receipt of the title documents from the Tenant for the manufactured home that is considered to be non-relocatable or abandoned pursuant to the Act, the Authority will relinquish the title to the Landlord to facilitate the removal and/or disposal of the home from the manufactured home community. Within ten (10) calendar days after the removal and/or disposal of the manufactured home by the Landlord, the Landlord shall notify the Authority in writing of the amount of funds received by the Landlord, if any, from any subsequent sale or disposal of the manufactured home.

and a copy of all documents relating to the removal and/or disposal shall be provided to the Authority, including documents relating to any expenses incurred by the Landlord in removing and/or disposing of the home.

2.3 Within thirty (30) days after receipt of the information and documents required under the Act and these regulations, the Authority shall cause a voucher to be issued to the Division of Revenue of the Department of Finance, directing the Division to issue a check in a designated amount to the Landlord which amount shall represent the amount determined by the Authority to be sufficient to cover the cost of the removal and/or disposal of the manufactured home, less any profit realized by the Landlord from the removal and/or disposal of the home, subject to the maximum relocation payment set forth in Section 2.1 hereof.

2.4 A Landlord shall not be entitled to any payment from the Trust Fund if the Landlord has failed to pay the Landlord's share of the total Trust Fund assessment during the course of the tenancies relating to the manufactured home community or if the Landlord has failed to remit the Tenant's share of said assessment.

3.0 Application Procedures

3.1 The Authority will provide application forms (Appendix A and Appendix B) on which applicants for benefits under the Act may apply for benefits.

3.2 In the case of an application for benefits under the Act by a Tenant, the application shall be in the form of Appendix A and shall contain the following information:

3.2.1 name of the Tenant;

3.2.2 mailing address of the Tenant;

3.2.3 telephone number of the Tenant;

3.2.4 manufactured home community park name and address;

3.2.5 space number for the manufactured home;

3.2.6 a description of the manufactured home, including its size, year, manufacturer, and whether the manufactured home is a single-wide or a double-wide;

3.2.7 a copy of the title or ownership documents relating to the manufactured home;

3.2.8 a copy of the notice of termination or non-renewal of the Tenant's rental agreement due to a change in use of land;

3.2.9 in the case of an application for relocation assistance, a copy of the contract between the Tenant and a licensed moving or towing contractor for the moving expenses for the home;

3.2.10 in the case of any requests for compensation for a manufactured home considered by the Tenant to be non-relocatable, a description of the facts which the Tenant relies upon in support of the Tenant's contention that the manufactured home is in fact non-relocatable based upon the criteria provided for in the Act and these regulations, together with any and all documents relating to

the purchase of the manufactured home and any improvements made to the manufactured home by the Tenant;

3.2.11 a certification by the Tenant that the Tenant has paid the Tenant's share of the Trust Fund assessments during the course of the Tenant's tenancy.

3.3 In the case of an application for benefits under the Act by a Landlord, the application shall be in the form of Appendix B and shall contain the following information:

3.3.1 the name of the Landlord;

3.3.2 the name of the manufactured home community;

3.3.3 the mailing address of the Landlord;

3.3.4 the telephone number of the Landlord and if the Landlord is not an individual, the name of the designated representative of the Landlord;

3.3.5 a description of each manufactured home for which the Landlord is seeking financial assistance;

3.3.6 a copy of the notice of termination or non-renewal of the rental agreement due to a change in use of land;

3.3.7 a contract with a licensed moving or towing contractor for the removal and/or disposal of the manufactured home;

3.3.8 an itemization of all expenses, other than the expenses reflected in the contract between the Landlord and the moving or towing contractor, together with associated documents, which the Landlord anticipates will be incurred in removing and/or disposing of the manufactured home from the manufactured home community;

3.3.9 a certification by the Landlord that the Landlord has paid the Landlord's share of the total Trust Fund assessment during the course of the tenancies for the manufactured home community and has remitted to the Authority the Tenant's share collected by the Landlord.

4.0 Assistance and Data Gathering

4.1 When requested, the Authority shall provide assistance to Landlords and Tenants in completing application forms.

4.2. The Authority's staff may conduct on-site inspections and/or phone interviews with the applicants to acquire data necessary to enable the Authority to carry out its duties under the Act.

5.0 Application Review Procedures

5.1 The Authority has the power to approve applications pursuant to the Act.

5.2 The Authority or the Authority's staff will review applications and determine whether or not the procedural requirements under the Act and these regulations have been met. The Authority shall not be required to render a decision on any application unless and until the Applicant has

submitted a completed application prepared in accordance with the Act and these regulations, and the Authority shall have the right to reject any application that does not comply with the procedural requirements of the Act or these regulations.

5.3 The Board of Directors of the Authority, or a committee of the Board designated to make such decisions (if authorized by the Board of Directors) shall endeavor to render a decision with respect to each application no later than thirty (30) days after receipt by the Authority of a completed application prepared in accordance with the Act and these regulations.

5.4 If the Authority approves an application, benefits available under the Act shall be made in the form of a voucher issued to the Division of Revenue of the Department of Finance, directing the Division to issue a check in a designated amount to the Applicant. Before any payment will be made by the Authority to the Applicant, the Applicant must provide the Authority with documentary evidence showing that the expenses for which the Applicant seeks reimbursement have been paid by the Applicant. Notwithstanding the foregoing, if an Applicant can demonstrate that due to financial hardship the Applicant cannot make such payments in advance of the payment of any benefit available under the Act, the Authority may issue a two-party check made payable to the Applicant and the contractor. Under such circumstances, the original check will be mailed to the Applicant and a copy will be mailed to the contractor.

5.5 If at the time the application is approved, the Trust Fund does not have sufficient monies to make a payment to an Applicant, the Authority shall issue a written promissory note to the Applicant for funds due and owing. Promissory Notes shall be redeemed in order of issuance of the notes as additional monies come into the Trust Fund.

5.6 If based upon the information submitted in a Tenant's completed application, the Authority determines that the Tenant's manufactured home cannot be relocated based upon the criteria set forth herein, the Tenant shall be directed to obtain, at the Tenant's expense, an appraisal prepared by a certified manufactured home appraiser, for purposes of determining the fair market value of the home and any existing appurtenances as sited, exclusive of the value of the underlying land. Within thirty (30) days after receipt of the appraisal, the Authority shall advise the Tenant of the benefits that the Authority will pay to the Tenant for the non-relocatable home. Payment shall be made to the Tenant in the manner described herein, within ten (10) days after the Tenant provides the Authority with all the documents required, including the current title to the home. Upon receipt of the title, the Authority will relinquish the title to the Landlord to facilitate the removal and/or disposal of the home from the manufactured home community.

5.7 With respect to applications submitted by the

Landlord for costs associated with the removal and/or disposal of non-relocatable or abandoned manufactured homes, within thirty (30) days after the receipt of the completed application and all necessary documents and information, including the documents described in Section 5.4 hereof, the Authority shall determine the cost of removing and/or disposing of the manufactured home and shall (subject to the maximum limits set forth in Section 2.1 hereof) issue payment for said amount to the Landlord, less any profit realized by the Landlord from the removal and/or disposal of the home.

5.8 If an Applicant disagrees with the Authority's decision with respect to any application, the Applicant may petition the Authority to reconsider its decision by requesting an administrative review with the Authority no later than fourteen (14) calendar days after the Authority's initial decision on the application. The request:

5.8.1 must be in writing;

5.8.2 must be received by the Authority within the aforesaid fourteen (14) day period; and

5.8.3 must include reasons and documentation in support of the Applicant's position.

5.9 After receipt of the Applicant's letter, the Authority will schedule an administrative review of the application at a regularly scheduled meeting of the Board of Directors of the Authority. Notice of the administrative review meeting will be sent to the Applicant at least seven (7) days in advance of the meeting. At the administrative review meeting, the Applicant shall present information or documentation to support the Applicant's position. At the administrative review meeting, the Authority will render a decision and notify the Applicant of its decision and the reason for the Authority's decision. The decision of the Authority shall be final and conclusive.

6.0 Moving and Towing Contractors

6.1 It shall be the responsibility of the Tenant and/or Landlord to enter into a contract with a towing or moving company for purposes of relocating, removing and/or disposing of a manufactured home. The contractor must be duly licensed to engage in said business in Delaware. The Authority shall not be responsible for the performance of the contractor, or have any obligation to the contractor, financial or otherwise.

7.0 Certified Manufactured Home Appraisers

7.1 The Authority shall maintain a list of certified manufactured home appraisers who are authorized and qualified to appraise manufactured homes in Delaware.

7.2 The appraiser shall be an independent appraiser who is qualified to appraise manufactured homes in Delaware.

7.3 Any appraisal required under the Act shall include the certified manufactured home appraiser's opinion as to

the fair market value of the manufactured home as sited, and any existing appurtenances, but shall exclude the value of the underlying land. The appraisal shall take into consideration the replacement cost of the manufactured home, together with the age, physical condition and appearance of the home.

7.4 Any appraisal submitted by the appraiser shall include the appraiser's professional qualifications, a summary of the salient facts and conclusions of the appraiser, a description of the manufactured home, its condition, and the appraiser's analysis and conclusions.

7.5 The appraiser shall provide at least one original and three copies of each report to the Authority.

APPENDIX A

**DELAWARE MANUFACTURED HOME
RELOCATION AUTHORITY
TENANT APPLICATION FOR RELOCATION
ASSISTANCE**

I hereby request assistance from the Delaware Manufactured Home Relocation Trust Fund as set forth in 25 Del.C. §7012. By signing this form, I certify that I am a tenant as defined in 25 Del.C. §7003(u) and that I have paid my share of the total Trust Fund assessment during the course of my tenancy. I understand that it is a class A misdemeanor for a tenant or a tenant's agent to file any notice, statement, or other document required hereunder which is false or contains a material misstatement of fact.

(Signature of Tenant) (Date)

(Social Security No.)

TENANTS NAME _____
(Please Print)

PARK NAME _____

UNIT _____
ADDRESS: _____

Space No.

CITY/STATE/ZIP CODE: _____

Mailing Address if different from where unit is:

PHONE NUMBER: _____

SINGLE-WIDE _____ DOUBLE-WIDE _____

UNIT SIZE: _____ YEAR: _____

MANUFACTURER: _____

Please attach: (a) a copy of your title or a notarized document showing ownership; (b) a copy of the notice of termination or non-renewal of your rental agreement due to a change in use of land; (c) if you are seeking relocation expenses, you must submit a copy of your contract with a licensed moving or towing contractor for the moving expenses for your home; (d) if you believe that your home is non-relocatable, provide a brief description of the reason for your belief. (If the Authority determines that your home is in fact non-relocatable, you must obtain at your expense, an appraisal prepared by a certified manufactured home appraiser. A list of qualified appraisers may be obtained by contacting the Authority). If you elect to abandon your home, please so note below. Under the Act, the maximum benefit payable to a Tenant who elects to abandon his or her home is \$1,500.00 for a single section home and \$2,500.00 for a multi-section home.

Type of Benefits Applied For: (Check the Appropriate Benefit and Amount Requested)

A. Relocation Expenses of Moving Home \$ _____

B. Abandonment Payment \$ _____

C. Non-Relocatable Home Payment \$ _____

This form must be completed and returned along with the required documents to:

Delaware Manufactured Home Relocation
Authority
Dover, Delaware 19901

APPENDIX B

**DELAWARE MANUFACTURED HOME
RELOCATION AUTHORITY
APPLICATION FOR REMOVAL AND DISPOSAL
ASSISTANCE SUBMITTED BY
MANUFACTURED HOME COMMUNITY OWNER**

The undersigned Applicant, a manufactured home community owner, hereby requests assistance from the Delaware Manufactured Home Relocation Trust Fund pursuant to 25 Del.C. §7014. By signing this form, Applicant certifies that Applicant is the owner of a manufactured home community, as defined in 25 Del.C. §7003(l), and that Applicant has paid Applicant's share of the total Trust Fund assessment during to course of the tenancies and has remitted to the Authority the tenant's share as required by law. Applicant agrees that if Applicant

FINAL REGULATIONS

realizes a profit from the removal and/or disposal of a home included in this Application, Applicant will notify the Authority in writing and will reimburse the Trust Fund for any profit gained by the Applicant pertaining to that home. Applicant understands that it is a class A misdemeanor for a landlord or a landlord's agent to file any notice, statement, or other document required under Section 7014 which is false or contains a material misstatement of fact.

(Signature of Landlord) (Date)

(Social Security or E.I. Number)

LANDLORD NAME _____
(Please Print)

PARK NAME _____

PARK ADDRESS: _____

Space No. _____

CITY/STATE/ZIP CODE: _____

Mailing Address if different from where park is located:

PHONE NUMBER: _____

Total Spaces in Park: _____

TOTAL HOMES LOCATED IN PARK: _____

DATE TERMINATION/NONRENEWAL NOTICE
MAILED TO TENANTS: _____

DATE RELOCATION PLAN FILED WITH
AUTHORITY: _____

Please attach: (a) a copy of the Relocation Plan and all quarterly updates to the Plan; (b) a copy of the notice of termination or non-renewal due to a change in use of land; (c) if you are seeking recovery of removal/disposal expenses, you must submit a copy of your contract with a licensed moving or towing contractor for the moving and disposal expenses for each home that is being removed or disposed of; (d) for each non-relocatable or abandoned home for which compensation is sought, complete the attached summary form and submit with this Application.

Total Removal/Disposal Expenses Claimed:\$ _____

This form must be completed and returned along with

the required documents to:

Delaware Manufactured Home Relocation
Authority
Dover, Delaware 19901

**NON-RELOCATABLE OR ABANDONED HOME
DESCRIPTION FORM
HOME OWNER INFORMATION CURRENT
LOCATION OF MANUFACTURED HOME**

Name: _____

Address & Space Number:

Address: _____

City/State/Zip Code: _____

Phone Number: _____

DESCRIPTION OF HOME

Single or Multi-Wide: _____

Size: _____

Manufacturer: _____

Serial Number: _____

Year Manufactured: _____

HUD Label if any: _____

Listing of Appurtenances attached to the home, including
estimate of Size:

(Awnings, Skirting, Coolers or Air Conditioners, Sheds,
Porches, Carport, etc.)

**DETAIL OF WORK TO BE PERFORMED AND
CHARGES:**

**NOTE: Must include all disassembly, transportation and
disposal costs.**

Contractor Information:

Name: _____

Address: _____

**IF APPLICANT REALIZES A PROFIT FROM THE
REMOVAL AND/OR DISPOSAL OF THE HOME,
APPLICANT MUST REIMBURSE THE TRUST FUND
FOR ANY PROFIT GAINED BY APPLICANT
PERTAINING TO THAT HOME.**

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
200 Board of Landscape Architecture
Statutory Authority: 24 Delaware Code,
Section 205 (24 Del.C. §205)
24 DE Admin Code 200**

**SUMMARY OF THE EVIDENCE AND
INFORMATION SUBMITTED**

No written comments were received. No public comment was received at the March 9, 2005 hearing.

**FINDINGS OF FACT WITH RESPECT TO THE
EVIDENCE AND INFORMATION SUBMITTED**

The Board carefully reviewed and considered the proposed changes to Regulations 3.0 and 7.1.2. The overarching concerns of the Board of Landscape Architecture were the public health, safety and welfare of citizens and the ability to maintain the public trust in the practice of landscape architecture. The Board finds that the changes to Regulation 3.0 are necessary to conform with changes in law resulting from HB 211, in accord with 29 Del.C. Sec. 10113(4). The Board further finds that the continuing education approval process specified in regulation 7.1.2 is necessary to ensure that licensees properly comply with the procedures for granting continuing education.

DECISION AND EFFECTIVE DATE

The Board hereby adopts the changes to Regulations 3.0 and 7.1.2 attached as Exhibits A and B respectively to be effective 10 days following publication of this order in the *Register of Regulations*. The text of the revised rule remains as published in *Register of Regulations*, 8 DE Reg. 953 (Jan. 05).

SO ORDERED this 9th day of March, 2005.

Second Order

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 9, 2005 at a scheduled meeting of the Delaware Board of Landscape Architects to receive comments regarding proposed Regulation 11.0. The proposed regulation identifies crimes substantially related to the practice of landscape architecture as mandated by SB 229 enacted by the 142nd General Assembly. The proposed regulation was published in 8 DE Reg. 953 (Jan., 2005).

Background

The enabling legislation for the practice of landscape architecture is found in 24 Del.C. Chapter 2. Pursuant to SB 229 the Board is directed to promulgate regulations specifically identifying those crimes which are substantially related to the practice of landscape architecture. "Substantially related" means the nature of the criminal

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a Public hearing was held on March 9, 2005 at a scheduled meeting of the Delaware Board of Landscape Architects to receive comments regarding proposed Regulations 3.0 and 7.1.2.

BACKGROUND

The enabling legislation for the practice of landscape architecture is found in 24 Del.C. Chapter 2. The purpose of the change to Regulation 3.0 is to conform the regulation to changes in law brought about by the passage of HB 211 by the Delaware General Assembly. HB 211 clarified that entities under Delaware law or the laws of any other state may practice landscape architecture in Delaware as long as a Delaware licensed landscape architect has been designated as being responsible for services performed by such entity. The entity must also receive a certificate of authorization from the Board. The proposed regulation changes the application process to account for these changes in the law.

The purpose of the change to Regulation 7.1.2 is to specify the approval process for continuing education programs. Continuing education programs other than those sponsored by organizations in Regulation 7.1.2 will be reviewed at the time of renewal. Self directed activities must be pre-approved and the licensee must submit 60 days prior to the activity on forms provided in Regulations 7.3 and 7.4.

The Board believes and finds that the State of Delaware has a compelling public policy interest in providing application and renewal procedures that conform to changes in law concerning the ability of entities to practice landscape architecture in Delaware. The Board further finds that the specification of continuing education is in the public interest by ensuring that licensed landscape architects have specified levels of educational and professional competence by timely completing approved continuing education courses. Therefore, the Board finds that the changes to Regulations 3.0 and 7.1.2, as contained in Exhibits A and B respectively, enhance the ability of licensees to practice landscape architecture in Delaware.

conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of architecture. The Board is therefore empowered to promulgate regulations specifically identifying those crimes which are substantially related to the provision of landscape architecture services. This regulation specifically identifies those crimes which are substantially related to the practice of landscape architecture services in Delaware.

The Board believes and finds that the State of Delaware has a compelling public policy interest in ensuring that licensed landscape architects have specified levels of educational and professional competence as well as sufficient character and judgment to practice safely in their chosen fields and to do so in a manner which will not undermine the community's confidence in the expertise and professionalism of the members of the profession. Landscape architects perform consultation, investigation, research, planning, design, drawing preparation, specifications and contract services in connection with the development of land areas with the primary purpose of the preservation, enhancement or determination of proper land uses. It is therefore critical that all reasonable steps are taken to determine, to the extent possible, that the licensing of landscape architects takes into consideration not only the individual's technical competence but his or her propensity to behave in a way that does not expose the public to risk. This regulation fosters legitimate expectations of honest and honorable behavior by such licensed professionals in the performance of their duties.

Therefore, the Board finds that conviction of the crimes listed in Exhibit "A" Proposed Regulation 11.0 or substantially similar crimes in another state or jurisdiction, including federal crimes, have a direct bearing on and adversely affect the character and fitness to perform one or more of the duties or responsibilities substantially and necessarily related to the practice of landscape architecture in Delaware.

Summary of the Evidence

No written comments were received. No public comment was received at the March 9, 2005 hearing.

Findings of Fact

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the **Delaware Code**. The overarching concerns of the Board of Landscape Architecture were the public health, safety and welfare of citizens and the ability to maintain the public trust in the practice of landscape architecture.

The Board finds that the identified crimes are substantially related to fitness or ability to perform 1 or more

of the duties and responsibilities of landscape architect in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; sexual abuse or inappropriate sexual conduct; violation of privacy; dishonesty, or false or fraudulent conduct; mistreatment or abuse of children, the elderly; and offenses involving the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment.

In summary, the Board finds that adopting regulation 11.0 as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the individuals who need the services of a landscape architect.

Decision And Effective Date

The Board hereby adopts the changes to Regulation 11.0 attached as Exhibit "A" to be effective 10 days following publication of this order in the *Register of Regulations*. The text of the revised rule remains as published in *Register of Regulations*, 8 **DE Reg.** 953 (Jan. 05).

SO ORDERED this 9th day of March, 2005.

200 Board of Landscape Architecture

1.0 Filing of Applications for Written Examination

1.1 Persons seeking licensure pursuant to 24 **Del.C.** §206 shall submit an application for written examination on a form prescribed by the Board to the Board's office at the Division of Professional Regulation (the "Division") along with the application fee established by the Division. Applicants for written examination shall be filed in such office of the Board no later than twelve (12) weeks prior to the opening date of the examination.

1.2 Applicants seeking licensure pursuant to 24 **Del.C.** §206(a)(1) shall have graduated from a school or college of landscape architecture approved or accredited by the national Council of Landscape Architectural Registration Boards, the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects.

1.3 For purposes of 24 **Del.C.** §206(a)(3), courses in landscape architecture shall have been taken at a school or college of landscape architecture approved or accredited by the national Council of Landscape Architectural Registration Boards, the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects.

1.4 Each applicant must submit documentary evidence, as more fully described on the application form, to show the

Board that the applicant is clearly eligible to sit for the examination under 24 **Del.C.** §206.

1.5 The Board shall not consider an application for written examination until all items described in paragraphs 1.1 and 1.2 of this Rule have been submitted to the Board's office.

1.6 The Board reserves the right to retain as a permanent part of the application any or all documents submitted.

1.7 The examination shall be the Council of Landscape Architectural Registration Board's ("CLARB") current uniform national examination. CLARB establishes a passing score for each uniform national examination.

Statutory Authority: 24 **Del.C.** §§206, 207
5 DE Reg. 821 (10/01/01)

2.0 Filing of Applications for Reciprocity

2.1 Persons seeking licensure pursuant to 24 **Del.C.** §208, shall submit payment of the fee established by the Division and an application on a form prescribed by the Board which shall include proof of licensure and good standing in each state or territory of current licensure, and on what basis the license was obtained therein, including the date licensure was granted. Letters of good standing must also be provided for each state or jurisdiction in which the applicant was ever previously licensed.

2.2 The Board shall not consider an application for licensure by reciprocity until all items described in 24 **Del.C.** §208 and paragraph 2.1 of this Rule have been submitted to the Board's office.

2.3 A passing exam score for purposes of reciprocity shall be the passing score set by CLARB, or the passing score accepted by the Delaware Board, for the year in which the exam was taken.

Statutory Authority: 24 **Del.C.** §208.

3.0 Filing of Applications for Certificate of Authorization

~~Corporations or partnerships seeking a certificate of authorization pursuant to 24 **Del.C.** §212 shall submit an application on a form prescribed by the Board. Such application shall include the (a) names and addresses of all officers and members of the corporation, or officers and partners of the partnership, and (b) the name of a corporate officer in the case of a corporation, or the name of a partner in the case of a partnership, who is licensed to practice landscape architecture in this State and who shall be responsible for services in the practice of landscape architecture on behalf of the corporation or partnership.~~

~~Statutory Authority: 24 **Del.C.** §212.~~

A business entity desiring a certificate of authorization pursuant to 24 **Del.C.** Section 212 shall file with the Board an application, on forms provided by the Board, listing relevant information, including the names and addresses of

officers, partners, members, managers or principals of the business entity and also of the individual(s) duly licensed to practice landscape architecture in this State who shall be in responsible charge of the landscape architecture in compliance with 24 **Del.C.** Section 212(b)(1), and any other information required by the Board, accompanied by the appropriate fee. A certificate of authorization shall be renewed biennially in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division. In the event there should be a change in the information provided in the application for a certificate of authorization, notification of such change shall be provided to the Board in writing within thirty (30) days of the effective date of such change.

4.0 Licenses

Only one license shall be issued to a licensed landscape architect, except for a duplicate issued to replace a lost or destroyed license.

5.0 Seal

5.1 Technical Requirements

5.1.1 For the purpose of signing and sealing drawings, specifications, contract documents, plans, reports and other documents (hereinafter collectively referred to as "drawings"), each landscape architect shall provide him or herself with an individual seal of design and size as approved by the Board to be used as hereinafter directed on documents prepared by him or her or under his/her direct supervision for use in the State of Delaware.

5.1.2 The application of the seal impression or rubber stamp to the first sheet of the bound sheets of the drawings (with index of drawings included), title page of specifications, and other drawings and contract documents shall constitute the licensed landscape architect's stamp.

5.1.3 The seal to be used by a licensee of the Board shall be of the embossing type or a rubber stamp, and have two (2) concentric circles. The outside circle measures across the center 1 13/16 inches. The inner circle shall contain only the words "NO." and "State of Delaware." At the bottom the words "Registered Landscape Architect" reading counterclockwise, and at the top the name of the licensee.

5.1.4 An impression of the seal is to be submitted to the Board to be included in the licensee's records.

5.2 Use of the Seal

5.2.1 A landscape architect shall not sign or seal drawings unless they were prepared by him/her or under his/her direct supervision.

5.2.2 "Supervision" for purposes of signing and/or sealing drawings shall mean direct supervision, involving responsible control over and detailed professional

knowledge of the contents of the drawings throughout their preparation. Reviewing, or reviewing and correcting, drawings after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over, nor detailed professional knowledge of, the content of such drawings throughout their preparation.

5.2.3 The seal appearing on any drawings shall be prima facie evidence that said drawings were prepared by or under the direct supervision of the individual who signed and/or sealed the drawings. Signing or sealing of drawings prepared by another shall be a representation by the registered landscape architect that he/she has detailed professional knowledge of and vouches for the contents of the drawings.

Statutory Authority: 24 Del.C. §205(a)(1); 212(a).

6.0 Renewal of Licenses

6.1 Each application for license renewal or request for inactive status shall be submitted on or before the expiration date of the current licensing period. However, a practitioner may still renew his or her license within 60 days following the license renewal date upon payment of a late fee set by the Division. Upon the expiration of 60 days following the license renewal date an unrenewed license shall be deemed lapsed and the practitioner must reapply pursuant to the terms of 24 Del.C. §210(b).

6.2 It shall be the responsibility of all licensees to keep the Board and the Division informed of any change in name, home or business address.

Statutory Authority: 24 Del.C. §210.

7.0 Continuing Education as a Condition of Biennial Renewal

7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new and relevant skills and knowledge.

7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs or self-directed activities approved by the Board.

7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.

7.1.2 ~~To be acceptable for credit toward this requirement, all courses, seminars, sessions, programs or~~

~~self-directed activities shall be submitted to the Board. The Board shall recommend any course, seminar, session or program for continuing education credit that meets the criteria in sub paragraph 7.1.2.1 below. All courses, seminars, sessions and programs are acceptable for continuing education credit if sponsored by organizations listed in Rule 7.1.3. All other continuing education credits will be reviewed at the time of renewal. All self-directed activities for continuing education credit allowed by Rule 7.6 must be pre-approved and submitted by the licensee 60 days prior to the activity on the form provided in Rules 7.3 and 7.4.~~

7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the Delaware Code and contain elements which will assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.

5 DE Reg. 446 (8/1/01)

7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education credit:

7.1.3.1 American Society of Landscape Architects (National and local/chapter levels)

7.1.3.2 Council of Landscape Architectural Registration

7.1.4 Erroneous or false information attested to by the licensee shall constitute grounds for denial of license renewal.

7.2 Effective Date: The Board shall commence requiring continuing education as a condition of renewal of a license for the license year commencing on February 1, 1995. The licensee shall be required to successfully complete twenty (20) hours of continuing education within the previous two calendar years (example: February 1, 1993 through January 31, 1995).

7.3 For licensing periods beginning February 1, 2001 and thereafter, documentation as required by Rule 7.4 of all continuing education hours must be submitted to the Board on or before November 1 of the year preceding the biennial renewal date of the licenses. A license shall not be renewed until the Board has approved twenty (20) hours of continuing education classes as provided in Rule 7.1 or has granted an extension of time for reasons of hardship.

7.4 Reporting: The licensee shall submit a completed Verification of Continuing Education Form provided by the Division of Professional Regulation to the Board.

7.4.1 Each licensee must retain copies of all supporting materials documenting proof of continuing education compliance for submission to the Board upon request. Supporting materials include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity

and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board reserves its right to request additional information and/or documentation to verify continuing education compliance.

7.5 Hardship: The Board will consider any reasonable special request from individual licensees for continuing education credits and procedures. The Board may, in individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.

7.6 Self-directed Activities: For renewal periods beginning February 1, 2001, the following rules regarding self-directed activity shall apply. The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.

7.6.1 The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.

7.7 Exemptions: New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth herein for their first renewal period.

Statutory Authority: 24 Del.C. §205(12).

5 DE Reg. 446 (8/1/01)

8.0 Inactive Status

8.1 A licensee may, upon written request to the Board, place his/her license on inactive status.

8.2 A licensee who has been granted inactive status and who wishes to re-enter the practice of landscape architecture, shall submit a written request to the Board along with a prorated renewal fee and proof of completion of twenty (20) hours of continuing education during the period of inactive status.

8.3 Licensees on inactive status shall renew their inactive status by notification to the Division of Professional Regulation at the time of biennial license renewal.

Statutory Authority: 24 Del.C. §210(c).

9.0 Disciplinary Proceedings and Hearings

9.1 Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 Del.C. §8807(h)(1)-(3).

9.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

9.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

9.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

9.1.4 If a hearing before the Board has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 Del.C. Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

9.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

9.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses

not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

9.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 Del.C. §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

Statutory authority: 24 Del.C. §§213 and 215; 29 Del.C. §§10111, 10122 and 10131

9.2 Hearing procedures

9.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

9.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

9.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

9.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if a majority of the members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 Del.C. §213.

Statutory authority: 24 Del.C. §§205(7)(8); 213, 214, 215.

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 section 10.8.

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.

11.0 Crimes substantially related to the practice of architecture

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

11.1.1 Conspiracy in the first degree. 11 Del.C. §513.

11.1.2 Aggravated Menacing. 11 Del.C. §602(b).

11.1.3 Reckless endangering in the first degree. 11 Del.C. §604.

11.1.4 Abuse of a pregnant female in the second degree. 11 Del. C. §605.

11.1.5 Abuse of a pregnant female in the first degree. 11 Del.C. §606.

11.1.6 Assault in the second degree. 11 Del.C. §612.

11.1.7 Assault in the first degree. 11 Del.C. §613

11.1.8 Terroristic threatening; felony. 11 Del.C. §621

11.1.9 Vehicular homicide in the first degree. 11 Del.C. §630A.

11.1.10 Murder by abuse or neglect in the second degree. 11 Del.C. §633.

11.1.11 Murder by abuse or neglect in the first degree. 11 Del.C. §634.

11.1.12 Murder in the second degree. 11 Del.C. §635.

11.1.13 Murder in the first degree. 11 Del.C. §636.

11.1.14 Unlawful sexual contact in the second degree. 11 Del.C. §768.

11.1.15 Unlawful sexual contact in the first degree.

- 11 Del.C. §769.
- 11.1.16 Rape in the fourth degree. 11 Del.C. §770.
- 11.1.17 Rape in the third degree. 11 Del.C. §771.
- 11.1.18 Rape in the second degree. 11 Del.C. §772.
- 11.1.19 Rape in the first degree. 11 Del.C. §773.
- 11.1.20 Sexual extortion. 11 Del.C. §776.
- 11.1.21 Continuous sexual abuse of a child. 11 Del.C. §778.
- 11.1.22 Female genital mutilation. 11 Del.C. §780.
- 11.1.23 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 11.1.24 Kidnapping in the second degree. 11 Del.C. §783.
- 11.1.25 Kidnapping in the first degree. 11 Del.C. §783A.
- 11.1.26 Arson in the second degree. 11 Del.C. §802.
- 11.1.27 Arson in the first degree. 11 Del.C. §803.
- 11.1.28 Burglary in the second degree. 11 Del.C. §825.
- 11.1.29 Burglary in the first degree. 11 Del.C. §826.
- 11.1.30 Robbery in the second degree. 11 Del.C. §831.
- 11.1.31 Robbery in the first degree. 11 Del.C. §832.
- 11.1.32 Carjacking in the second degree. 11 Del.C. §835.
- 11.1.33 Carjacking in the first degree. 11 Del.C. §836.
- 11.1.34 Theft. 11 Del.C. §841
- 11.1.35 Theft; false pretenses. 11 Del.C. §843
- 11.1.36 Extortion. 11 Del.C. §846.
- 11.1.37 Identity theft. 11 Del.C. §854.
- 11.1.38 Forgery. 11 Del.C. §861.
- 11.1.39 Tampering with public records in the first degree. 11 Del.C. §876.
- 11.1.40 Issuing a false certificate. 11 Del.C. §878.
- 11.1.41 Bribery 11 Del.C. §881.
- 11.1.42 Receiving a bribe 11 Del.C. §882.
- 11.1.43 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 11.1.44 Insurance fraud. 11 Del.C. §913.
- 11.1.45 Dealing in children. 11 Del.C. §1100.
- 11.1.46 Endangering the welfare of a child. 11 Del.C. §1102.
- 11.1.47 Sexual exploitation of a child. 11 Del.C. §1108.
- 11.1.48 Unlawfully dealing in child pornography. 11 Del.C. §1109.
- 11.1.49 Possession of child pornography. 11 Del.C. §1111.
- 11.1.50 Felony Bribery. 11 Del.C. §1201.
- 11.1.51 Felony Receiving a Bribe. 11 Del.C. §1203.
- 11.1.52 Perjury in the second degree. 11 Del.C. §1222.
- 11.1.53 Perjury in the first degree. 11 Del.C. §1223.
- 11.1.54 Terroristic threatening of public officials or public servants. 11 Del.C. §1240.
- 11.1.55 Unlawfully dealing with a dangerous weapon. 11 Del.C. §1445.
- 11.1.56 Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447.
- 11.1.57 Possession of a firearm during commission of a felony. 11 Del.C. §1447A.
- 11.1.58 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448.
- 11.1.59 Removing a firearm from the possession of a law enforcement officer. 11 Del.C. §1458.
- 11.1.60 Criminal Penalties, Organized Crime and Racketeering. 11 Del.C. §1504.
- 11.1.61 Victim or Witness intimidation. 11 Del.C. §§3532 & 3533.
- 11.2 Crimes substantially related to the practice of landscape architecture shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

DIVISION OF PROFESSIONAL REGULATION

1700 Board of Medical Practice

Statutory Authority: 24 Delaware Code,
Section 1730(a)(12) (24 Del.C. §1730(a)(12))
24 DE Admin. Code 1700

ORDER

After due notice in the *Register of Regulations* and publication of notice in two Delaware Newspapers, a public hearing was held on Tuesday, January 4, 2005 at a scheduled meeting of the Board of Medical Practice to receive and consider public comment concerning proposed Regulation No. 29. This Regulation sets forth crimes which the Board of Medical Practice believes are substantially related to the practice of medicine, the practice as a licensed respiratory care practitioner and a physician's assistant. The proposed regulation was published in the *Register of Regulations* in Volume 8, Issue 6, Wednesday, December 1, 2004.

Background

The 142nd General Assembly of the State of Delaware passed Senate Bill No. 229 which, among other things, directed various Boards, Agencies and Commissions including the Board of Medical Practice to adopt a regulation specifically identifying and setting forth crimes which were deemed to be substantially related to the practice of medicine, the work of a physician's assistant or the practice of respiratory care. (See Section 29, Senate Bill No. 229, **Del. Code Ann.**, §1730(e) (June 30, 2004)) The Governor signed this legislation into law.

In this legislation, the term "substantially related to" means that the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the provision of the particular professional services.

Summary of the Evidence

The Board received written comments from Ms. Daniese McMullin-Powell, Chairperson of the State Council for Persons with Disabilities ("SCPD"). In her written comments, Ms. McMullin-Powell observes that the Board of Medical Practice has not adopted a restrained approach to defining crimes substantially related to the practice of medicine. Ms. McMullin-Powell also observes that many of the listed crimes are misdemeanors which would not have been disqualifying under the statute prior to the repeal of the "any felony" statute. Finally, Ms. McMullin-Powell asserts that the SCPD believes that the Board's 7 page list of crimes is inconsistent with the legislative intent of S.B. No. 229.

In proposing the Regulation, the Board carefully considered a compilation of crimes extracted from the **Delaware Code** and included federal criminal offenses (Title 18, U.S.C.A.) to include Federal Health Care offenses as being substantially related to the fitness of an individual to provide health care services in the State of Delaware as a physician, Physician's Assistant or a licensed Respiratory Care Practitioner. Also included are any crimes under other laws which are substantially similar to those crimes identified in the proposed regulation.

It is the view of the Board that the conviction of such crimes should form the basis for a proposal to deny certification to an applicant as a matter of public information and protection. It is unfortunate that the Board has been required to specify in advance a list of crimes which are deemed to be "substantially related to the practice of..." It is unfortunate because such determinations are more appropriately made after a review of the circumstances surrounding the crime and the particular facts leading to the conviction. However, the Board has the statutory ability to

waive any such criminal convictions as well as other disqualifications for licensure as a physician. The addition of waiver provisions for Physician's Assistants and Respiratory Care Practitioners has been legislatively proposed. The presence of a waiver provision vesting appropriate discretion in the Board allows the Board to take into consideration things such as the circumstances surrounding the commission of the crime, how much time has elapsed since the conviction, the extent to which restitution has been made, the age of the individual at the time of the conviction and any other circumstances bearing on the ability of the individual to practice in the health care field competently and with safety to the public. It is a fact that there are physicians practicing in Delaware who are convicted felons and the Board has expressly waived such felony convictions and granted licensure when it was determined to be appropriate to do so and proposed to continue to make such waivers where the circumstances indicate that it is appropriate to do so and the public is protected.

Decision and Effective Date

The Board by this order adopts the proposed Regulation No. 29 to be effective on April 11, 2005. (Ten (10) days after the publication of this Order in the *Register of Regulations*).

Text and Citation

The text of the Regulation No. 29 remains as published in the *Register of Regulation*, Volume No. 8, Issue No. 6, Wednesday, December 1, 2004, (a copy of which is attached hereto) with the exception of the erroneously published definition of "Jurisdiction" in Section 29.1 which is corrected to read: " 'Substantially similar crimes in another State or Jurisdiction' includes all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care Offenses".

IT IS SO ORDERED this 1st day of March, 2005.

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Mr. Vance Daniels
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1700 Board of Medical Practice

29.0 Crimes Substantially Related to the Practice of Medicine and the Practice of Licensed Respiratory Care and Practice as a Licensed Physician's Assistant

The Board finds that for purposes of licensing, renewal, reinstatement and discipline, the conviction of any of the following crimes, or of the attempt to commit or a conspiracy to commit or conceal the following crimes or substantially similar crimes in another state or jurisdiction, is deemed to be substantially related to the practice of Medicine, Respiratory Care and Physician's Assistants in the State of Delaware without regard to the place of conviction:

29.1 For the purposes of this section the following definitions shall apply:

"Conviction" means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a "Robinson" or "Alford" plea unless the individual has been discharged under §4218 of Title 11 of the Delaware Code (probation before judgment) or under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program).

"Jurisdiction" [Substantially similar crimes in another State or Jurisdiction] including all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

29.2 Any crime which involves the use of physical force or violence toward or upon the person of another and shall include by way of example and not of limitation the following crimes set forth in Title 11 of the **Delaware Code Annotated:**

Assaults and Related Offenses

29.2.1 §601. Offensive touching;

29.2.2 §602. Menacing;

29.2.3 §603. Reckless endangering in the second degree;

29.2.4 §604. Reckless endangering in the first degree;

29.2.5 §605. Abuse of a pregnant female in the second degree;

29.2.6 §606. Abuse of a pregnant female in the first degree;

29.2.7 §611. Assault in the third degree;

29.2.8 §612. Assault in the second degree;

29.2.9 §613. Assault in the first degree;

29.2.10 §614. Assault on a sports official.

29.2.11 §615. Assault by abuse or neglect;

29.2.12 §621. Terroristic threatening;

29.2.13 §625. Unlawfully administering drugs;

29.2.14 §626. Unlawfully administering controlled substance or counterfeit substance or narcotic drugs;

29.2.15 §627. Prohibited acts as to substances

releasing vapors or fumes;

29.2.16 §628. Vehicular assault in the second degree;

29.2.17 §629. Vehicular assault in the first degree;

29.2.18 §630. Vehicular homicide in the second degree;

29.2.19 §630A. Vehicular homicide in the first degree;

29.2.20 §631. Criminally negligent homicide;

29.2.21 §632. Manslaughter;

29.2.22 §633. Murder by abuse or neglect in the second degree;

29.2.23 §634. Murder by abuse or neglect in the first degree;

29.2.24 §635. Murder in the second degree;

29.2.25 §636. Murder in the first degree;

29.2.26 §645. Promoting suicide.

Abortion and Related Offenses

29.2.27 §651. Abortion;

29.2.28 §653. Issuing abortifacient articles.

Sexual Offenses

29.2.29 §763. Sexual harassment;

29.2.30 §764. Indecent exposure in the second degree;

29.2.31 §765. Indecent exposure in the first degree;

29.2.32 §766. Incest;

29.2.33 §767. Unlawful sexual contact in the third degree;

29.2.34 §768. Unlawful sexual contact in the second degree;

29.2.35 §769. Unlawful sexual contact in the first degree;

29.2.36 §770. Rape in the fourth degree;

29.2.37 §771. Rape in the third degree;

29.2.38 §772. Rape in the second degree;

29.2.39 §773. Rape in the first degree;

29.2.40 §776. Sexual extortion;

29.2.41 §777. Bestiality;

29.2.42 §778. Continuous sexual abuse of a child;

29.2.43 §780. Female genital mutilation.

Kidnapping and Related Offenses

29.2.44 §781. Unlawful imprisonment in the second degree;

29.2.45 §782. Unlawful imprisonment in the first degree;

29.2.46 §783. Kidnapping in the second degree;

29.2.47 §783A. Kidnapping in the first degree;

29.2.48 §785. Interference with custody;

Coercion

29.2.49 §791. Acts constituting coercion;

29.3 Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in

Title 11 of the Delaware Code Annotated:

Arson and Related Offenses

- 29.3.1 §801. Arson in the third degree;
- 29.3.2 §802. Arson in the second degree;
- 29.3.3 §803. Arson in the first degree;
- 29.3.4 §804. Reckless burning or exploding;
- 29.3.5 §805. Cross or religious symbol burning;

Criminal Trespass and Burglary

29.3.6 §820. Trespassing with intent to peer or peep into a window or door of another;

29.3.7 §821. Criminal trespass in the third degree;

29.3.8 §822. Criminal trespass in the second degree;

29.3.9 §823. Criminal trespass in the first degree;

29.3.10 §824. Burglary in the third degree;

29.3.11 §825. Burglary in the second degree;

29.3.12 §826. Burglary in the first degree;

29.3.13 §828. Possession of burglar's tools or instruments facilitating theft;

Robbery

29.3.14 §831. Robbery in the second degree;

29.3.15 §832. Robbery in the first degree.

29.3.16 §835. Carjacking in the second degree;

29.3.17 §836. Carjacking in the first degree;

Theft and Related Offenses

29.3.18 §840. Shoplifting; class G felony;

29.3.19 §840A. Use of illegitimate retail sales receipt or Universal Product Code Label.

29.3.20 §841. Theft;

29.3.21 §842. Theft; lost or mislaid property; mistaken delivery.

29.3.22 §843. Theft; false pretense.

29.3.23 §844. Theft; false promise.

29.3.24 §845. Theft of services.

29.3.25 §846. Extortion;

29.3.26 §848. Misapplication of property;

29.3.27 §849. Theft of rented property;

29.3.28 §850. Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices.

29.3.29 §851. Receiving stolen property;

29.3.30 §853. Unauthorized use of a vehicle;

29.3.31 §854. Identity theft;

29.3.32 §859. Larceny of livestock;

29.3.33 §860. Possession of shoplifter's tools or instruments facilitating theft;

Forgery and Related Offenses

29.3.34 §861. Forgery; class F felony;

29.3.35 §862. Possession of forgery devices;

Offenses Involving Falsification of Records

29.3.36 §871. Falsifying business records;

29.3.37 §872. Falsifying business records;

29.3.38 §873. Tampering with public records in

the second degree;

29.3.39 §876. Tampering with public records in

the first degree;

29.3.40 §877. Offering a false instrument for

filing;

29.3.41 §878. Issuing a false certificate;

Bribery Not Involving Public Servants

29.3.42 §881. Bribery;

29.3.43 §882. Bribe receiving;

Frauds on Creditors

29.3.44 §891. Defrauding secured creditors;

29.3.45 §892. Fraud in insolvency;

29.3.46 §893. Interference with levied-upon

property;

Other Frauds and Cheats

29.3.47 §900. Issuing a bad check;

29.3.48 §903. Unlawful use of credit card;

29.3.49 §903A. Reencoder and scanning devices;

29.3.50 §906. Deceptive business practices;

29.3.51 §907. Criminal impersonation;

29.3.52 §907A. Criminal impersonation, accident

related;

29.3.53 §907B. Criminal impersonation of a police

officer;

29.3.54 §908. Unlawfully concealing a will;

29.3.55 §909. Securing execution of documents by

deception;

29.3.56 §910. Debt adjusting;

29.3.57 §911. Fraudulent conveyance of public

lands;

29.3.58 §912. Fraudulent receipt of public lands.;

29.3.59 §913. Insurance fraud;

29.3.60 §913A. Health care fraud;

29.3.61 §914. Use of consumer identification

information;

29.3.62 §915. Use of credit card information;

29.3.63 §915A. Credit and debit card transaction

receipts;

29.3.64 §916. Home improvement fraud;

29.3.65 §917. New home construction fraud;

Offenses Relating to Recorded Devices

29.3.66 §920. Transfer of recorded sounds;

29.3.67 §921. Sale of transferred recorded sounds;

29.3.68 §922. Improper labeling;

Computer Related Offenses

29.3.69 §932. Unauthorized access.

29.3.70 §933. Theft of computer services.

29.3.71 §934. Interruption of computer services.

29.3.72 §935. Misuse of computer system

information.

29.3.73 §936. Destruction of computer equipment.

29.3.74 §937. Unrequested or unauthorized

electronic mail or use of network or software to cause same.

29.3.75 §938. Failure to promptly cease electronic

communication upon request.

Offenses Relating to Marriage

29.3.76 §1001. Bigamy;

29.3.77 §1003. Bigamous marriage contracted outside the State.

29.4 Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Child Welfare; Sexual Offenses, Animal Offenses

29.4.1 §1100. Dealing in children;

29.4.2 §1101. Abandonment of child;

29.4.3 §1102. Endangering the welfare of a child;

29.4.4 §1105. Endangering the welfare of an incompetent person;

29.4.5 §1106. Unlawfully dealing with a child;

29.4.6 §1107. Endangering children;

29.4.7 §1108. Sexual exploitation of a child;

29.4.8 §1109. Unlawfully dealing in child pornography;

29.4.9 §1111. Possession of child pornography;

29.4.10 §1112. Sexual offenders; prohibitions from school zones.

29.4.11 §1112A. Sexual solicitation of a child;

29.4.12 §1113. Criminal non-support and aggravated criminal non-support.

29.4.13 §1114. Body-piercing; tattooing or branding;

29.4.14 §1114A. Tongue-splitting;

29.4.15 §1116. Sale or distribution of tobacco products to minors;

29.4.16 §1117. Notice;

29.4.17 §1119. Distribution of cigarettes through vending machines;

29.4.18 §1120. Distribution of tobacco products;

29.4.19 §1124. Purchase or receipt of tobacco products by minor;

29.4.20 §1325. Cruelty to animals;

29.4.21 §1325A. The unlawful trade in dog or cat by-products;

29.4.22 §1326. Animals; fighting and baiting prohibited;

29.4.23 §1327. Maintaining a dangerous animal;

29.5 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Bribery and Improper Influence

29.5.1 §1201. Bribery;

29.5.2 §1203. Receiving a bribe;

29.5.3 §1205. Giving unlawful gratuities;

29.5.4 §1206. Receiving unlawful gratuities;

29.5.5 §1207. Improper influence;

29.5.6 §1211. Official misconduct;

29.5.7 §1212. Profiteering.

Perjury and related offenses

29.5.8 §1221. Perjury in the third degree;

29.5.9 §1222. Perjury in the second degree;

29.5.10 §1223. Perjury in the first degree;

29.5.11 §1233. Making a false written statement;

29.5.12 §1239. Wearing a disguise during the commission of a felony;

29.5.13 §1240. Terroristic threatening of public officials or public servants;

29.5.14 §1241. Refusing to aid a police officer;

29.5.15 §1243. Obstructing fire-fighting operations;

29.5.16 §1244. Hindering prosecution;

29.5.17 §1245. Falsely reporting an incident;

29.5.18 §1246. Compounding a crime;

29.5.19 §1248. Obstructing the control and suppression of rabies;

29.5.20 §1249. Abetting the violation of driver's license restrictions;

29.5.21 §1250. Offenses against law-enforcement animals;

29.5.22 §1251. Escape in the third degree;

29.5.23 §1252. Escape in the second degree;

29.5.24 §1253. Escape after conviction;

29.5.25 §1254. Assault in a detention facility;

29.5.26 §1257A. Use of an animal to avoid capture;

29.5.27 §1259. Sexual relations in detention facility;

29.5.28 §1260. Misuse of prisoner mail.

Offenses Relating to Judicial and Similar Proceedings

29.5.29 §1261. Bribing a witness;

29.5.30 §1262. Bribe receiving by a witness;

29.5.31 §1263. Tampering with a witness;

29.5.32 §1263A. Interfering with child witness.

29.5.33 §1264. Bribing a juror;

29.5.34 §1265. Bribe receiving by a juror;

29.5.35 §1266. Tampering with a juror;

29.5.36 §1267. Misconduct by a juror;

29.5.37 §1269. Tampering with physical evidence;

29.5.38 §1271. Criminal contempt;

29.5.39 §1271A. Criminal contempt of a domestic violence protective order;

29.5.40 §1273. Unlawful grand jury disclosure.

29.6 Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the Delaware Code Annotated which evidence a lack of appropriate concern for

the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.

Disorderly Conduct and Related Offenses

29.6.1 §1301. Disorderly conduct;

29.6.2 §1302. Riot;

29.6.3 §1304. Hate crimes;

29.6.4 §1311. Harassment;

29.6.5 §1312. Aggravated harassment;

29.6.6 §1312A. Stalking;

29.6.7 §1313. Malicious interference with emergency communications;

29.6.8 §1315. Public intoxication;

29.6.9 §1316. Registration of out-of-state liquor agents;

29.6.10 §1320. Loitering on property of a state-supported school, college or university;

29.6.11 §1321. Loitering

29.6.12 §1322. Criminal nuisance;

29.6.13 §1323. Obstructing public passages;

29.6.14 §1324. Obstructing ingress to or egress from public buildings;

29.6.15 §1331. Desecration;

29.6.16 §1332. Abusing a corpse;

29.6.17 §1333. Trading in human remains and associated funerary objects.

29.6.18 §1335. Violation of privacy;

29.6.19 §1338. Bombs, incendiary devices, Molotov cocktails and explosive devices;

29.6.20 §1339. Adulteration;

29.6.21 §1340. Desecration of burial place.

Offenses Involving Public Indecency

29.6.22 §1341. Lewdness;

29.6.23 §1342. Prostitution;

29.6.24 §1343. Patronizing a prostitute prohibited.

29.6.25 §1351. Promoting prostitution in the third degree;

29.6.26 §1352. Promoting prostitution in the second degree;

29.6.27 §1353. Promoting prostitution in the first degree;

29.6.28 §1355. Permitting prostitution;

Obscenity

29.6.29 §1361. Obscenity; acts constituting;

29.6.30 §1365. Obscene literature harmful to minors;

29.6.31 §1366. Outdoor motion picture theatres;

Offenses Involving Gambling

29.6.32 §1403. Advancing gambling in the first degree;

29.6.33 §1404. Providing premises for gambling;

29.6.34 §1405. Possessing a gambling device; class A misdemeanor.

29.6.35 §1406. Being concerned in interest in keeping any gambling device;

29.6.36 §1407. Engaging in a crap game;

29.6.37 §1411. Unlawfully disseminating gambling information.

29.7 Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the Delaware Code Annotated:

29.7.1 §4751. Prohibited acts A;

29.7.2 §4752. Prohibited acts B;

29.7.3 §4752A. Unlawful delivery of noncontrolled substance.

29.7.4 §4753. Prohibited acts C.

29.7.5 §4753A. Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs.

29.7.6 §4754. Prohibited acts D;

29.6.7 §4754A. Possession and delivery of noncontrolled prescription drug.

29.7.8 §4755. Prohibited acts E;

29.7.9 §4756. Prohibited acts;

29.7.10 §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;

29.7.11 §4758. Keeping drugs in original containers.

29.7.12 §4761. Distribution to persons under 21 years of age;

29.7.13 §4761A. Purchase of drugs from minors;

29.7.14 §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;

29.7.15 §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship.

29.8 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Offenses Involving Deadly Weapons and Dangerous Instruments

29.8.1 §1442. Carrying a concealed deadly weapon;

29.8.2 §1443. Carrying a concealed dangerous instrument;

29.7.3 §1444. Possessing a destructive weapon;

29.8.4 §1445. Unlawfully dealing with a dangerous weapon;

29.8.5 §1446. Unlawfully dealing with a switchblade knife;

29.8.6 §1447. Possession of a deadly weapon during commission of a felony;

29.8.7 §1447A. Possession of a firearm during commission of a felony;

29.8.8 §1448. Possession and purchase of deadly weapons by persons prohibited;

29.8.9 §1448A. Criminal history record checks for sales or firearms;

29.8.10 §1449. Wearing body armor during commission of felony;

29.8.11 §1450. Receiving a stolen firearm;

29.8.12 §1451. Theft of a firearm;

29.8.13 §1452. Unlawfully dealing with knuckles-combination knife;

29.8.14 §1453. Unlawfully dealing with martial arts throwing star;

29.8.15 §1454. Giving a firearm to person prohibited;

29.8.16 §1455. Engaging in a firearms transaction on behalf of another;

29.8.17 §1456. Unlawfully permitting a minor access to a firearm;

29.8.18 §1457. Possession of a weapon in a Safe School and Recreation Zone;

29.8.19 §1458. Removing a firearm from the possession of a law enforcement officer;

29.8.20 §1459. Possession of a weapon with a removed, obliterated or altered serial number;

29.8.21 §1471. Prohibited acts.

Offenses Involving Drug Paraphernalia

29.8.22 §4774. Penalties.

Offenses Involving Organized Crime and Racketeering

29.8.23 §1504. Criminal Penalties for Organized Crime & Racketeering

Offenses Involving Intimidation of Victims or Witnesses

29.8.24 §3532. Acts of Intimidation: Class E felony

29.8.25 §3533. Aggravated act of intimidation, Class D felony

Other Crimes

29.8.26 Title 3 §1041. Willfully or maliciously starting fires; Carelessly Starting Fires;

29.8.27 §1043. Setting fire to woodland; Unseasonable Marsh Burning.

29.8.28 Title 4 §901. Offenses carrying penalty of imprisonment for 3 to 6 months;

29.8.29 §902. Offenses carrying penalty of fine of \$500 to \$1,000 or imprisonment of 3 to 6 months on failure to pay fine;

29.8.30 §903. Offenses carrying penalty of fine of not more than \$100 imprisonment for 1 month on failure to pay fine;

29.8.31 §904. Offenses concerning certain persons;

29.8.32 §905. Unlicensed manufacture of alcoholic liquor; Possession of still, apparatus, mash, etc., by unlicensed person;

29.8.33 §906. Transportation or shipment;

29.8.34 §907. Interference with officer or inspector;

29.8.35 §908. Failure of licensee to file report;

29.8.36 §909. Violation of rules respecting liquor taxes.

29.8.37 Title 7 §1717. Unauthorized acts against a service guide or seeing eye dog.

29.8.38 Title 11 §2403. Manufacture, possession or sale of intercepting device;

29.8.39 §2410. Breaking and entering, etc. to place or remove equipment;

29.8.40 §2412. Obstruction, impediment or prevention of interception;

29.8.41 §2422. Divulging contents of communications;

29.8.42 §3532. Act of intimidation;

29.8.43 §3533. Aggravated act of intimidation;

29.8.44 §3534. Attempt to intimidate;

29.8.45 §8523. Penalties [for violation of reporting provision re: SBI];

29.8.46 §8562. Penalties [for failure of child-care provider to obtain information required under §8561 or for those providing false information]

29.8.47 §8572. Penalties [for providing false information when seeking employment in a public school]

29.8.48 §9016. Filing false claim [under Victims' Compensation Fund].

29.8.49 Title 12 §210. Alteration, theft or destruction of Will.

29.8.50 Title 16 §1136. Abuse or neglect of a patient or resident of a nursing facility.

29.8.51 Title 21 §2118A. Unlawful possession or manufacture of proof of insurance;

29.8.52 §2133. Penalties; jurisdiction of justices of the peace.

29.8.53 §2315. False statements;

29.8.54 §2316. Altering or forging certificate of title, manufacturer's certificate of origin, registration sticker or vehicle I identification plate;

29.8.55 §2620. False statements; incorrect or incomplete information;

29.8.56 §2703. License to operate a motorcycle, motorbike, etc.;

29.8.57 §2710. Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age;

29.8.58 §2722. Restricted licenses based on driver's physical limitations;

29.8.59 §2751. Unlawful application for or use of

license or identification card:

29.8.60 §2752. False statements;

29.8.61 §2756. Driving vehicle while license is suspended or revoked; penalty;

29.8.62 §2760. Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards.

29.8.63 Title 23 §2302. Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs;

29.8.64 §2305. Penalties; jurisdiction.

29.8.65 Title 24 §903. Sale to persons under 21 or intoxicated persons.

29.8.66 Title 29 §3107. Motor vehicle safety-responsibility; False statements;

29.8.67 §4175A. Reckless driving;

29.8.68 §4177. Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties.

29.8.69 §4177M. Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs;

29.8.70 §4183 Parking areas for vehicles being used by persons with disabilities;

29.8.71 §4198J. Bicycling on highways under influence of drugs or alcohol;

29.8.72 §4198O. Operation of electric personal assistive mobility devices (EPAMD);

29.8.73 §4201. Duty of driver involved in accident resulting in property damage or injury;

29.8.74 §4202. Duty of driver involved in accident resulting in injury or death to any person;

29.8.75 §4203. Duty to report accidents; evidence;

29.8.76 §4204. Report of damaged vehicles; cars involved in fatal accidents;

29.8.77 §4604. Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires;

29.8.78 §6420. Odometers penalties;

29.8.79 §6702. Driving vehicle without consent of owner;

29.8.80 §6704. Receiving or transferring stolen vehicle;

29.8.81 §6705. Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity;

29.8.82 §6707. Penalty;

29.8.83 §6709. Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers;

29.8.84 §6710. Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers.

29.8.85 Title 30 §571. Attempt to evade or defeat

tax:

29.8.86 §572. Failure to collect or pay over tax;

29.8.87 §573. Failure to file return, supply information or pay tax;

29.8.88 §574. Fraud and false statements;

29.8.89 §576. Misdemeanors.

29.8.90 Title 31 §1007. Fraudulent acts penalties;

29.8.91 §3913. Welfare violations [knowing or reckless abuse of an infirm adult]

29.9 Any crime which is a violation of Title 24, Chapter 17 (Delaware Medical Practices Act) as it may be amended from time to time or of any other statute which requires the reporting of a medical situation or condition to state, federal or local authorities or a crime which constitutes a violation of the Medical Practice Act of the state in which the conviction occurred or in which the physician is licensed.

29.10 The Board reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 Del.C. §10119 to address imminent peril to the public health, safety or welfare. The Board also specifically reserves the jurisdiction to review any crime committed by an applicant for licensure as a physician and to determine whether to waive the disqualification under 24 Del.C. §1720(d).

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Medical Practice is available at: <http://www.state.de.us/research/AdminCode/title24/1700> Board of Medical Practice.shtml**

**DIVISION OF PROFESSIONAL REGULATION
1770 Board of Medical Practice Respiratory
Care Practice Advisory Council**

Statutory Authority: 24 Delaware Code,
Section 1770B(e) (24 Del.C. §1770B(e)(5))
24 DE Admin. Code 1770

ORDER

AND NOW, this 1st day of March, 2005, the Board of Medical Practice having considered the hereto attached Recommendation of the Respiratory Care Practice Advisory Council which commends to the Board approval of the Rules and Regulations attached to the aforesaid Recommendation of the Respiratory Care Practice Advisory Council pursuant to 29 Del.C. §1770B;

AND, the Board of Medical Practice after consideration having determined not to approve the aforesaid Rules and Regulations as proposed by the Respiratory Care Practice Advisory Council;

NOW, THEREFORE, IT IS ORDERED:

1. That the hereto attached Rules and Regulations recommended by the Respiratory Care Practice Advisory Council to govern the administration of sedation and analgesia by licensed respiratory care practitioners in the State of Delaware are hereby temporarily rejected by the Board of Medical Practice. This rejection is expressly for the purpose of allowing the General Assembly of the State of Delaware to address the scope of practice of Respiratory Care Practitioners as it pertains to the administration of conscious sedation and analgesia in connection with respiratory care procedures. If there is no legislation from the Delaware General Assembly concerning this subject enacted by June 30, 2005, the Respiratory Care Practice Advisory Council shall resubmit such proposed Regulations or a revision thereof to the Board of Medical Practice for its consideration.

2. That such Rules and Regulations shall not be deemed to be effective and shall not be placed into force or effect pending further Order of the Board of Medical Practice.

BY ORDER OF THE BOARD OF MEDICAL PRACTICE:

| | |
|-------------------------|-----------------------------|
| Garrett Colmorgen, M.D. | Karl McIntosh, M.D. |
| Francis Marro, M.D. | Mr. John W. Banks |
| Vance Daniels | Roberto Villasenor, M.D. |
| Paul W. Ford | Oluseyi N. Senu-Oke, M.D. |
| Mr. George Brown | Galicano Inguito, M.D. |
| James Salva, M.D. | Vincent Lobo, D.O. |
| Ray A. Blackwell, M.D. | Anthony M. Policastro, M.D. |

8.0 Continuing Education

8.1 Contact Hours Required for Renewal

8.1.1 The respiratory care practitioner shall be required to complete (20) twenty contact hours biennially and to retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes. All contact hours must be completed at least sixty (60) days prior to the end of the renewal year.

8.1.2 Contact hours shall be prorated for new licensees in accordance with the following schedule:

| | |
|---|----------|
| Two years remaining in the licensing cycle requires - | 20 hours |
| One year remaining in the licensing cycle requires - | 10 hours |

Less than one year remaining in the licensing cycle - exempt

8.2 Exemptions

8.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Practice for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

8.2.2 A request for a waiver must be submitted sixty (60) days prior to the license renewal date.

8.3 Criteria for Qualification of Continuing Education Program Offerings

The following criteria are given to guide respiratory care practitioners in selecting an appropriate activity/program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to the professional competence of the respiratory care practitioner.

8.3.1 Definition of Contact Hours

8.3.1.1 Fifty consecutive minutes of academic course work, correspondence course, or seminar/workshop shall be equivalent to one (1) contact hour. A fraction of a contact hour may be computed by dividing the minutes of an activity by 50 and expressed as a decimal.

8.3.1.2 Recredentialing examination for certified respiratory therapy technician, (CRTT), and registered respiratory therapist, (RRT), shall be equivalent to five (5) contact hours.

8.3.1.3 Successful completion of advanced specialty exams administered by the National Board for Respiratory Care, (NBRC), shall be equal to five (5) contact hours for each exam.

8.3.1.4 One (1) semester hour shall be equal to fifteen (15) contact hours.

8.3.1.5 One (1) quarter hour shall be equal to ten (10) contact hours.

8.3.1.6 Two (2) hours (120 minutes) of clinical educational experience shall be equal to one (1) contact hour.

8.3.1.7 Fifty (50) consecutive minutes of presentation of lectures, seminars or workshops in respiratory care or health care subjects shall be equivalent to one (1) contact hour.

8.3.1.8 Preparing original lectures, seminars, or workshops in respiratory care or health care subjects shall be granted no more than two (2) contact hours for each contact hour of presentation.

8.3.1.9 Performing clinical or laboratory

research in health care shall be reviewed and may be granted an appropriate number of contact hour(s) at the Council's discretion.

8.3.2 Learner Objectives

8.3.2.1 Objectives shall be written and be the basis for determining content, learning experience, teaching methodologies, and evaluation.

8.3.2.2 Objectives shall be specific, attainable, measurable, and describe expected outcomes for the learner.

8.3.3 Subject Matter

Appropriate subject matter for continuing education shall include the following:

8.3.3.1 Respiratory care science and practice and other scientific topics related thereto

8.3.3.2 Respiratory care education

8.3.3.3 Research in respiratory care and health care

8.3.3.4 Management, administration and supervision in health care delivery

8.3.3.5 Social, economic, political, legal aspects of health care

8.3.3.6 Teaching health care and consumer health education

8.3.3.7 Professional requirements for a formal respiratory care program or a related field beyond those that were completed for the issuance of the original license

8.3.4 Description

Subject matter shall be described in outline form and shall include learner objectives, content, time allotment, teaching methods, faculty, and evaluation format.

8.3.5 Types of Activities/Programs

8.3.5.1 An academic course shall be an activity that is approved and presented by an accredited post-secondary educational institution which carries academic credit. The course may be within the framework of a curriculum that leads to an academic degree in respiratory care beyond that required for the original license, or relevant to respiratory care, or any course that shall be necessary to a respiratory care practitioner's professional growth and development.

8.3.5.2 A correspondence course contains the following elements:

8.3.5.2.1 developed by a professional group, such as an education corporation or professional association.

8.3.5.2.2 follows a logical sequence.

8.3.5.2.3 involves the learner by requiring active response to module materials and provides feedback.

8.3.5.2.4 contains a test to indicate progress and to verify completion of module.

8.3.5.2.5 supplies a bibliography for continued study.

8.3.5.3 A workshop contains the following elements:

8.3.5.3.1 developed by a knowledgeable individual or group in the subject matter.

8.3.5.3.2 follows a logical sequence.

8.3.5.3.3 involves the learner by requiring active response, demonstration and feedback.

8.3.5.3.4 requires hands-on experience.

8.3.5.3.5 supplies a bibliography for continued study.

8.3.5.4 Advanced and specialty examinations offered by the NBRC or other examinations as approved by the Council including:

Recredential exam

Pediatric/perinatal specialty exam

Pulmonary function credentialing exams

Advanced practitioner exam

8.3.5.5 Course preparation

8.3.5.6 Clinical education experience must be:

8.3.5.6.1 Planned and supervised.

8.3.5.6.2 Extended beyond the basic level of preparation of the individual who is licensed.

8.3.5.6.3 Based on a planned program of study.

8.3.5.6.4 Instructed and supervised by individual(s) who possess the appropriate credentials related to the discipline being taught.

8.3.5.6.5 Conducted in a clinical setting.

8.4 Educational Providers

8.4.1 Continuing education contact hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

American Association for Respiratory Care.

American Medical Association under Physician Category I.

American Thoracic Society

American Association of Cardiovascular and Pulmonary Rehabilitation

American Heart Association

American Nurses Association

American College of Chest Physicians

American Society of Anesthesiologists

American Sleep Disorders Association

Other professional or educational organizations as approved periodically by the Council.

8.5 Accumulation of Continuing Education

8.5.1 When a licensee applies for license renewal, a minimum of twenty (20) contact hours in

activities that update skills and knowledge levels in respiratory care theory, practice and science is required. The total of twenty (20) contact hours per renewal period shall include the following categories:

4 DE Reg. 694 (10/1/00)

8.5.1.1 A minimum of 12 contact hours of continuing education required for renewal must be acquired in a field related to the science and practice of respiratory care as set forth in Subsection 8.3.3, Subject Matter, 8.3.3.1, 8.3.3.2, or 8.3.3.3.

8.5.1.2 The remaining 8 contact hours of the continuing education required for renewal may be selected from Subsection 8.3.3, Subject Matter.

8.5.2 Contact hours, accumulated through preparation for, presentation of, or participation in activities/programs as defined are limited to application in meeting the required number of contact hours per renewal period as follows:

8.5.2.1 Presentation of respiratory care education programs, including preparation time, to a maximum of four contact hours.

8.5.2.2 Presentation of a new respiratory care curriculum, including preparation, to a respiratory care education program, to a maximum of four contact hours.

8.5.2.3 Preparation and publication of respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.4 Research projects in health care, respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.5 Infection control programs from facility or agency to a maximum of one contact hour.

[8.5.2.6 Presentation or participation in review or recertification in American Heart Association or Red Cross provider or instructor programs, such as Advanced Cardiac Life Support, Basic Life Support, Pediatric Advanced Life Support, or CPR, to a maximum of two contact hours per program.]

8.5.2.7 Academic course work, related to health care or health care administration, to a maximum of four contact hours.

8.6 Review/Approval of Continuing Education Contact Hours

8.6.1 The Council may review the documentation of any respiratory care practitioner's continuing education.

8.6.2 The Council may determine whether the activity/program documentation submitted meets all criteria for continuing education as specified in these regulations.

8.6.3 Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council.

8.6.4 Any incomplete or inaccurate documentation of continuing education may be rejected in

part or in whole by the Council.

8.6.5 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.

8.6.6 Each license not renewed in accordance with this section shall expire, but may within a period of three years thereafter be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware.

8.6.7 An applicant wishing to reinstate an expired license shall provide documentation establishing completion of the required 20 hours of continuing education during the two-year period preceding the application for renewal.

4 DE Reg. 694 (10/1/00)

12.0 Sedation and analgesia regulations:

Moderate Sedation — A drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is maintained.

Direct Supervision — The physician will be present during the initial and continued administration of moderate sedation and will interpret monitoring.

12.1 Certain recognized and accepted respiratory care procedures may involve the administration of sedative and analgesic medications by Respiratory Care Practitioners and the monitoring of patients who have received such medications. Such procedures include, but are not limited to:

12.1.1 Bronchoscopy

12.1.2 Intubation

12.1.3 Administration of anesthetic agents during mechanical ventilation

12.2 In the process of providing respiratory care, Respiratory Care Practitioners, under the direct supervision of a physician with clinical privileges to administer moderate sedation, may administer sedative and analgesic medications to induce moderate sedation, pursuant to the order of a licensed physician, who is licensed and credentialed to prescribe and administer the particular medication(s). The route of administration shall be appropriate to the procedure.

12.3 Any administration and monitoring by a Respiratory Care Practitioner of a sedative or analgesic which may induce moderate sedation must be:

12.3.1 In accordance with the current version of the "Practice Guidelines for Sedation and Analgesia by Non-Anesthesiologist" published by the American

~~Society of Anesthesiologists as the same may from time to time be amended, AND,~~

~~12.3.2 Undertaken only by Respiratory Care Practitioners who have successfully completed a formal educational experience and periodic competency assessment in the administration of sedatives, and analgesics. Such training and education shall be expressly approved for facilities accredited by a nationally recognized accrediting body approved by federal regulations in which the procedure is being performed. Such training shall include:~~

~~12.3.2.1 Competency assessment for licensed Respiratory Care Practitioners administering sedation and analgesic:~~

~~12.3.2.1.1 Successfully complete a formal dysrhythmia or EKG module or course, or the institution's approved dysrhythmia competency course.~~

~~12.3.2.1.2 Successfully complete a medication pharmacology competency specific to sedation and analgesic.~~

~~12.3.2.1.3 Current Basic Cardiac Life Support certification.~~

~~12.3.2.1.4 Completion of a department specific competency related to sedation and analgesic provided by facilities accredited by a nationally recognized accrediting body approved by federal regulations.~~

~~12.3.2.1.5 Successful completion of the relevant Advanced Cardiac Life Support (ACLS) or Pediatric Advanced Life Support (PALS) or Neonatal Resuscitation Program (NRP) course every two (2) years.~~

~~12.3.3 These periodic competencies require approval in writing by the department medical director or by another Delaware licensed physician who is in a position to assess the individual's qualifications. The Respiratory Care Practitioner must maintain his or her records of completion of the formal education and periodic competence certification for a period of three (3) years.~~

~~12.4 Respiratory Care Practitioners shall not administer sedative or analgesic substances in the home care environment.~~

*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Respiratory Care Practice Advisory Council is available at: <http://www.state.de.us/research/AdminCode/title24/1770RespiratoryCarePracticeAdvisoryCouncil.shtml>

DIVISION OF PROFESSIONAL REGULATION**2000 Board of Occupational Therapists**

Statutory Authority: 24 Delaware Code,

Section 2006(b) (24 Del.C. §2006(b))

24 DE Admin. Code 2000

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on November 17, 2004 at a scheduled meeting of the Board of Occupational Therapy Practice to receive comments regarding proposed Regulation 7.0. The proposed regulation identifies crimes substantially related to the practice of occupational therapy as mandated by SB 229 enacted by the 142nd General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 4, October 1, 2004.

A revised proposal with substantive changes was again published in the *Register of Regulations*, Vol. 8, Issue 9, February 1, 2005. A second public hearing was held on March 16, 2005 to receive comments on the revised proposal.

Background

Under 24 Del.C. §2015(a)(2) as amended by SB 229, the Board of Occupational Therapy Practice may impose discipline on a licensee who “has been convicted of a crime that is substantially related to the practice of occupational therapy.” SB 229 has defined “substantially related” as “the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the practice of occupational therapy.” The “practice of occupational therapy” is defined in 24 Del.C. §2002(7).¹

After hearing the public comment in November, the Board decided to reexamine the selected crimes at its January meeting. There were some misdemeanors that were included by mistake. The Board is guided in this process by its recognition that there is a large and diverse population served by occupational therapists. Some patients have seeing eye dogs or canine partners for life. Occupational

1. “Practice of occupational therapy” shall mean the use of goal-directed activities with individuals who are limited by physical limitations due to injury or illness, psychiatric and emotional disorders, developmental or learning disabilities, poverty and cultural differences or the aging process, in order to maximize independence, prevent disability and maintain health.

therapists work in the homes and cars of clients. They serve vulnerable populations and the goal of the Board, consistent with its legislative mandate, is the protection of these individuals.

It is noteworthy that the National Board for Certification of Occupational Therapy, Inc. (NBCOT) reviews crimes on a case by case basis when permitting applicants to take the licensure examination that is the prerequisite for licensure in Delaware.

Summary of the Evidence and Information Submitted

For the November 17, 2004 public hearing:

1. John A. Werner, Chairperson, Governor's Advisory Council for Exception Citizens, submitted a letter dated October 26, 2004 with two comments. First, he believes the Board did not identify crimes that are substantially related to the practice of occupational therapy, rather a hodgepodge of crimes including some misdemeanors. He selected proposed 7.1.9, 7.1.61, 7.1.62 and 7.1.71, as examples of inappropriate selections. He thought a restrained approach to defining crimes would be consistent with the intent of SB 229.

Secondly, he notes that in 16.1 the phrase "without regard to the place of conviction" could be considered to include foreign jurisdictions that may not have the due process protection we enjoy in this country. He suggested that the Board clarify whether convictions in foreign countries are disqualifying events.

2. Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities, submitted a memorandum dated November 8, 2003 with the same comments and concerns expressed by the Governor's Council for Exceptional Citizens.

3. Julie Marshall offered verbal comment supporting the written comments read into the record. She thought the 94 crimes identified should be scaled back and stated that the occupational therapy field should not follow a conventional model that might apply to other allied medical fields.

For the March 16, 2005 public hearing:

4. Jamie Wolfe, Chairperson, Delaware Developmental Disabilities Council sent a letter dated February 24, 2005. She noted the changes made by the Board but the Council supports giving the Division of Professional Regulation the authority to identify the crimes for consistency among professions. The Council recommends clarifying that foreign crimes are not covered. In addition, the Council recommends including the rule promulgated by the Board of Dental Examiners reserving the authority to make changes in emergencies.¹ She thought that would encourage Boards to take a more restrained approach

if they could subsequently add crimes that may have been overlooked.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board completed its assigned task after carefully considering what occupational therapists do in all settings and the clients that they serve. It considered the written and verbal comments after two public hearings. The Board respectfully suggests that an approach of being inclusive is necessary to protect the public. The Board does have the authority to re-visit the regulation. However, reviewing the circumstances in each case would be a better mechanism to accomplish the legislative intent than making emergency revisions because a major crime was overlooked.

There is no indication that the legislature intended for criminal conduct in a foreign jurisdiction to be treated more favorably than the same conduct in this country. It is noteworthy that the prior statutory felony language was silent with respect to place of conviction. It is outside the scope of the enabling legislation for the Board to impose jurisdictional limitations that were not included by the General Assembly.

Decision and Effective Date

The Board hereby adopts the changes to Regulation 7.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the revised rules remains as published in *Register of Regulations*, Vol. 8, Issue 9, February 1, 2005

SO ORDERED this day of 16th day of March, 2005.

BOARD OF OCCUPATIONAL THERAPY PRACTICE

Michael von Reider, President
December Hughes, Vice President
Dana Maurer, Secretary
Mara Schmittinger

1. 11.10 The Board [of Dentistry and Dental Hygiene] reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 Del.C. §10119 to address imminent peril to the public health, safety or welfare.

7.0 Crimes substantially related to practice of occupational therapy

7.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the practice of occupational therapy in the State of Delaware without regard to the place of conviction:

- 7.1.1 Unlawful harm to law enforcement or seeing eye dogs. 7 **Del.C.** §1717
- 7.1.2 Aggravated meancing. 11 **Del.C.** §602(b)
- 7.1.3 Reckless endangering. 11 **Del.C.** §604
- 7.1.4 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605
- 7.1.5 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606
- 7.1.6 Assault in the second degree. 11 **Del.C.** §612
- 7.1.7 Assault in the first degree. 11 **Del.C.** §613
- 7.1.8 Felony abuse of a sports official. 11 **Del.C.** §614
- 7.1.9 Assault by abuse of neglect. 11 **Del.C.** §615
- 7.1.10 Felony Terroristic threatening. 11 **Del.C.** §621
- 7.1.11 Unlawful administering drugs. 11 **Del.C.** §625
- 7.1.12 Unlawful administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626
- 7.1.13 Vehicular assault in the first degree. 11 **Del.C.** §629
- 7.1.14 Criminally negligent homicide. 11 **Del.C.** §631
- 7.1.15 Manslaughter. 11 **Del.C.** §632
- 7.1.16 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
- 7.1.17 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634
- 7.1.18 Murder in the second degree. 11 **Del.C.** §635
- 7.1.19 Murder in the first degree. 11 **Del.C.** §636
- 7.1.20 Sexual harassment. 11 **Del.C.** §763
- 7.1.21 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
- 7.1.22 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
- 7.1.23 Rape in the fourth degree. 11 **Del.C.** §770
- 7.1.24 Rape in the third degree. 11 **Del.C.** §771
- 7.1.25 Rape in the second degree. 11 **Del.C.** §772
- 7.1.26 Rape in the first degree. 11 **Del.C.** §773
- 7.1.27 Sexual extortion. 11 **Del.C.** §776
- 7.1.28 Bestiality. 11 **Del.C.** §777

- 7.1.29 Continuous sexual abuse of a child. 11 **Del.C.** §778
- 7.1.30 Dangerous crime against a child. 11 **Del.C.** §779
- 7.1.31 Unlawful imprisonment in the first degree. 11 **Del.C.** §782
- 7.1.32 Kidnapping in the second degree. 11 **Del.C.** §783
- 7.1.33 Kidnapping in the first degree. 11 **Del.C.** §783A
- 7.1.34 Acts constituting coercion. 11 **Del.C.** §791
- 7.1.35 Burglary in the second degree. 11 **Del.C.** §825
- 7.1.36 Burglary in the first degree. 11 **Del.C.** §826
- 7.1.37 Robbery in the second degree. 11 **Del.C.** §831
- 7.1.38 Robbery in the first degree. 11 **Del.C.** §832
- 7.1.39 Carjacking in the second degree. 11 **Del.C.** §835
- 7.1.40 Carjacking in the first degree. 11 **Del.C.** §836
- 7.1.41 Extortion. 11 **Del.C.** §846
- 7.1.42 Identity theft. 11 **Del.C.** §854
- 7.1.43 Felony forgery. 11 **Del.C.** §861
- 7.1.44 Falsifying business records. 11 **Del.C.** §871
- 7.1.45 Felony unlawful use of a credit card. 11 **Del.C.** §903
- 7.1.46 Insurance fraud. 11 **Del.C.** §913
- 7.1.47 Health care fraud. 11 **Del.C.** §913A
- 7.1.48 Dealing in children. 11 **Del.C.** §1100
- 7.1.49 Endangering the welfare of a child. 11 **Del.C.** §1102
- 7.1.50 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105
- 7.1.51 Unlawfully dealing with a child. 11 **Del.C.** §1106
- 7.1.52 Sexual exploitation of a child. 11 **Del.C.** §1108
- 7.1.53 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- 7.1.54 Possession of child pornography 11 **Del.C.** §1111
- 7.1.55 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
- 7.1.56 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 7.1.57 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240
- 7.1.58 Felony abetting the violation of driver's license restrictions. 11 **Del.C.** §1249
- 7.1.59 Felony offenses against law enforcement

animals. 11 **Del.C.** §1250

7.1.60 Felony hate crimes. 11 **Del.C.** §1304

7.1.61 Felony stalking. 11 **Del.C.** §1312A

7.1.62 Felony cruelty to animals. 11 **Del.C.**, §1325

7.1.63 Felony maintaining a dangerous animal. 11 **Del.C.** §1327(a)

7.1.64 Felony violation of privacy. 11 **Del.C.** §1335(a)

7.1.65 Adulteration. 11 **Del.C.** §1339

7.1.66 Promoting prostitution in the second degree. 11 **Del.C.** §1352

7.1.67 Promoting prostitution in the first degree. 11 **Del.C.** §1353

7.1.68 Obscenity. 11 **Del.C.** §1361

7.1.69 Carrying a concealed deadly weapon. 11 **Del.C.** §1442

7.1.70 Felony unlawful dealing with a dangerous weapon. 11 **Del.C.** §1445(a)

7.1.71 Felony possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447

7.1.72 Possession of a firearm during a commission of a felony. 11 **Del.C.** §1447A

7.1.73 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448

7.1.74 Felony Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457

7.1.75 Duty to report child abuse or neglect. 16 **Del.C.** §903

7.1.76 Abuse, neglect, mistreatment or financial exploitation of residents or patients in a nursing or similar facility. 16 **Del.C.** §1136

7.1.77 Felony falsification or destruction of records related to maintenance medical treatment. 16 **Del.C.** §2513

7.1.78 Manufacture, delivery or possession with intent to deliver schedule I or II narcotic drugs. 16 **Del.C.** §4751

7.1.79 Manufacture, delivery or possession with intent to deliver Schedule I, II, III, IV, or V non-narcotic drugs. 16 **Del.C.** §4752

7.1.80 Unlawful delivery or noncontrolled substances. 16 **Del.C.** §4752A.

7.1.81 Possession, consumption, or use of controlled substances. 16 **Del.C.** §4753.

7.1.82 Trafficking in marijuana, cocaine, illegal drugs, metamphetamines, L.S.D., or designer drugs. 16 **Del.C.** §4753A

7.1.83 Possession, consumption, or use of non-narcotic controlled substances classified in Schedule I, II, III, IV, or V. 16 **Del.C.** § 4754

7.1.84 Crimes related to controlled substances. 16 **Del.C.** §4756

7.1.85 Distribution of controlled substances to

persons under 21 years of age. 16 **Del.C.** §4761

7.1.86 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767

7.1.87 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768

7.1.88 Felony obtaining benefit under false representation. 31 **Del.C.** §1003

7.1.89 Felony falsification of reports, statements, or documents. 31 **Del.C.** §1004

7.1.90 Kickback schemes and solicitation. 31 **Del.C.** §1005

7.1.91 Conversion of benefit payment. 31 **Del.C.** §1006

7.1.92 Intentional abuse, neglect, mistreatment, or exploitation of an infirm adult. 31 **Del.C.** §3913

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

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Occupational Therapy is available at:**

<http://dpr.delaware.gov/boards/occupationaltherapy/index.shtml>

**DIVISION OF PROFESSIONAL REGULATION
2600 Board of Physical Therapists and Athletic Trainers**

Statutory Authority: 24 Delaware Code,
Section 2604(1) (24 **Del.C.** §2604(1))
24 **DE Admin. Code** 2600

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 15, 2005 at a scheduled meeting of the Delaware Examining Board of Physical Therapists and Athletic Trainers to receive comments regarding proposed Regulation 13.0. The proposed regulation identifies crimes substantially related to the practice of physical therapy and athletic training as mandated by SB 229 enacted by the 142nd General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

Background

Under Title 24, Chapter 26, one of the qualifications for licensure is that the applicant "Shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of physical therapy or athletic training. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of physical therapy or athletic training." 24 **Del.C.** §2606(a)(6). 24 **Del.C.** §2616(a)(4), as amended by SB 229, provides that the Board, after due notice and hearing, may refuse to license or register any applicant or may refuse to renew the license or registration of any person or may suspend or revoke the license or registration of any licensed or registered person who "has been convicted of a crime that is substantially related to the practice of physical therapy or athletic training in the courts of this State or any other state, territory or country. Conviction, as used in this paragraph, shall include a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere." 24 **Del.C.** §2616(a)(4).

" 'Substantially related' means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of physical therapy or athletic training." 24 **Del.C.** §2602(9).

The Board's authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 26 is set forth in 24 **Del.C.** §2604(a)(1). The specific mandate for this rule is set forth in 24 **Del.C.** §2604(b). The proposed regulation specifically identifies those crimes which are substantially related to the practice of physical therapy and athletic training.

Summary of the Evidence and Information Submitted

No written comments were received. No public comment was received at the March 15, 2005 hearing.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the **Delaware Code**. The overarching concern of the Board was the safety of the public since the licensed practitioners work in close physical proximity, and have direct physical contact, with the individuals they treat while performing the services of a physical therapist or athletic trainer. Clients may include children and the elderly who are vulnerable to undue

influence or other forms of abuse. Practitioners work in a variety of settings including, but not limited to, hospitals, clinics, nursing homes and private offices. In addition, many athletic trainers work directly with student athletes in schools.

Physical therapists and athletic trainers also have access to confidential health and financial information. Practitioners often have access to home and business addresses of their clients. They also have access to the billing information of their clients, including credit card and checking account information.

The "primary objective of the Examining Board of Physical Therapists and Athletic Trainers, which all other objectives and purposes are secondary, is to protect the general public (especially those persons who are direct recipients of services regulated by this chapter) from unsafe practices and from occupational practices which tend to reduce competition or to fix the price of services rendered.." 24 **Del.C.** § 2601.

The Board finds that the crimes identified in the proposed rule are substantially related to fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of physical therapy or athletic training in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; sexual abuse or inappropriate sexual conduct; violation of privacy; dishonesty, or false or fraudulent conduct; mistreatment or abuse of children and the elderly; and offenses involving the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and which call into question the ability of the practitioner to carry out the practitioner's professional duties with due regard for the health and safety of the individuals who are the recipients of their services.

In summary, the Board finds that adopting regulation 13.0 as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public, particularly the recipients of physical therapy and athletic training services.

Decision and Effective Date

The Board hereby adopts Regulation 13.0 to be effective 10 days following publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the rule remains as published in *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004, and as attached hereto as Exhibit A.

SO ORDERED this 15th day of March, 2005.

EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

Gary T. Nowell, President, Professional Member
 Patrick McKenzie, Vice-Chairperson,
 Professional Member
 Katherine Daniello, Professional Member
 Vincent De Leo, Professional Member
 Sharon Harris, Public Member
 Steven Kotrch, Public Member
 Ruth Ann Messick, Public Member
 Denise Smith, Professional Member
 John R. Smith, Professional Member
 Kristen Whiteman, Professional Member

13.0 Crimes substantially related to the practice of physical therapy and athletic training:

13.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of physical therapy and athletic training in the State of Delaware without regard to the place of conviction:

13.1.1 Offensive touching. 11 Del.C. 601.

13.1.2 Aggravated menacing. 11 Del.C. §602

(b)

13.1.3 Abuse of a pregnant female in the second degree. 11 Del.C. § 605.

13.1.4 Abuse of a pregnant female in the first degree. 11 Del.C. §606.

13.1.5 Assault in the second degree. 11 Del.C. §612

13.1.6 Assault in the first degree. 11 Del.C. §613.

13.1.7 Assault by abuse or neglect. 11 Del.C. §615.

13.1.8 Unlawfully administering drugs. 11 Del.C. §625.

13.1.9 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.

13.1.10 Criminally negligent homicide. 11 Del.C. §631.

13.1.11 Manslaughter. 11 Del.C. §632.

13.1.12 Murder by abuse or neglect in the second degree. 11 Del.C. §633

13.1.13 Murder by abuse or neglect in the first degree. 11 Del.C. §634.

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

13.1.15 Murder in the first degree. 11 Del.C. §636.

13.1.16 Promoting suicide. 11 Del.C. §645.

13.1.17 Abortion. 11 Del.C. §651.

13.1.18 Issuing abortifacient articles. 11 Del.C. §653.

13.1.19 Incest. 11 Del.C. §766.

13.1.20 Unlawful sexual contact in the third degree. 11 Del.C. §767.

13.1.21 Unlawful sexual contact in the second degree. 11 Del.C. §768.

13.1.22 Unlawful sexual contact in the first degree. 11 Del.C. §769.

13.1.23 Rape in the fourth degree. 11 Del.C. §770.

13.1.24 Rape in the third degree. 11 Del.C. §771.

13.1.25 Rape in the second degree. 11 Del.C. §772.

13.1.26 Rape in the first degree. 11 Del.C. §773.

13.1.27 Sexual extortion. 11 Del.C. § 776.

13.1.28 Bestiality. 11 Del.C. § 777.

13.1.29 Continuous sexual abuse of a child. 11 Del.C. §778.

13.1.30 Dangerous crime against a child. 11 Del.C. §779.

13.1.31 Female genital mutilation. 11 Del.C. §780.

13.1.32 Unlawful imprisonment in the first degree. 11 Del.C. §782.

13.1.33 Kidnapping in the second degree. 11 Del.C. §783.

13.1.34 Kidnapping in the first degree. 11 Del.C. §783A.

13.1.35 Arson in the first degree. 11 Del.C. §803.

13.1.36 Burglary in the third degree. 11 Del.C. §824.

13.1.37 Burglary in the second degree. 11 Del.C. §825.

13.1.38 Burglary in the first degree. 11 Del.C. §826.

13.1.39 Robbery in the second degree. 11 Del.C. §831.

13.1.40 Robbery in the first degree. 11 Del.C. §832.

13.1.41 Carjacking in the second degree. 11 Del.C. §835.

13.1.42 Carjacking in the first degree. 11 Del.C. §836.

13.1.43 Theft; felony. 11 Del.C. §841.

13.1.44 Extortion. 11 Del.C. §846.

13.1.45 Identity theft. 11 Del.C. §854.

13.1.46 Forgery. 11 Del.C. § 861.

13.1.47 Falsifying business records. 11 Del.C. §871.

13.1.48 Tampering with public records in the second degree. 11 Del.C. §873.

13.1.49 Tampering with public records in the first degree. 11 Del.C. §876.

13.1.50 Offering a false instrument for filing. 11

- Del.C. §877.**
13.1.51 Issuing a false certificate. 11 **Del.C. §878.**
13.1.52 Reencoder and scanning devices. 11 **Del.C. §903A.**
13.1.53 Criminal impersonation of a police officer. 11 **Del.C. §907B.**
13.1.54 Insurance fraud. 11 **Del.C. §913.**
13.1.55 Health care fraud. 11 **Del.C. §913A.**
13.1.56 Dealing in children. 11 **Del.C. §1100.**
13.1.57 Sexual exploitation of a child. 11 **Del.C. §1108.**
13.1.58 Unlawfully dealing in child pornography. 11 **Del.C. §1109.**
13.1.59 Possession of child pornography. 11 **Del.C. §1111.**
13.1.60 Sexual solicitation of a child. 11 **Del.C. §1112A.**
13.1.61 Bribery. 11 **Del.C. §1201.**
13.1.62 Receiving a bribe; felony. 11 **Del.C. §1203.**
13.1.63 Perjury in the second degree. 11 **Del.C. §1222.**
13.1.64 Perjury in the first degree. 11 **Del.C. §1223.**
13.1.65 Escape after conviction. 11 **Del.C. §1253.**
13.1.66 Assault in a detention facility. 11 **Del.C. §1254.**
13.1.67 Promoting prison contraband; felony. 11 **Del.C. §1256.**
13.1.68 Bribing a witness. 11 **Del.C. §1261.**
13.1.69 Bribe receiving by a witness. 11 **Del.C. §1262.**
13.1.70 Tampering with a witness. 11 **Del.C. §1263.**
13.1.71 Interfering with child witness; class F. 11 **Del.C. §1263A.**
13.1.72 Bribing a juror. 11 **Del.C. §1264.**
13.1.73 Bribe receiving by a juror. 11 **Del.C. §1265.**
13.1.74 Tampering with physical evidence. 11 **Del.C. §1269.**
13.1.75 Riot. 11 **Del.C. §1302.**
13.1.76 Hate crimes; felony. 11 **Del.C. §1304.**
13.1.77 Aggravated harassment. 11 **Del.C. §1312.**
13.1.78 Stalking; felony. 11 **Del.C. §1312A.**
13.1.79 Abusing a corpse. 11 **Del.C. §1332.**
13.1.80 Violation of privacy; felony. 11 **Del.C. §1335.**
13.1.81 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C. §1338.**
13.1.82 Adulteration. 11 **Del.C. §1339.**
13.1.83 Promoting prostitution in the second degree. 11 **Del.C. §1352.**
13.1.84 Promoting prostitution in the first degree. 11 **Del.C. §1353.**
13.1.85 Obscenity. 11 **Del.C. §1361.**
13.1.86 Carrying a concealed deadly weapon; Class E (if previous conviction within 5 years). 11 **Del.C. §1442.**
13.1.87 Possessing a destructive weapon. 11 **Del.C. §1444.**
13.1.88 Unlawfully dealing with a dangerous weapon; felony 11 **Del.C. §1445.**
13.1.89 Possession of a deadly weapon during commission of a felony. 11 **Del.C. §1447.**
13.1.90 Possession of a firearm during commission of a felony. 11 **Del.C. §1447A.**
13.1.91 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C. §1448.**
13.1.92 Engaging in a firearms transaction on behalf of another. 11 **Del.C. §1455.**
13.1.93 Organized Crime and Racketeering. 11 **Del.C. §1504.**
13.1.94 Victim or Witness Intimidation. 11 **Del.C. §§3532 & 3533.**
13.1.95 Abuse, neglect, mistreatment or financial exploitation of residents or patients; felony or under subsection (c). 16 **Del.C. §1136(a), (b) and (c).**
13.1.96 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C. §4751(a), (b) and (c).**
13.1.97 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C. §4752(a) and (b).**
13.1.98 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C. §4753A (a)(1)-(9).**
13.1.99 Prohibited acts E under the Uniform Controlled Substances Act. 16 **Del.C. §4755.(a)(1) and (2)**
13.1.100 Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C. §4756(a)(1)-(5) and (b).**
13.1.101 Distribution to persons under 21 years of age. 16 **Del.C. §4761.**
13.1.102 Purchase of drugs from minors. 16 **Del.C. §4761A**
13.1.103 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; felony. 23 **Del.C. §2302(a) and § 2305 (3) and (4).**
13.1.104 Failure to collect or pay over tax. 30 **Del.C. §572.**
13.1.105 Driving a vehicle while under the influence or with a prohibited alcohol content; felony. 21 **Del.C. §4177 (3) and (4).**
13.1.106 Duty of driver involved in accident resulting in injury or death to any person; felony. 21 **Del.C. §4202.**

13.1.107 Prohibition of Intimidation under the Fair Housing Act; felony. 6 Del.C. §2581.

13.1.108 Interception of Communications Generally; Divulging Contents of Communications; felony. 11 Del.C. §2402

13.1.109 Breaking and Entering, Etc. to Place or Remove Equipment 11 Del.C. §2410.

13.1.110 Aggravated Act of Intimidation. 11 Del.C. §3533

13.1.111 Attempt to Intimidate. 11 Del.C. §3534

13.1.112 Providing false information when seeking employment in a public school. 11 Del.C. §8572

13.1.113 Abuse, neglect, exploitation or mistreatment of infirm adult; felony. 31 Del.C. §3913(a), (b) and (c).

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

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Physical Therapists and Athletic Trainers is available at: <http://www.professionallicensing.state.de.us/boards/physicaltherapy/index.shtml>

DIVISION OF PROFESSIONAL REGULATION 3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

Statutory Authority: 24 Delaware Code,
Section 3006(a)(1) (24 Del.C. §3006(a)(1))
24 DE Admin. Code 3000

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 4, 2005 at a scheduled meeting of the Delaware Board of Professional Mental Health Counselors and Chemical Dependency Professionals to receive comments regarding proposed Regulation 11.0. The proposed regulation identifies crimes substantially related to the practice of mental health counseling and chemical dependency counseling. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005.

Background

Under Title 24, Chapter 30, one of the qualifications for licensure as a professional counselor of mental health is that the applicant shall submit evidence verified by oath and satisfactory to the Board that the applicant "shall not have a criminal conviction record nor pending criminal charge relating to an offense the circumstances of which substantially relate to actions as a licensed professional counselor of mental health or associate counselor of mental health. Applicants who have criminal conviction records or pending criminal charges shall request appropriate authorities to provide information about the conviction or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the conviction or charge is substantially related to actions as a licensed professional counselor of mental health or associate counselor of mental health." 24 Del.C. §3008(a)(5). 24 Del.C. §3013(a)(2), as amended by SB 229, provides that a licensee shall be subject to disciplinary action set forth in § 3015 if, after a hearing, the Board finds that the licensee "has been convicted of a crime that is substantially related to the practice of professional counseling of mental health." "A copy of the record of conviction certified by the clerk of court entering the conviction shall be conclusive evidence therefor." 24 Del.C. §3013(a)(3).

In addition, a licensed chemical dependency professional shall be subject to disciplinary sanction set forth in §3032 if, after a hearing, the Board finds that the licensee "has been convicted of a crime that is substantially related to the practice of professional counseling of mental health or chemical dependency counseling. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence thereof." 24 Del.C. §3027(a)(2).

"Substantially related" means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of professional counseling of mental health and chemical dependency counseling." 24 Del.C. §3002(9).

The Board's authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 30 is set forth in 24 Del.C. §3006(a)(1). The specific mandate for this rule is set forth in 24 Del.C. §3006(c). The proposed regulation specifically identifies those crimes which are substantially related to the practice of professional counseling of mental health and chemical dependency counseling.

Summary of the Evidence

No written comments were received. No public comment was received at the February 4, 2005 hearing.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the **Delaware Code**. The overarching concern of the Board was the safety of the public since practitioners work closely in a position of trust and responsibility with the members of the public they serve gaining access to the details of their clients' personal, family, business, health and financial information. In addition, they deal with individuals and families who are often in crisis and vulnerable to undue influence and manipulation. The nature of counseling requires the highest standards of honesty and integrity in dealing with confidential issues and patient records. It also requires that the practitioner is able to exercise appropriate judgment in dealing with a multitude of issues, including but not limited to, a client's criminal conduct, physical disabilities, addictions, behavior disorders, sexual abuse and other mental health issues.

In addition, practitioners work in a variety of settings including, but not limited to, hospitals, clinics, schools, prisons, detention centers and private offices. They frequently counsel individuals on a one to one basis when no one else is present. They are called upon to testify in court proceedings and file reports with courts and governmental agencies.

The "primary objective of the Board of Professional Mental Health Counselors and Chemical Dependency Professionals, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered. The secondary objectives of the Board are to maintain minimum standards of licensee competency and to maintain certain standards in the delivery of services to the public." 24 **Del.C.** § 3001.

The Board finds that the crimes identified in the proposed rule are substantially related to fitness or ability to perform 1 or more of the duties and responsibilities of a professional counselor of mental health and chemical dependency professional in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; sexual abuse or inappropriate sexual conduct; violation of privacy; dishonesty, or false or fraudulent conduct; mistreatment or abuse of children, the elderly or animals; offenses indicative of issues with power and control; offenses against public administration including but not limited to bribery and perjury, and offenses involving the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment.

In summary, the Board finds that adopting regulation 11.0 as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public, particularly the recipients of the services provided by professional counselors of mental health and chemical dependency professionals.

Decision and Effective Date

The Board hereby adopts Regulation 11.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the regulation remains as published in *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005, without any changes, and as attached hereto as Exhibit A.

SO ORDERED this ____ day of _____, 2005.

BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

David Ciamaricone, LPCMH, President,
Professional Member
James D. Wilson, Ed.D, LPCMH,
Vice-President, Professional Member
Dawn S. Brown, Secretary, Public Member
Jean Gunnells, LPCMH, Professional Member
Joan T. McDonough, Public Member
Carmetah Murray, Public Member

11.0 Crimes substantially related to the provision of mental health counseling and chemical dependency counseling:

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the provision of mental health counseling and chemical dependency counseling in the State of Delaware without regard to the place of conviction:

11.1.1 Menacing. 11 Del.C. §602(a)

11.1.2 Aggravated menacing. 11 Del.C. §602(b)

11.1.3 Reckless endangering in the first degree.

11 Del.C. §604

11.1.4 Abuse of a pregnant female in the second degree. 11 Del.C. §605.

11.1.5 Abuse of a pregnant female in the first degree. 11 Del.C. §606.

11.1.6 Assault in the third degree. 11 Del.C. §611.

- 11.1.7 Assault in the second degree. 11 Del.C. §612
- 11.1.8 Assault in the first degree. 11 Del.C. §613.
- 11.1.9 Abuse of a sports official; felony. 11 Del.C. §614.
- 11.1.10 Assault by abuse or neglect. 11 Del.C. §615.
- 11.1.11 Terroristic threatening. 11 Del.C. §621(a) and (b).
- 11.1.12 Unlawfully administering drugs. 11 Del.C. §625.
- 11.1.13 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.
- 11.1.14 Criminally negligent homicide. 11 Del.C. §631.
- 11.1.15 Manslaughter. 11 Del.C. §632.
- 11.1.16 Murder by abuse or neglect in the second degree. 11 Del.C. §633
- 11.1.17 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
- 11.1.18 Murder in the second degree. 11 Del.C. §635.
- 11.1.19 Murder in the first degree. 11 Del.C. §636.
- 11.1.20 Promoting suicide. 11 Del.C. §645.
- 11.1.21 Abortion. 11 Del.C. §651.
- 11.1.22 Self abortion. 11 Del.C. §652.
- 11.1.23 Issuing abortifacient articles. 11 Del.C. §653.
- 11.1.24 Sexual harassment. 11 Del.C. §763.
- 11.1.25 Indecent exposure in the second degree. 11 Del.C. §764.
- 11.1.26 Indecent exposure in the first degree. 11 Del.C. §765.
- 11.1.27 Incest. 11 Del.C. §766.
- 11.1.28 Unlawful sexual contact in the third degree. 11 Del.C. §767.
- 11.1.29 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 11.1.30 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 11.1.31 Rape in the fourth degree. 11 Del.C. §770.
- 11.1.32 Rape in the third degree. 11 Del.C. §771.
- 11.1.33 Rape in the second degree. 11 Del.C. §772.
- 11.1.34 Rape in the first degree. 11 Del.C. §773.
- 11.1.35 Sexual extortion. 11 Del.C. §776.
- 11.1.36 Bestiality. 11 Del.C. §777.
- 11.1.37 Continuous sexual abuse of a child. 11 Del.C. §778.
- 11.1.38 Dangerous crime against a child. 11 Del.C. §779.
- 11.1.39 Female genital mutilation. 11 Del.C. §780.
- 11.1.40 Unlawful imprisonment in the second degree. 11 Del.C. §781.
- 11.1.41 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 11.1.42 Kidnapping in the second degree. 11 Del.C. §783.
- 11.1.43 Kidnapping in the first degree. 11 Del.C. §783A.
- 11.1.44 Acts constituting coercion. 11 Del.C. §791.
- 11.1.45 Arson in the third degree. 11 Del.C. §801.
- 11.1.46 Arson in the second degree. 11 Del.C. §802.
- 11.1.47 Arson in the first degree. 11 Del.C. §803
- 11.1.48 Cross or religious symbol burning. 11 Del.C. §805.
- 11.1.49 Trespassing with intent to peer or peep into a window of another. 11 Del.C. §820.
- 11.1.50 Burglary in the third degree. 11 Del.C. §824.
- 11.1.51 Burglary in the second degree. 11 Del.C. §825.
- 11.1.52 Burglary in the first degree. 11 Del.C. §826.
- 11.1.53 Robbery in the second degree. 11 Del.C. §831.
- 11.1.54 Robbery in the first degree. 11 Del.C. §832.
- 11.1.55 Carjacking in the second degree. 11 Del.C. §835.
- 11.1.56 Carjacking in the first degree. 11 Del.C. §836.
- 11.1.57 Theft; felony. 11 Del.C. §841.
- 11.1.58 Theft; false pretense. 11 Del.C. §843.
- 11.1.59 Theft; false promise. 11 Del.C. §844.
- 11.1.60 Extortion. 11 Del.C. §846.
- 11.1.61 Misapplication of property. 11 Del.C. §848.
- 11.1.62 Theft of rented property; felony. 11 Del.C. §849.
- 11.1.63 Receiving stolen property. 11 Del.C. §851
- 11.1.64 Identity theft. 11 Del.C. §854.
- 11.1.65 Forgery. 11 Del.C. §861.
- 11.1.66 Possession of forgery devices. 11 Del.C. §862.
- 11.1.67 Falsifying business records. 11 Del.C. §871.
- 11.1.68 Tampering with public records in the second degree 11 Del.C. §873.
- 11.1.69 Tampering with public records in the first degree. 11 Del.C. §876.
- 11.1.70 Offering a false instrument for filing. 11 Del.C. §877.
- 11.1.71 Issuing a false certificate. 11 Del.C. §878.
- 11.1.72 Bribery. 11 Del.C. §881.
- 11.1.73 Bribe receiving. 11 Del.C. §882.

- 11.1.74 Defrauding secured creditors. 11 **Del.C.** §891.
- 11.1.75 Fraud in insolvency. 11 **Del.C.** §892.
- 11.1.76 Interference with levied-upon property. 11 **Del.C.** §893.
- 11.1.77 Issuing a bad check; felony. 11 **Del.C.** §900.
- 11.1.78 Unlawful use of credit card; felony. 11 **Del.C.** §903.
- 11.1.79 Reencoder and scanning devices. 11 **Del.C.** §903A.
- 11.1.80 Criminal impersonation. 11 **Del.C.** §907.
- 11.1.81 Criminal impersonation, accident related. 11 **Del.C.** §907A.
- 11.1.82 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
- 11.1.83 Unlawfully concealing a will. 11 **Del.C.** §908.
- 11.1.84 Securing execution of documents by deception. 11 **Del.C.** §909.
- 11.1.85 Fraudulent conveyance of public lands. 11 **Del.C.** §911.
- 11.1.86 Fraudulent receipt of public lands. 11 **Del.C.** §912.
- 11.1.87 Insurance fraud. 11 **Del.C.** §913.
- 11.1.88 Health care fraud. 11 **Del.C.** §913A.
- 11.1.89 Home improvement fraud. 11 **Del.C.** §916.
- 11.1.90 New home construction fraud. 11 **Del.C.** §917.
- 11.1.91 Misuse of computer system information. 11 **Del.C.** §935.
- 11.1.92 Bigamy. 11 **Del.C.** §1001.
- 11.1.93 Bigamous marriage contracted outside of the State. 11 **Del.C.** §1002.
- 11.1.94 Dealing in children. 11 **Del.C.** §1100.
- 11.1.95 Abandonment of child. 11 **Del.C.** §1101.
- 11.1.96 Endangering the welfare of a child. 11 **Del.C.** §1102.
- 11.1.97 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105.
- 11.1.98 Unlawfully dealing with a child. 11 **Del.C.** §1106.
- 11.1.99 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 11.1.100 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 11.1.101 Possession of child pornography. 11 **Del.C.** §1111.
- 11.1.102 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
- 11.1.103 Sexual solicitation of a child. 11 **Del.C.** §1112A.
- 11.1.104 Criminal non-support and aggravated criminal non-support. 11 **Del.C.** §1113.
- 11.1.105 Bribery. 11 **Del.C.** §1201
- 11.1.106 Receiving a bribe; felony. 11 **Del.C.** §1203.
- 11.1.107 Improper influence. 11 **Del.C.** §1207.
- 11.1.108 Perjury in the third degree. 11 **Del.C.** §1221.
- 11.1.109 Perjury in the second degree. 11 **Del.C.** §1353.
- 11.1.147 Permitting prostitution. 11 **Del.C.** §1355.
- 11.1.148 Obscenity. 11 **Del.C.** §1361.
- 11.1.149 Obscene literature harmful to minors. 11 **Del.C.** §1365.
- 11.1.150 Outdoor notion picture theatres. 11 **Del.C.** §1366.
- 11.1.151 Possessing a destructive weapon. 11 **Del.C.** §1444.
- 11.1.152 Unlawfully dealing with a dangerous weapon; felony. 11 **Del.C.** §1445.
- 11.1.153 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.
- 11.1.154 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.
- 11.1.155 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.
- 11.1.156 Receiving a stolen firearm. 11 **Del.C.** §1450.
- 11.1.157 Theft of a firearm. 11 **Del.C.** §1451.
- 11.1.158 Giving a firearm to person prohibited. 11 **Del.C.** §1454.
- 11.1.159 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.
- 11.1.160 Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457.
- 11.1.161 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458.
- 11.1.162 Organized Crime and Racketeering. 11 **Del.C.** §1504.
- 11.1.163 Victim or Witness Intimidation. 11 **Del.C.** §§3532 & 3533.
- 11.1.164 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136(a), (b) and (c).
- 11.1.165 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).
- 11.1.166 Unlawful delivery of non controlled substance. 16 **Del.C.** §4752A.
- 11.1.167 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).
- 11.1.168 Prohibited acts under the Uniform

Controlled Substances Act. 16 **Del.C.** §4756(a)(1)-(5) and (b).

11.1.169 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.

11.1.170 Purchase of drugs from minors. 16 **Del.C.** §4761A

11.1.171 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 **Del.C.** §4767

11.1.172 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768

11.1.173 Drug paraphernalia-Manufacture and sale; delivery to a minor; felony. 16 **Del.C.** §§4771 and 4774.

11.1.174 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; third and fourth offenses. 23 **Del.C.** §2302(a) and §2305 (3) and (4).

11.1.175 Obtaining benefit under false representation. 31 **Del.C.** §1003.

11.1.176 Reports, statements and documents. 31 **Del.C.** §1004.

11.1.177 Kickback schemes and solicitations. 31 **Del.C.** §1005.

11.1.178 Conversion of payment. 31 **Del.C.** §1006.

11.1.179 Driving a vehicle while under the influence or with a prohibited alcohol content; third and fourth offenses. 21 **Del.C.** §4177 (3) and (4).

11.1.180 Duty of driver involved in accident resulting in injury or death to any person; felony. 21 **Del.C.** §4202.

11.1.181 Prohibited trade practices against infirm or elderly. 6 **Del.C.** §2581

11.1.182 Prohibition of intimidation [under the Fair Housing Act]; 6 **Del.C.** §4619

11.1.183 Auto Repair Fraud victimizing the infirm or elderly. 6 **Del.C.** §4909A

11.1.184 Unauthorized Acts against a Service Guide or Seeing Eye Dog 7 **Del.C.** §1717

11.1.185 Interception of Communications Generally; Divulging Contents of Communications 11 **Del.C.** §2402

11.1.186 Breaking and Entering, Etc. to Place or Remove Equipment 11 **Del.C.** §2410

11.1.187 Divulging Contents of Communications. 11 **Del.C.** §2422

11.1.188 Installation and Use Generally [of pen trace and trap and trace devices]. 11 **Del.C.** §243.

11.1.189 Attempt to Intimidate. 11 **Del.C.** §3534

11.1.190 Failure of child-care provider to

obtain information required under §8561 or for those providing false information; felony. 11 **Del.C.** §8562

11.1.191 Providing false information when seeking employment in a public school. 11 **Del.C.** §8572

11.1.192 Filing False Claim [under Victims' Compensation Fund]. 11 **Del.C.** §9016

11.1.193 Alteration, Theft or Destruction of Will. 12 **Del.C.** §210.

11.1.194 Failure of Physician to file report of abuse of neglect pursuant to 16 **Del.C.** §903.

11.1.195 Coercion or intimidation involving health-care decisions and falsification, destruction of a document to create a false impression that measures to prolong life have been authorized; felony. 16 **Del.C.** §2513 (b).

11.1.196 [Failure to make] Reports of Persons who are Subject to Loss Consciousness. 24 **Del.C.** §1763.

11.1.197 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C.** §3913(a), (b) and (c).

11.2 Crimes substantially related to provision of mental health counseling and chemical dependency counseling shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Professional Counselors of Mental Health and Chemical Dependency Professionals is available at:**

<http://www.professionallicensing.state.de.us/boards/profcounselors/index.shtml>

DIVISION OF PROFESSIONAL REGULATION
5100 Board of Cosmetology and Barbering
 Statutory Authority: 24 Delaware Code,
 Section 5106 (24 **Del.C.** §5106)
 24 **DE Admin. Code** 5100

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 31, 2005 at a scheduled meeting of the Delaware Board of Cosmetology and Barbering to receive comments regarding proposed Regulation 18.0. The proposed regulation identifies crimes substantially related to the practice of cosmetology, barbering, electrology and nail technology as mandated by SB 229 enacted by the 142nd General

Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

Background

Under Title 24, Chapter 51, as amended by SB 229, one of the qualifications for licensure is that the applicant “shall not have a criminal conviction record, nor pending criminal charge relating to an offense the circumstances of which substantially relate to his or her licensed practice or which calls into question the ability of the applicant to carry out that applicant’s own professional services with due regard for the health and safety of the recipients of those services and the public. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to his or her licensed practice or which calls into question the ability of the applicant to carry out that applicant’s own professional services with due regard for the health and safety of the recipients of those services and the public.” 24 **Del.C.** §5107(a)(7). In addition, a licensee shall be subject to disciplinary action if the licensee has “been convicted of a crime that is substantially related to the practice of cosmetology, barbering, or manicuring within the past 5 years.” 24 **Del.C.** §5113(a)(4).¹

“‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the cosmetology, barbering, or manicuring.” 24 **Del.C.** §5101(13).

The Board is charged by SB 229 to “promulgate regulations specifically identifying those crimes, which are substantially related to the practice of cosmetology, barbering, or manicuring.” 24 **Del.C.** § 5106(b).

Summary of the Evidence

No written comments were received.

Malik Shelton appeared to offer public comment. Mr. Shelton questioned whether the rule would allow for licensure of someone who may have been convicted 10 years ago of a crime on the list but has been rehabilitated. He also wanted to know what standard the Board used to select the crimes.

1. A felony conviction remains a bar to licensure under in 24 **Del.C.** §5107(a)(6) as of the date of this Order and until removed by legislative action.

Counsel for the Board explained that Senate Bill 229 did not permit the Board to look at the circumstances of the offense or factors such as rehabilitation. In addition, Senate Bill 229 set the standard by which the Board selected the crimes and read the standard set forth in 24 **Del.C.** §5101(13).

Theresa Tucci appeared to offer public comment. Ms. Tucci was concerned with how information would be obtained on the application. Ms. Tucci’s did not have a comment about the substance of the rule.

Findings of Fact

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the **Delaware Code**. Neither of the public comments offered specifically addressed or opposed the offenses selected by the Board as substantially related. The overarching concern of the Board was the safety of public since the licensees have direct physical contact with the individuals they treat while performing cosmetology, barbering, electrology and nail technology services. Many services are performed with scissors, razors and other sharp instruments. Many salons also include spa services where clients receive treatment in various states of undress during which they should be able to be secure in their privacy. In addition, licensees perform services on children and the elderly who may be vulnerable to undue influence or other forms of abuse.

Clients frequently share details of their personal lives including information about their homes and financial status. Licensees often have access to home and business addresses of their clients. They also have access to the billing information of their clients, including credit card and checking account information. While certain services are performed clients often leave personal property, including purses, unattended.

The “primary objective of the Board of Cosmetology and Barbering, to which all other objectives and purposes are secondary, is to protect the general public (specifically those persons who are direct recipients of services regulated by this subchapter) from unsafe practices, and from occupational practices which tend to reduce competition or artificially fix the price of services rendered. The secondary objectives of the Board are to maintain minimum standards of practitioner competency, and to maintain certain standards in the delivery of services to the public.” 24 **Del.C.** §5100.

The Board finds that the crimes identified in the proposed rule are substantially related to fitness or ability to perform 1 or more of the duties and responsibilities necessarily related to the practice of cosmetology, barbering, electrology and nail technology in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; sexual abuse or inappropriate sexual conduct; violation of privacy; dishonesty, or false or

fraudulent conduct; mistreatment or abuse of children, the elderly or animals; and those felony drug offenses involving the distribution, delivery or possession of drugs in areas where children are likely to be present.

The Board finds that the proposed draft contained typographical omissions in sections 18.1.59, 18.1.74 and 18.1.83 and finds that the draft should have specified that the offenses were limited to felony level offenses only. In addition, the Board finds that the definitional provision found in 18.1.76 is not a crime and should be deleted and the remainder of the list renumbered. The Board will make these non-substantive corrections.

Decision and Effective Date

The Board hereby adopts Regulation 18.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the rule remains as published in *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004, with technical corrections noted above and as reflected in Exhibit A attached hereto.

SO ORDERED this ____ day of _____, 2005.

BOARD OF COSMETOLOGY AND BARBERING

Kevin J. Castaldi, President, Professional Member
Marina T. Civarelli, Vice President, Professional Member

Veronica L. Hopkins, Secretary, Public Member
John Bonarigo, Professional Member
Madelyn M. Nellius, Public Member
Richard Shultie, Jr., Professional Member
Jerome Stanley, Professional Member

5100 Board of Cosmetology and Barbering

18.0 Crimes substantially related to the practice of cosmetology, barbering, electrology and nail technology

18.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of cosmetology, barbering, electrology and nail technology in the State of Delaware without regard to the place of conviction:

18.1.1 Criminal solicitation in the first degree. 11 Del.C. §503.

18.1.2 Conspiracy in the first degree. 11 Del.C. §513.

18.1.3 Aggravated Menacing. 11 Del.C. §602(b).

18.1.4 Reckless endangering in the first degree. 11 Del.C. §604.

18.1.5 Abuse of a pregnant female in the second degree. 11 Del.C. §605.

18.1.6 Abuse of a pregnant female in the first degree. 11 Del.C. §606.

18.1.7 Assault in the second degree. 11 Del.C. §612.

18.1.8 Assault in the first degree. 11 Del.C. §613.

18.1.9 Abuse of a sports official; felony. 11 Del.C. §614.

18.1.10 Assault by abuse or neglect. 11 Del.C. §615.

18.1.11 Terroristic threatening; felony. 11 Del.C. §621.

18.1.12 Unlawfully administering drugs. 11 Del.C. §625.

18.1.13 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.

18.1.14 Murder by abuse or neglect in the second degree. 11 Del.C. §633.

18.1.15 Murder by abuse or neglect in the first degree. 11 Del.C. §634.

18.1.16 Murder in the second degree. 11 Del.C. §635.

18.1.17 Murder in the first degree. 11 Del.C. §636.

18.1.18 Abortion. 11 Del.C. §651.

18.1.19 Unlawful sexual contact in the second degree. 11 Del.C. §768.

18.1.20 Unlawful sexual contact in the first degree. 11 Del.C. §769.

18.1.21 Rape in the fourth degree. 11 Del.C. §770.

18.1.22 Rape in the third degree. 11 Del.C. §771.

18.1.23 Rape in the second degree. 11 Del.C. §772.

18.1.24 Rape in the first degree. 11 Del.C. §773.

18.1.25 Sexual extortion. 11 Del.C. §776.

18.1.26 Continuous sexual abuse of a child. 11 Del.C. §778.

18.1.27 Dangerous crime against a child. 11 Del.C. §779.

18.1.28 Female genital mutilation. 11 Del.C. §780.

18.1.29 Unlawful imprisonment in the first degree. 11 Del.C. §782.

18.1.30 Kidnapping in the second degree. 11 Del.C. §783.

18.1.31 Kidnapping in the first degree. 11 Del.C. §783A.

18.1.32 Arson in the third degree. 11 Del.C. §801.

18.1.33 Arson in the second degree. 11 Del.C. §802.

- 18.1.34 Arson in the first degree. 11 **Del.C.** §803.
- 18.1.35 Burglary in the second degree. 11 **Del.C.** §825.
- 18.1.36 Burglary in the first degree. 11 **Del.C.** §826.
- 18.1.37 Possession of burglar's tools or instruments facilitating theft. 11 **Del.C.** §828.
- 18.1.38 Robbery in the second degree. 11 **Del.C.** §831.
- 18.1.39 Robbery in the first degree. 11 **Del.C.** §832.
- 18.1.40 Carjacking in the second degree. 11 **Del.C.** §835.
- 18.1.41 Carjacking in the first degree. 11 **Del.C.** §836.
- 18.1.42 Extortion. 11 **Del.C.** §846.
- 18.1.43 Identity theft. 11 **Del.C.** §854.
- 18.1.44 Forgery. 11 **Del.C.** §861.
- 18.1.45 Possession of forgery devices. 11 **Del.C.** §862.
- 18.1.46 Tampering with public records in the first degree. 11 **Del.C.** §876.
- 18.1.47 Unlawful use of credit card; felony. 11 **Del.C.** §903.
- 18.1.48 Reencoder and scanning devices. 11 **Del.C.** §903A.
- 18.1.49 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
- 18.1.50 Dealing in children. 11 **Del.C.** §1100.
- 18.1.51 Endangering the welfare of a child. 11 **Del.C.** §1102.
- 18.1.52 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 18.1.53 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 18.1.54 Possession of child pornography. 11 **Del.C.** §1111.
- 18.1.55 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
- 18.1.56 Perjury in the second degree. 11 **Del.C.** §1222.
- 18.1.57 Perjury in the first degree. 11 **Del.C.** §1223.
- 18.1.58 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240.
- 18.1.59 Abetting the violation of driver's license restrictions; [felony]. 11 **Del.C.** §1249.
- 18.1.60 Escape in the second degree. 11 **Del.C.** §1252.
- 18.1.61 Escape after conviction. 11 **Del.C.** §1253.
- 18.1.62 Assault in a detention facility. 11 **Del.C.** §1254.
- 18.1.63 Promoting prison contraband; deadly weapon. 11 **Del.C.** §1256.
- 18.1.64 Use of an animal to avoid capture. 11 **Del.C.** §1257A(b)(1) and (2).
- 18.1.65 Sexual relations in detention facility. 11 **Del.C.** §1259.
- 18.1.66 Misuse of prisoner mail; second conviction. 11 **Del.C.** §1260.
- 18.1.67 Tampering with a witness. 11 **Del.C.** §1263.
- 18.1.68 Interfering with child witness. 11 **Del.C.** §1263A.
- 18.1.69 Tampering with physical evidence. 11 **Del.C.** §1269.
- 18.1.70 Criminal contempt of a domestic violence protective order. 11 **Del.C.** §1271A.
- 18.1.71 Hate crimes. 11 **Del.C.** §1304.
- 18.1.72 Aggravated harassment. 11 **Del.C.** §1312.
- 18.1.73 Stalking. 11 **Del.C.** §1312A.
- 18.1.74 Cruelty to animals; [felony]. 11 **Del.C.** §1325.
- 18.1.75 Violation of privacy. 11 **Del.C.** §1335.
- ~~18.1.76 Definitions relating to riot, disorderly conduct and related offenses. 11 **Del.C.** §1337.~~
- 18.1.[77 76] Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- 18.1.[78 77] Adulteration. 11 **Del.C.** §1339.
- 18.1.[79 78] Promoting prostitution in the third degree. 11 **Del.C.** §1351.
- 18.1.[80 79] Promoting prostitution in the second degree. 11 **Del.C.** §1352.
- 18.1.[81 80] Promoting prostitution in the first degree. 11 **Del.C.** §1353.
- 18.1.[82 81] Obscenity. 11 **Del.C.** §1361.
- 18.1.[83 82] Unlawfully dealing with a dangerous weapon; [felony]. 11 **Del.C.** §1445.
- 18.1.[84 83] Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.
- 18.1.[85 84] Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.
- 18.1.[86 85] Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.
- 18.1.[87 86] Giving a firearm to person prohibited. 11 **Del.C.** §1454.
- 18.1.[88 87] Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.
- 18.1.[89 88] Possession of a weapon in a Safe School and Recreation Zone; felony. 11 **Del.C.** §1457.
- 18.1.[90 89] Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458.
- 18.1.[91 90] Organized Crime and Racketeering. 11 **Del.C.** §1504.
- 18.1.[92 91] Victim or Witness intimidation. 11 **Del.C.** §§3532 & 3533.
- 18.1.[93 92] Violations. (Abuse, neglect, mistreatment or financial exploitation of residents or

patients.) 16 **Del.C.** §1136.

18.1. **[94 93]** Distribution, delivery, or possession of controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767.

18.1. **[95 94]** Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768.

18.2 Crimes substantially related to the practice of cosmetology, barbering, electrology and nail technology shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Cosmetology and Barbering is available at: <http://www.professionallicensing.state.de.us/boards/cosmetology/index.shtml>

PUBLIC SERVICE COMMISSION

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

| | | |
|--|--|----------------|
| In the Matter of the Adoption of Regulations Concerning the Implementation of 74 Delaware Laws, Chapter 317 (2004) | | PSC Regulation |
| Granting the Delaware Public Service Commission the Jurisdiction to Regulate Wastewater Utilities Including the Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity for Wastewater Utilities | | Docket No. 54 |
| (Opened October 5, 2004) | | |

ORDER NO. 6573

AND NOW, to-wit, this 22nd day of February, 2005, the Commission having received and considered the Findings and Recommendations of the Hearing Examiner, previously designated in the above-captioned matter, which was submitted after a duly publicized evidentiary hearing, and having heard from all parties and the Commission Staff that there are no exceptions to said Findings and Recommendations;

AND WHEREAS, based upon the recommendations of the Hearing Examiner, the Commission has determined that

the evidence of record supports approving the *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services*, as proposed by Commission Staff;

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

1. That the Commission hereby adopts and approves in its entirety the Findings and Recommendations of the Hearing Examiner, which is attached hereto as Exhibit "A."

2. That the Commission adopts the proposed *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services*, the exact text and citation of which are attached hereto as Exhibit "B."

3. That the Secretary shall transmit this Order, together with the exact text of *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services* to the Registrar of Regulations for publication on April 1, 2005.

4. That the effective date of this Order shall be the later of April 10, 2005, or ten days after the date of publication in the *Register of Regulations* of this Order and the final text of *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services*.

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner

ATTEST: Karen J. Nickerson, Secretary

EXHIBIT "A"

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

William F. O'Brien, duly appointed Hearing Examiner in this Docket pursuant to 26 **Del.C.** §502 and 29 **Del.C.** ch. 101, by Commission Order No. 6486, dated October 5, 2004, reports to the Commission as follows:

I. APPEARANCES

On behalf of Commission Staff ("Staff"):
MURPHY SPADARO & LANDON

By: Chase T. Brockstedt, Esquire

On behalf of the Division of the Public Advocate
("DPA"):

G. Arthur Padmore, Public Advocate

On behalf of Artesian Wastewater Management, Inc.
("Artesian"):

John J. Schreppler, II, Esquire

II. BACKGROUND

1. On July 6, 2004, new legislation was enacted by the Delaware General Assembly, found at *74 Delaware Laws, Chapter 317*, which granted this Commission jurisdiction to regulate wastewater utilities having more than fifty customers, including the jurisdiction to grant and revoke Certificates of Public Convenience and Necessity ("CPCN"). In preparation for the implementation of this new jurisdiction, Commission Staff drafted a proposed regulation entitled *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services*.

2. On October 5, 2004, by PSC Order No. 6486, the Commission opened Regulation Docket No. 54 to consider Staff's proposed regulation. The Commission directed publication of notice of the proposed regulation, which included, among other things, publication in the *Delaware Register*. The Commission set a deadline of November 30, 2004, for the filing of comments by interested parties, and scheduled a public hearing for December 8, 2004. Written comments were filed by Artesian (Ex. 6),¹ DPA (Ex. 4), the Office of State Planning Coordination ("State Planning") (Ex. 2), and White Marsh Environmental Systems, Inc. (a subsidiary of Tidewater Utilities, Inc.) (Ex. 3).

3. In accordance with PSC Order No. 6486, a duly noticed² public hearing was conducted at the Commission's offices in Dover on December 8, 2004. Representatives of Staff, DPA, and Artesian participated in the hearing. Clark Carbaugh, President of Utility Systems, Inc., appeared at the hearing but did not participate. No member of the public appeared at or otherwise participated in the hearing.

1. References to the Exhibits entered into the evidentiary record of this proceeding will be cited as "(Ex. ____)" or "(Ex. ____ at ____)." References to the transcript of the proceedings will be cited as "(Tr. at ____)."

2. Ex. 1 consists of the affidavits of publication of notice from *The News Journal* and *Delaware State News* newspapers. Notice was also sent to all certified wastewater utilities in Delaware.

4. At the hearing, Staff submitted an amended proposed regulation, which included certain changes Staff had made prior to the hearing based on the written comments received (Ex. 4.) In accordance with the post-hearing schedule, Staff, on December 21, 2004, submitted its final proposed regulation (Ex. 7), which included additional changes Staff made based on the oral comments offered at the hearing. Staff also provided a redlined version of the final proposal (Ex. 8), as well as a six-page, post-hearing memorandum describing each change that it made to its original proposed regulation (Ex. 9). After receiving these documents into evidence, I closed the record, which now consists of nine exhibits and a 39-page *verbatim* transcript of the proceedings. I have considered all of the record evidence of this docket and, based thereon, I submit for the Commission's consideration these Findings and Recommendations.

II. THE PROPOSED REGULATION

5. Staff's proposed regulation consists of eleven rules governing the certification process for wastewater utilities. (Ex. 7.) Rule 1 defines certain terms and acronyms. Rule 2 identifies the scope of the regulation and the Commission's authority for its adoption. Rules 3 and 4 outline the application procedure and filing requirements for wastewater utilities seeking a new CPCN or an extension of an existing CPCN. Rule 5 provides a 21-day deadline for Staff to review the CPCN application and to notify the applicant of any deficiencies, and provides a 30-day deadline (upon notice) for the applicant to correct any deficiencies. Rule 6 requires an applicant to provide copies of its application to the Department of Natural Resources and Control ("DNREC"), State Planning, the county within which the proposed service territory lies, and any affected municipalities, towns or local authorities (collectively, "municipalities") and directs Staff to coordinate its investigative efforts with these entities.

6. Rule 7 provides the procedure that applicants must follow in order to notify landowners in the proposed service territory of the CPCN application. Rule 8 provides the process by which a landowner may oppose the CPCN application or request a hearing on the application.

7. Rule 9 outlines the procedure that the Commission will undertake before suspending or revoking a CPCN and identifies the factors that constitute "good cause" for such action. Rule 10 requires wastewater utilities to obtain approval from the Commission before they abandon or transfer a CPCN. Rule 11 provides that municipalities and governmental agencies who act as wastewater utilities need not obtain CPCNs but must notify the Commission of their service territories (and of any extensions thereof). In addition, Rule 11 prohibits municipalities and governmental agencies from extending service into an area subject to an existing CPCN without prior Commission approval.

III. SUMMARY OF EVIDENCE

8. By letter dated November 30, 2004, Constance C. Holland, Director of State Planning, recommended that Staff define “existing service territory” as:

The area for which the municipality, governmental agency, or wastewater authority or district is planning to serve with its public wastewater service. This area shall be consistent with service and/or growth areas reflected in the jurisdiction’s most current wastewater and/or comprehensive planning efforts.

(Ex. 2.) Ms. Holland asserted that the definition would provide guidance on what the Commission considers “existing service territory” and would help reduce the potential overlap between public wastewater providers and private utility companies.

9. Kevin Neilson, Regulatory Policy Administrator, testified on behalf of Commission Staff. (Tr. at 16-22.) Mr. Neilson stated that Staff chose not to include the definition proposed by State Planning because it did interpret the statute to include an area not yet served as an “existing” service territory. Mr. Neilson noted that under Staff’s proposed rules, if a private wastewater utility applies for a CPCN for an area that overlaps with a municipality’s planned growth area, the municipality will have an opportunity to object to the CPCN application and to request a hearing.

10. Mr. Neilson testified that Staff had modified slightly its proposed Rule 7.1 based on a recommendation made by White Marsh in its December 7, 2004 comments (Ex. 3). The modification clarified that the Rule 7.1 notice requirements apply only to CPCN applicants that rely on a petition from a majority of landowners to comply with 26 **Del.C.** 203D(d) rather than to those that rely on a service agreement with the developer of a proposed subdivision. (Tr. at 22, Ex. 3.)

11. G. Arthur Padmore, Public Advocate, moved DPA’s November 23, 2004 comments into the record (Ex. 4) and asserted that Staff had addressed each of DPA’s concerns to his satisfaction. DPA’s comments involved certain clarifications of various rules as well as grammatical and typographical corrections.

12. John Schreppler, counsel for Artesian, moved Artesian’s December 17, 2004 comments into the record (Ex. 6) and stated that Staff had addressed all but one of Artesian’s concerns to his satisfaction. Artesian’s comments primarily related to clarifications, deletions of unnecessary language, and one minor change to a timing deadline. The remaining issue, which involved clarification of the procedure for instituting a proceeding to revoke a CPCN under proposed Rule 9.4, was left for resolution after the

hearing. Staff reported in its post-hearing memorandum (Ex. 9) that it made certain minor changes to Rule 9.4, which were acceptable to Artesian.

III. FINDINGS AND RECOMMENDATIONS

14. The Commission has the authority and jurisdiction to promulgate regulations under 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 *et seq.* Pursuant to 26 **Del.C.** §209(a), the Commission may fix “just and reasonable” regulations governing any public utility.

15. The final proposed regulation, which is attached to the proposed Order in this case as Exhibit “B”, outlines the procedure to be followed by the regulated wastewater utilities and by Staff with respect to CPCN applications, transfers, abandonments, and revocations. The proposed regulation follows the recent wastewater utility legislation (codified primarily at 26 **Del.C.** 203D), which transferred jurisdiction over wastewater CPCNs from DNREC to the Commission. In addition, the proposed regulation parallels the Commission’s existing regulation governing CPCNs for water utilities, adopted in June 2001 in Regulation Docket No. 51. (PSC Order No. 5730, June 5, 2001.) For the following reasons, I recommend that the Commission adopt the proposed regulation as “just and reasonable.”

16. The comments submitted by the parties, and offered at the hearing, primarily involved minor changes to language that either served to clarify certain procedural or administrative requirements in the proposed regulation or to correct grammatical or typographical errors. Based on these comments, Staff made changes to its proposed regulation, which, according to the parties that attended the hearing, satisfied all concerns. (Ex. 9 at 2.) Staff detailed such changes in its post-hearing memorandum (Ex. 9).¹

17. Staff did not, however, incorporate the recommendation made by the State Office of Planning Coordination. As summarized above, State Planning suggested that the regulation define “existing service territory” to include that area where a municipality or governmental agency is *planning* to serve with its public wastewater service, consistent with its comprehensive plan. Staff did not include any definition in its proposed regulation for “existing service territory,” which appears (or closely appears) in proposed Rules 6.3, 11.1 and 11.2.

18. Under Rule 6.3, a CPCN applicant is required to file copies of its application with the county within which the proposed service territory falls, any municipality within which the proposed service territory falls or is adjacent to,

1. Staff concluded (and I agree) that the changes it made to the published proposed regulation are not material and, therefore, do not warrant republication of the regulation prior to Commission action. See 29 **Del.C.** §10118(c).

and any municipality that has an “existing wastewater service territory” that overlaps the applicant’s proposed service territory. Rules 11.1 and 11.2 provide that municipalities need not obtain CPCNs for new or existing service territories but must file with the Commission descriptions of their service territories and notify the Commission of any extensions thereof.

19. At the hearing, Mr. Schreppler, Artesian’s counsel, and Mr. Padmore, Public Advocate, supported Staff’s decision not to incorporate State Planning’s recommendation. (Tr. at 36-38.) Mr. Schreppler argued that a landowner whose property is located outside of a municipality’s borders and miles from that municipality’s wastewater system, but within its defined “service territory” (under State Planning’s recommendation), could be held “hostage” by that municipality when seeking wastewater service. He noted that, under this scenario, that property owner would not have had the opportunity to challenge that municipality’s identification of its service territory (and cannot vote in the municipal elections).

20. Mr. Padmore expressed concern that allowing a municipality to define its own service territory, beyond where its system is located, could result in an increase in the number of complaints his office receives from customers of a municipal utility who do not reside within the municipality. Because such customers are not residents of the municipality, and because the Public Advocate lacks jurisdiction over municipal utilities, these customers have little recourse regarding their service complaints, according to Mr. Padmore.

21. In its post-hearing memorandum, Staff recommended against including State Planning’s proposed definition of “existing service territory” because:

- a. the definition appears overly broad;
- b. use of the definition is not likely to have any practical effect on planning and development; [and]
- c. under [Staff’s] proposed regulations, counties, municipalities, towns, local governments and the Office of State Planning will receive copies of CPCN applications, and may intervene and challenge the applications.

(Ex. 9 at 2.)¹

22. For the reasons outlined above, I agree with Staff, DPA, and Artesian that the Commission should not adopt State Planning’s proposed definition of “existing service territory.” If the Commission were to adopt such definition, the Commission would be, in effect, reserving future service territory for a municipal utility, without first considering the interests of ratepayers or competing wastewater utilities. Under Staff’s proposed regulation, however, the Commission will be able to institute proceedings to resolve

1. Staff also replied directly to State Planning, in a letter dated December 16, 2004.

disputes whenever an investor-owned wastewater utility seeks to expand into an area located within the growth plans of a county or municipality.

23. For all of the above reasons, I recommend that the Commission adopt, as just and reasonable, Staff’s proposed regulation (Ex. 7). A proposed form of Order implementing the above recommendation is appended, as Attachment “A,” for the Commission’s convenience.

Respectfully submitted,

William F. O’Brien, Hearing Examiner

Dated: January 21, 2005

E X H I B I T “B”

REGULATIONS CONCERNING THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION TO GRANT AND REVOKE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER SERVICES

1.0 Definitions

1.1 The following words and terms, when used in this regulation[s], should have the following meaning unless the context clearly indicates otherwise:

“Commission” means the Delaware Public Service Commission.

“CPCN” means a Certificate of Public Convenience and Necessity.

“DNREC” means the Delaware Department of Natural Resources and Environmental Control.

“DPA” means the Division of the Public Advocate.

“DPH” means the Division of Public Health of the Delaware Department of Health and Social Services

“Staff” means the Staff of the Delaware Public Service Commission.

“Secretary” means the Secretary of the Delaware Public Service Commission.

2.0 Scope and Authority

2.1 This regulation[s] governs the process by which non-governmental wastewater utilities serving, or planning to serve, fifty or more customers (in the aggregate) apply for and are granted a CPCN to provide wastewater services. This regulation[s] also contains procedures for municipalities, governmental agencies, and wastewater authorities and districts, to notify the Commission of ~~its~~ their] service territory and planned service extensions.

2.2 Authority for these regulations is granted by 26 Del.C. §203D.

2.3 Proceedings before the Commission for wastewater utilities shall be conducted in accordance with the procedures set forth in 29 Del.C. Ch. 101, Subchapter III,

including any proceedings where the Commission finds that an applicant is unwilling or unable to provide safe, adequate, and reliable wastewater service to existing customers, or is currently subject to such a Commission finding under 26 Del.C. §203D(e).

3.0 Application for a Certificate of Public Convenience and Necessity

3.1 An application for a CPCN to begin the business of a wastewater utility, or to extend or expand the business or operations of an existing wastewater utility, shall be made in writing and filed with the Commission. The application shall include all information and supporting documentation required by statute, the Rules of Practice and Procedure of the Commission, and these regulations, and shall not be considered complete until all such information and supporting documentation has been filed with the Commission. At the time of filing, the application shall:

3.1.1 Contain a statement explaining the reason(s) why the Commission should grant the CPCN, and include citations to all statutory and regulatory authority upon which the application is based, or upon which the applicant relies to support the application.

3.1.2 A statement identifying any significant element of the application that, to the applicant's knowledge, represents a departure from prior decisions of the Commission.

3.1.3 State the name, address, telephone number, and e-mail address (if any) of the individual to be notified if Staff determines there are deficiencies in the application.

3.1.4 For applications submitted under 26 Del.C. §203D(d)(2), contain the supporting documentation required by 26 Del.C. §203D, that all landowners of the proposed territory have been notified of the application by certified mail.

3.1.5 A complete list of county tax map parcel number(s), and the corresponding names and mailing addresses of the property owners, for the area covered by the application.

3.1.6 Copies of the tax map or maps with the proposed service territory clearly marked.

3.1.7 A check made out to the Delaware Public Service Commission as specified in Title 26.

3.2 If an application for a CPCN involves a wastewater utility project or service that requires the review, approval or authorization of any other state, local or federal regulatory body, including DNREC, the application to the Commission shall so state, and include the following:

3.2.1 A statement of the current status of such application or applications.

3.2.2 If a determination has been made with respect to such application by the other regulatory body or bodies, the applicant shall include a copy of any permit,

order, certificate, or other document issued by the regulatory body; and,

3.2.3 If a determination is made by the other regulatory body or bodies with respect to such application after the filing of the CPCN application with the Commission, but prior to its determination, a copy of any permit, order, certificate or other document issued by the regulatory body or bodies shall be filed with the Commission within six ~~working business~~ days of receipt ~~[by the applicant].~~

3.3 If not presently on file with the Commission, an applicant for a CPCN shall provide the following with the CPCN application:

3.3.1 A ~~corporate legal~~ history ~~[of the applicant]~~ including ~~[information such as the]~~ dates of ~~[formation or]~~ incorporation, subsequent acquisitions and/or mergers, ~~[a copy of the applicant's certificate of incorporation or other documentation reflecting the applicant's formation, and business license];~~

3.3.2 A complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates, and a chart or charts that depict the inter-company relationships;

3.3.3 A map or maps identifying all areas, including towns, cities, counties, or other government subdivisions to which service is currently provided;

3.3.4 Annual reports to stockholders for the applicant, its subsidiaries, and its parent for the last two years;

3.3.5 The applicant's audited financial statements, 10K's, and all proxy material for the last two years;

3.3.6 Any report or document submitted by the applicant within the preceding twelve months to any state or federal authorities in any proceeding where an issue has been raised regarding the applicant's failure to comply with any statute, regulation, rule, or order related to the provision of safe, adequate and reliable wastewater services to its existing customers; and

3.3.7 Evidence of comprehensive general liability insurance.

3.3.8 Supporting documentation not filed with the application shall be made available upon request for Staff review.

3.4 An applicant for a CPCN that proposes to extend services into the service territory of a municipality, government agency or wastewater authority or district must submit written documentation that such entity has been informed of and has approved such an expansion by the applicant.

3.5 During the course of the Staff investigation of an application, the Commission may require an applicant to furnish additional information specifically related to the statutory standards for Commission review and

consideration ~~[and including information]~~ pertaining to the financial viability of the applicant. **[Such documentation shall be made available for inspection and copying upon request by the Staff.]**

3.6 An applicant for a CPCN shall submit one original and 10 copies of the application and shall include three copies of applicable maps.

4.0 Additional Requirements for a CPCN Application Filed by a New Wastewater Utility

4.1 Except for municipalities, governmental agencies and wastewater authorities and districts, and wastewater utilities serving or to serve fewer than 50 customers in the aggregate, any new wastewater utility that has not previously been awarded a CPCN in Delaware and that will begin operations or ~~connect~~ **provide service to** its 50th customer after June 7, 2004, must submit the following information with its CPCN application:

4.1.1 Evidence that it possesses the financial, operational, and managerial capacity to comply with all federal, state and local wastewater requirements, by maintaining capacity sufficient to meet existing and reasonably anticipated future peak daily and monthly demands. **[In this regard, the Staff may request that the applicant provide information, such as projected revenues, expenses, capital costs, number of customers, and funding sources for a five-year period.]**

4.1.2 A certified copy of the applicant's certificate of incorporation or ~~[other documents reflecting the applicant's formation, and the applicant's]~~ **business license if not presently on file with the Commission;**

4.1.3 Details of plant as to type, capacity, cost, status of plant construction, construction schedule, and estimated number of customers to be served; and

4.1.4 A map showing the location and size, in acres or square feet, of the proposed territory, and the composition, diameter, length, and location of pipes to be initially installed.

4.2 Any existing wastewater utility that did not obtain a CPCN from the Commission by December 3, 2004 as required by 26 Del.C. §203D(a)(2), must comply with the requirements set forth in Section 4.1 of these rules.

5.0 Review of Application; Deficiencies in the Application

5.1 The Staff shall review all CPCN applications for compliance with applicable statutes and these regulations. The Staff will, within twenty-one days after the date of filing, specifically identify any deficiencies in the application, and promptly notify the applicant of the alleged deficiencies.

5.2 The applicant shall have thirty days from the date of the receipt of the notice of the deficiencies in the application to file a corrected or supplemental application. The

Commission may, in its discretion, extend the period to cure deficiencies in the application for an additional thirty days.

5.3 Only upon the applicant's filing of a corrected or supplemental application correcting the deficiencies shall such application be deemed completed and filed with the Commission for purposes of the time limits for action by the Commission under 26 Del.C. §203D(g)(1). In the event the alleged deficiencies are not cured within the time provided hereunder, Staff may move the Commission to reject the utility's application for non-compliance with these regulations.

5.4 Nothing in this regulation shall prevent an applicant from filing an application in draft form for Staff's informal review and comment without prejudice. Such informal review and comment shall not be unreasonably withheld by Staff, nor shall this regulation affect or delay the filing date of applications that comply with applicable statutes and these regulations, or whose non-compliance is deemed minor or immaterial by the Commission or its Staff.

6.0 Filing of Application with DNREC [and the Office of State Planning ~~and DPH~~]; Coordination and Cooperation; [Filing of Application with Counties, Municipalities and Towns]

6.1 An applicant for a CPCN shall file a ~~[an identical]~~ copy of the application ~~[and its supporting documentation]~~ with DNREC ~~[and the Office of State Planning ~~and DPH~~]~~ within three days of filing the same with the Commission. **[The applicant need not provide DNREC or the Office of State Planning with the supporting documentation for the application unless DNREC or the Office of State Planning request the supporting documentation.]**

6.2 Staff shall send a written request to DNREC ~~[and DPH]~~ soliciting written comment as to whether it is aware of any matters indicating that the applicant has been unwilling or unable to provide safe, adequate and reliable wastewater services to existing customers. **[Within three days of filing an application with the Commission, an applicant for a CPCN shall also file a copy of the application with a) any county within whose boundaries the proposed service territory would be located, and b) any municipality, town or local authority i) whose boundaries are adjacent to the proposed service territory, or ii) within whose boundaries or existing wastewater service territory the proposed service territory would be located. The applicant need not provide the county, municipality, town or local authority with the supporting documentation for the application unless they request it.]**

6.3 Staff shall coordinate and cooperate with DNREC ~~[and DPH]~~ during the process of reviewing an application for a CPCN. Staff shall also coordinate and cooperate with the DPA and other interested state, local, and federal authorities.

7.0 Provision of Notice to all Landowners [~~Governing County and Adjacent Towns and/or Cities of the Proposed Service Territory~~]

7.1 [~~Pursuant to the provisions of In proceedings involving an application under~~] 26 Del.C. §203D(d)(2), prior to filing the application with the Commission, the applicant shall provide written notice of the anticipated filing of the application to all landowners of the proposed territory.

7.2 Such written notice shall be sent to all landowners of the proposed territory not more than sixty days and not less than thirty days prior to the filing of the application, and must include, at a minimum, the following statement:

“Pursuant to 26 Delaware Code, Section 203D(d)(2), an application for a Certificate of Public Convenience and Necessity (CPCN) will be submitted to the Delaware Public Service Commission on or about {enter date of intended submission}. Your property has been included within an area {enter name of your organization} intends to serve with public wastewater and we are required to inform you of certain information. The area to be served is {provide a shorthand description of the service area}. If you agree to the inclusion of your property in the proposed service area, no action on your part is required. Inclusion of your property in a CPCN area does not obligate you to connect immediately to our system; however, should your existing system fail and public wastewater services are deemed to be legally and publicly available, you may then be required to connect.”

“Under Delaware law, the Public Service Commission cannot grant a CPCN to {enter name of your organization} if a majority of the landowners in the proposed wastewater service area object to the issuance of the CPCN. If you object to the issuance of a CPCN for the proposed area that includes your property, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.”

“You may also request a public hearing on this matter. The purpose of the public hearing will be to demonstrate why it would not be in the public interest for the Commission to grant {enter name of your organization} a CPCN to provide wastewater services to the proposed area. A request for a public hearing must be made in writing to the Commission within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.”

“Written notice of your decision to object to the

issuance of the CPCN or your written request for a public hearing, should be sent to the Secretary of the Delaware Public Service Commission at the address shown below. Any written notice sent to the Commission must include the description of the service area referred to above, your tax parcel identification number, and the name of the applicant for the CPCN so the Commission will be able to identify the CPCN application to which your notice is related.

Secretary
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite100
Dover, Delaware 19904

“Questions regarding objections or public hearings may be directed to: {enter the name or title, and the address and telephone number of the Commission's contact person(s)}.”

8.0 Landowners Who Object or Request a Public Hearing; Time Limits; Extension of Time

8.1 In proceedings involving an application submitted under 26 Del.C. §203D(d)(2), any landowner whose property, or any part thereof, is located within the proposed territory to be served may object to the issuance of the CPCN or request a public hearing. The applicant shall inform the Commission of the name and address of any landowner who notifies the applicant of their objection to the issuance of the CPCN or who requests a public hearing. Any written notice received [by the applicant] from a landowner shall be filed with the Commission.

8.2 The Commission shall maintain records identifying any landowner who has provided written notice of their objection to the issuance of the CPCN or who has requested a public hearing. Such records shall be made available to the applicant.

8.3 Written notice from a landowner either objecting to the issuance of the CPCN or requesting a public hearing must be filed with the Commission within sixty days from the date of the landowner's receipt of a written notice from the wastewater utility that complies with Section 7.0 of these rules, or within thirty days of the filing of the completed application, whichever period is greater.

8.4 The Commission may, in the exercise of its discretion, extend the time to object or to request a public hearing even though the period in which to do so has expired.

9.0 Suspension or Revocation of CPCN for Good Cause

9.1 Pursuant to the provisions of 26 Del.C. §203D(j), the Commission may suspend or revoke a CPCN, or a

portion thereof, for good cause. Good cause shall consist of:

9.1.1 A finding made by the Commission of material noncompliance by the holder of the certificate with any provisions of Titles 7, 16 or 26 dealing with the provision of wastewater services to customers, or any order or rule of the Commission relating to the same; or,

9.1.2 A finding by the Commission that the wastewater utility has failed in a material manner to provide adequate or safe wastewater service to customers as evidenced by inadequate customer service, insufficient investment in, or inadequate operation of, the system or otherwise; and,

9.1.3 A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative wastewater utility or a designated third party capable of providing adequate wastewater service; and,

9.1.4. A finding by the Commission that to the extent practicable, any financial consequences to customers served by the utility subject to a revocation are appropriately mitigated. (74 Del. Laws, Ch. 317, §6.)

9.2 ~~In addition to the factors~~ In conjunction with the findings] described in Section 9.1 above, the Commission may consider one or more of the following factors in determining whether to suspend or revoke a CPCN:

9.2.1 Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the wastewater utility; or

9.2.2 Criminal conduct on the part of the wastewater utility; or

9.2.3 Actual, threatened or impending insolvency of the wastewater utility; or

9.2.4 Persistent, serious, substantial violations of statutes or regulations governing the wastewater utility in addition to any finding of non-compliance required by Section 9.1.1 above; or

9.2.5 Failure or inability on the part of the wastewater utility to comply with an order of any other federal, state or local regulatory body after the wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance; or

9.2.6 Such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.

9.3 Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 Del.C. Ch. 101, Subchapter III.

9.4 The Commission will not suspend or revoke a CPCN for good cause without first affording the wastewater utility a reasonable opportunity to correct the conditions that ~~are alleged to~~ constitute the grounds for the suspension or revocation of the CPCN, unless the Commission finds that

the conduct of a wastewater utility poses an imminent threat to the health and safety of its customers, to the general public or to the environment.

10.0 Abandonment, Sale of Utility, and Transfer of CPCN

10.1 A utility seeking to abandon service, sell, or transfer a CPCN shall file an application with the Commission and must receive Commission approval prior to such abandonment, sale, or transfer.

10.2 Any entity acquiring a CPCN from the divesting utility must submit a CPCN application and receive Commission approval as specified in these regulations.

11.0 Municipalities, Governmental Agencies, and Wastewater Authorities and Districts

11.1 As provided for in 26 Del.C. §203D(b), municipalities, governmental agencies, and wastewater authorities and districts engaging in or desiring to engage in the business of a wastewater utility are not required to obtain a CPCN from the Commission for any existing or new service territory, or expansion of an existing territory.

11.2 These entities shall provide to the Commission a description of any existing service territory for wastewater service no later than October 4, 2004, and shall promptly give notice and a description of any extension of wastewater [service] territory or new wastewater service territory to the Commission.

11.3 A municipality, governmental agency or wastewater authority or district[s] shall not extend service in areas where the Commission has granted a CPCN to another wastewater utility without receiving the approval of the Commission.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 262

REGULATORY IMPLEMENTING ORDER

262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) - Fiscal Action

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to adopt a new regulation **14 DE Admin. Code 262** General Administrative Appeal Procedures for the National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA)-Fiscal Action in order to comply with the requirements in the federal statute for an appeal procedure.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 20, 2005, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Fact

The Secretary finds that it is appropriate to adopt **14 DE Admin. Code 262** in order to comply with the requirements in the federal statute for an appeal procedure.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt **14 DE Admin. Code 262**. Therefore, pursuant to **14 Del.C. §122**, **14 DE Admin. Code 262** attached hereto as *Exhibit "B"* is hereby adopted. Pursuant to the provision of **14 Del.C. §122(e)**, **14 DE Admin. Code 262** hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of **14 DE Admin. Code 262** adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as **14 DE Admin. Code 262** in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to **14 Del.C. §122** on March 10, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 10th day of March 2005.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA)-Fiscal Action

1.0 Institutions participating in the Delaware NSLP, SBP and ASSP may request an Administrative Appeal of the following fiscal actions:

1.1 Denial of all or a part of an institution's claim for reimbursement or withholding payment arising from a Coordinated Review Effort (CRE) or follow-up review activity conducted by the Delaware State Agency under Volume 7 of the Code of Federal Regulations (7 CFR) 210.18; and,

1.2 Withholding of program payments resulting from a CRE.

2.0 Administrative Appeal shall apply as set forth below, and will be conducted as follows:

2.1 The Department of Education ("Department") shall give written notice of the action being taken or proposed, the grounds upon which the action is based, and the procedures under which the school food authority (SFA) may request an appeal of the action. Notice shall be given to the SFA individuals by certified mail, return receipt requested. As used herein, "Petitioner" means an SFA or its responsible individuals, as appropriate under the circumstances.

2.2 A request for administrative appeal shall be submitted to the Department in writing, postmarked within 10 calendar days after the date the notice of action is received. The Department shall acknowledge receipt of the request for appeal within 10 calendar days.

2.3 Any information on which the Department's action was based will be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative appeal; if alterations or adjustments can be developed that are agreeable to both the petitioner and the Department, such procedure shall be followed.

2.4 The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department's review official. In order to be considered, written documentation must be submitted to the review official not later than 30 days after the petitioner submitted the appeal, shall clearly identify the State agency (SA) action being appealed, and shall include a photocopy of the notice of action issued by the SA.

2.5 A hearing must be held by the administrative appeal official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative appeal. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative appeal official, unless the administrative appeal official

agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner's testimony and written information and to answer questions posed by the administrative appeal official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.

2.6 The petitioner may retain legal counsel or may be represented by another person if permitted by law.

2.7 The administrative appeal official shall be independent and impartial, other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section. The administrative appeal official may be an employee of the Department, but shall not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative appeal official directly, but all such contacts shall include the participation of a representative of the Department, if the Department chooses to participate.

2.8 The administrative appeal official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon Program regulations, policies and procedures governing the NSBP and NSLP.

2.9 The decision of the administrative appeal official shall be issued to the Department and petitioner within 60 days of the Department's receipt of the request for review, by written notice, sent by certified mail, return receipt requested. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not, constitute grounds for reversing the Department's action. The decision of the administrative appeal official is the final administrative determination to be afforded to the petitioner, unless the CRE or review included USDA officials. When USDA officials participate in the CRE or review leading to the fiscal actions taken, then an appeal may be made to the USDA as specified under 4.0 below.

2.10 The Department's action shall remain in effect during the appeal process.

2.11 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same. The record shall document the Department's compliance with these regulations and shall include the basis for its decision.

3.0 When the CRE or follow-up activity is conducted by the State agency only, the appeal shall be made to the: Secretary

of Education, Delaware Department of Education, P.O. Box 1402, Dover, DE 19903

4.0 When the CRE is performed as a State-Assisted CRE with participation of USDA officials, at the discretion of the petitioner, the appeal may also be made to the: Chief, Administrative Review Branch, USDA-FNS, 3101 Park Center Drive, Alexandria, VA 22302

4.1 Any appeal correspondence should be marked "Request for Review". The USDA Administrative Review Branch conducting an appeal will make a determination based on information provided by the Food and Nutrition Service, the appellant and the Program regulations.

DEPARTMENT OF EDUCATION
Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 264

REGULATORY IMPLEMENTING ORDER

**264 General Administrative Appeal Procedures for the
Summer Food Service Programs of the United States
Department of Agriculture CACFP/USDA**

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to adopt a new regulation 14 **DE Admin. Code** 264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA in order to comply with the requirements in the federal statute for an appeal procedure.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 20, 2005, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Fact

The Secretary finds that it is appropriate to adopt 14 **DE Admin. Code** 264 in order to comply with the requirements in the federal statute for an appeal procedure.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt 14 **DE Admin. Code** 264. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 264 attached hereto as *Exhibit "B"* is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE**

Admin. Code 264 hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code 264** adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code 264** in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on March 10, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 10th day of March 2005.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA

1.0 Institutions participating in the Delaware SFSP may request an Administrative Appeal of the following actions:

1.1 Denial of a new or renewing institution's application for participation;

1.2 Denial of a sponsor's request for an advance payment;

1.3 Denial of all or a part of a sponsor's claim for reimbursement (except for a denial based on a late submission under 7 CFR § 225.9(d)(5));

1.4 Refusal to forward to FNS an exception request by the sponsor for payment of a late claim or request for an upward adjustment to a claim;

1.5 A claim against a sponsor for remittance of a payment;

1.6 Termination of the sponsor or site; and,

1.7 Denial of a sponsor's application for a site;

2.0 Notwithstanding the provisions of Section 1.0 above, institutions participating in the Delaware SFSP may not request an Administrative Review of the following action:

2.1 decisions made by FNS with respect to late claims or upward adjustments under S 225.9(d)(5).

3.0 Administrative appeal procedures shall apply as set forth below, and will be conducted as follows:

3.1 The Department of Education ("Department") shall give written notice of the action being taken or proposed, the grounds upon which the action is based, and the procedures under which the sponsor or food service management company may request an appeal of the action. Notice shall be given to the institution's executive director or other responsible individuals by certified mail, return receipt requested. As used herein, "Petitioner" means a participating institution or agency, or its responsible individuals, as appropriate under the circumstances.

3.2 A request for administrative appeal shall be submitted to the Department in writing not later than 15 days after the date the notice of action is received and the appeal shall meet the requirements specified in 3.5 below.

3.3 The petitioner shall make an appeal within ten (10) working days from the date on which the notice of action is received.

3.4 Any information on which the Department's action was based shall be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative appeal.

3.5 The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department's review official. In order to be considered, written documentation shall be submitted to the review official not later than seven (7) days after the petitioner submitted the appeal, must clearly identify the Department action being appealed, and must include a photocopy of the notice of action issued by the Department.

3.6 A hearing shall be held by the administrative appeal official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative appeal. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative appeal official, unless the administrative appeal official agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner's testimony and written information and to answer questions posed by the administrative appeal official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.

3.7 The petitioner may retain legal counsel or may be represented by another person if permitted by law.

3.8 The hearing shall be held within fourteen (14) days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs 3.4-3.7 above.

3.9 The administrative appeal official shall be independent and impartial. The administrative appeal official

may be an employee of the Department, but shall not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative appeal official directly, but all such contacts shall include the participation of a representative of the Department, if the Department chooses to participate.

3.10 The administrative appeal official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon Program regulations, policies and procedures governing the SFSP.

3.11 The decision of the administrative appeal official shall be issued to the Department and petitioner within five (5) days of the petitioner's hearing, or within five (5) working days after receipt of the written documentation if no hearing is held, the appeal official shall make a determination based upon a full review of the administrative record and inform the petitioner of the determination of the review by certified mail, return receipt requested. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not constitute grounds for reversing the Department's action. The decision of the administrative appeal official is the final administrative determination to be afforded to the petitioner.

3.12 The Department's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the Department's decision, reimbursement shall be paid for meals during the appeal process. However, such continued Program operation shall not be allowed if the Department's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the Department shall so specify in its notice of action.

3.13 The Department shall send written notification of the complete appeal procedures and of the actions which can be appealed, as specified in sections 1.1-1.7 above, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with 7 CFR 225.6(g).

3.14 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same. The record shall document the Department's compliance with these regulations and shall include the basis for its decision.

DEPARTMENT OF EDUCATION
Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 701

REGULATORY IMPLEMENTING ORDER

701 Unit Count

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 701 Unit Count in order to clarify issues in 4.1.1 concerning the Delaware Adolescent Program, in 4.1.6 concerning Alternative Education Programs, in 4.1.7 concerning gifted kindergarten students, in 4.1.13 concerning Vocational Programs, in 5.1.6 concerning students enrolled in a Homeschool and in 7.1.2 concerning Charter Schools. Editorial corrections have also been made.

Notice of the proposed regulation was published in the News Journal and the State News on January 20, 2005, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children, the State Council for Persons with Disabilities and the Developmental Disabilities Council concerning the 12.5 hour rule in section 4.1.12 of the regulation. The Department acknowledges the concerns expressed by the Councils on the existence of the 12.5 hour rule. But, because of the financial impact, the Department doesn't feel that it is appropriate to remove this provision without the concurrence of the Budget Office, the Comptroller General's office and the Joint Finance Committee.

II. Findings of Fact

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 701 concerning students in the Delaware Adolescent Program, in alternative education programs, in gifted kindergarten programs, in vocational programs, in homeschools and in charter schools in order to provide clarity to the explanation of the counting procedure.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 701. Therefore, pursuant to 14 Del.C. Chapter 17, 14 DE Admin. Code 701 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 701 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 701 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 701 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Chapter 17 on March 10, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 10th day of March 2005.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

701 Unit Count

1.0 Forms and Record Keeping

1.1 All information submitted through the unit count process shall be on the forms provided by the Department of Education or in such other format as may be acceptable to the Department.

1.2 Each school shall maintain September enrollment records in a manner which will allow for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.

1.3 Records to substantiate special education students included in the enrollment count shall contain: student name, cohort age group, grade level, eligibility category, name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are bonafide identified as special education students as per 14 **DE Admin. Code** 925.

2.0 Special Situations Regarding Enrollment

2.1 All exceptions and extenuating circumstances

relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.

2.2 Students with multiple disabilities shall be reported in the category that corresponds to their major eligibility category.

2.3 Students included in the special education unit count under the placement provisions of Transfer Student or Emergency Temporary Placement or Change of Placement shall meet the evaluation and placement requirements found in 14 **DE Admin. Code** 925.

2.4 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

3.0 Accounting for Students not in Attendance the Last Ten Days in September

3.1 For students not in attendance at school during the last 10 school days of September, the following information shall be on file to substantiate their inclusion in the enrollment count:

3.1.1 Reason for absence, usually medical, and date of last direct contact with student or parent.

3.1.2 Reason to believe that student will be returning to school before November 1st.

3.1.3 Districts and Charter Schools enrolling a within-state transfer student during the last ten school days of September shall notify the student's previous district or charter school of such enrollment no later than the last student attendance day of September. The notification shall be by fax with a follow-up letter to the previous ~~district central office~~ unit count coordinator's office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district or charter school is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district or charter school enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving ~~district's district or charter school's~~ enrollment and unit count. Copies of the fax transmittals and follow-up letters shall be on file to substantiate the student's inclusion in the receiving ~~district's district or charter school's~~ enrollment and unit count.

4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:

4.1.1 ~~Delaware Adolescent Program, Inc. (DAPI): A student enrolled in DAPI on September 30 may be counted in the home school enrollment count. If the~~

student received special education services the previous year in the reporting school, the student may continue to be reported for the same level of special education service as was received during the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may continue to be reported as enrolled in the next vocational course in the program series.

4.1.1 Delaware Adolescent Program, Inc. (DAPI):

4.1.1.1 Students enrolled in DAPI shall be counted in the enrollment of the sending school.

4.1.1.2 Students shall be reported for the level of special education service as defined by the current IEP.

4.1.1.3 If a student was enrolled the previous year in a vocational program in the reporting school, the students shall be reported as enrolled in the next vocational course in the program series.

4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In-school Credit Program (14 **DE Admin. Code** 915.2.4) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.

4.1.3 Temporary problem, usually medical, which precludes school attendance prior to November 1st.

4.1.4 Supportive Instruction (Homebound): Students receiving supportive instruction (homebound) pursuant to 14 **DE Admin. Code** 930 qualify for inclusion in the unit count.

4.1.4.1 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a full-time special education student if, in the child's placement immediately preceding the homebound placement, the child was receiving instruction from a certified special education teacher for at least ~~12-1/2~~ 12.5 hours per week.

4.1.4.2 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a part-time special education student if, in the child's placement immediately preceding the homebound placement, the child was receiving instruction from a certified special education teacher for less than ~~12-1/2~~ 12.5 hours per week.

~~4.1.6 Alternative Education Program: A student enrolled in an Alternative Program on September 30 may be counted in the home school enrollment count. If the student received special education services the previous year in the reporting school], the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a~~

vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.

4.1.6 Consortium Discipline Alternative Program:

4.1.6.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school. (see 14 **DE Admin. Code** 611)

4.1.6.2 Students shall be reported for the level of special education service as defined by the current IEP.

4.1.6.3 If a student was enrolled in the previous year in a vocational program in the reporting school, the students shall be reported as enrolled in the next vocational course in the program series.

~~4.1.7 Gifted or talented students as defined in 14 **Del.C.** §3101 beginning with the chronological age of 4 inclusive, who have been identified by professionally qualified persons (14 **Del.C.** §3101), are recorded in the grade level enrollment group to which they are assigned. These students should be evaluated using standardized assessment instruments.~~

4.1.7 Students enrolled in kindergarten pursuant to 14 **DE Admin. Code** 940 shall be counted in the grade level enrollment group to which they are assigned.

4.1.8 Except as provided in section 5.0 and 7.2 ~~of this regulation~~, all pre-kindergarten children with disabilities shall be counted as full-time in the appropriate eligibility category.

4.1.9 Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.

4.1.10 Regular Programs - Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, which most students take.

4.1.11 Full-time Special Education Services - Students who have been properly identified, and receive instruction from a certified special education teacher for at least ~~12-1/2~~ 12.5 hours per week. Children with disabilities must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in 14 **DE Admin. Code** 925.

4.1.12 Part Time Special Education Services - Students who have been properly identified and receive instruction from a certified special education teacher for less than ~~12-1/2~~ 12.5 hours per week. These children with disabilities must meet all other criteria for full-time special education services. For unit count computation, they will have their time apportioned between a regular student in a specified grade and a special student in a specified category.

4.1.12.1 The apportioning is accomplished by dividing the number of hours that each student receives instruction from a certified special education teacher by 15. For example, if a second grade student eligible for special education services in the Learning Disabled category receives 11.5 hours of special education service per week, the student is counted as a .77 LD student ($11.5/15 = .77$) and a .23 second grade regular student. This accounts for one Full-Time Equivalent Student ($.77 + .23 = 1.0$).

4.1.13 Vocational Programs - A maximum of 900 minutes of vocational time per week per student shall be credited toward the vocational unit determination. ~~Students who attend full time, 900 minute vocational programs are not counted in any other vocational course. They have the maximum time allowed.~~ However, units shall be counted on the basis of 1 unit for each 30 students or major fraction thereof for students enrolled in the New Castle County Votech School District, the POLYTECH School District and the Sussex Technical School District.

5.0 Programs and/or Situations that Do Not Qualify for the Unit Count

5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:

5.1.1 Students who have not attended school during the last 10 days of September

5.1.2 Students who are enrolled in General Education Development (GED) programs

5.1.3 Students who are enrolled in other than Department of Education approved programs

5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District unless that District operates the facility's instructional program; otherwise the student must be treated as a withdrawal

5.1.5 Children eligible for special education under Developmentally Delayed Three Year Old Children and Pre-School Speech Delayed 3 and 4 Year Old Children. Services will be provided for these students through an annual appropriation to the Department of Education specifically for that purpose (14 Del.C. §1703).

5.1.6 Students enrolled in a Homeschool as defined in 14 Del.C 2703A.

6.0 Nontraditional High School Schedules:

For unit count purposes if a ~~special education student~~ student receiving special education services or a vocational student in a school utilizing nontraditional schedules receives, during the course of the year, the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a vocational student receives a minimum of 300 minutes of instruction per week and a full-time special

education student receives a minimum of 7.5 hours of instruction per week.

6.1 The following exemplifies a situation with the required minimum minutes and hours for a full time vocational and/or special education student and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the year.

Fall/Spring Vocational = 300 minutes per week
Spring/Fall Vocational = 1500 minutes per week
 $1800 / 2 = 900$ minutes
per week

Fall/Spring Special Education = 7.5 hours per week
Spring/Fall Special Education = 17.5 hours per week
 $= 25.0 / 2 = 12.5$ hours
per week

7.0 Charter Schools

7.1 Charter schools shall be allowed the following options in calculating their unit count:

7.1.1 Using the standard public school procedure: major fraction unit rounding rule in each category; or

7.1.2 ~~Adding the fractional units in each category and using the major fraction unit rounding rule on the total.~~ Adding the fractional units in each category, fractional units will be funded

7.2 Funding for charter schools is limited to students lawfully enrolled in such grades K through 12 as the charter school may be approved to operate. Charter schools shall not include any pre-k students in their enrollment for unit count purposes. This section shall not be interpreted to authorize any charter school to enroll pre-k students.

8.0 Unit Adjustments After Audit

If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. ~~An other~~ Another eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

2 DE Reg. 382 (9/1/98)

5 De Reg. 627 (9/1/01)

6 DE Reg. 74 (7/1/02)

DEPARTMENT OF EDUCATION
Statutory Authority: 14 Delaware Code,
Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 712

REGULATORY IMPLEMENTING ORDER

712 Employee Leave

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 712 Employee Leave in order to add the words "school district(s)" to Sections 1.0 and 2.0 and to change the reference to "vacation time" to "annual leave". The statement that "if there is a break in service the transfer of annual leave can only occur if the break is less than six (6) months" has also been added to Section 1.0.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 20, 2005, in the form hereto attached as *Exhibit "A"*. No Comments were received.

II. Findings of Fact

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 712 by adding "school district(s)" to the words "employing state agencies", changing "vacation time" to "annual leave" and adding the statement that "if there is a break in service the transfer of annual leave can only occur if the break is less than six (6) months" to section 1.0 in order to improve the clarity of the regulation.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 712. Therefore, pursuant to 14 **Del.C.** §1318, 14 **DE Admin. Code** 712 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 712 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 712 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 712 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §1318 on January 20, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 10th day of March 2005.

STATE OF EDUCATION

Valerie A. Woodruff, Secretary of Education

712 Employee Leave

1.0 Sick Leave

Sick leave accumulated by an employee of any state agency or school district shall be transferred when said employee begins subsequent employment in a school district. If there is a break in service the transfer can only occur if the break was for less than six (6) months.

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~~ Annual Leave

Subject to any limitation imposed by statute, accumulated ~~vacation~~ annual leave shall be paid upon termination of employment. The employee may either remain on the regular payroll until such time as all ~~vacation time~~ annual leave is exhausted, or a lump sum payment ~~may be made~~ for all unused ~~vacation time~~ annual leave 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~~ annual leave shall not be transferred between different employing state agencies or school districts.

3 DE Reg. 1392 (4/1/00)

DEPARTMENT OF EDUCATION
Statutory Authority: 14 Delaware Code,
Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 940

REGULATORY IMPLEMENTING ORDER

940 Early Admission to Kindergarten for Gifted Students

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the approval of the State Board of Education to adopt a new regulation 14 **DE Admin. Code** 940 Early Admission to Kindergarten for Gifted Students in order to clarify what a school must do if they choose to admit gifted students to kindergarten before they are five years of age.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on January 20, 2005, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. The Councils suggested that more discretion be given to the schools in determining if a four year old may be admitted to kindergarten under the category of "Gifted" by using "professional judgment". It was the intent of the Department to bring some specificity to the eligibility process for early admissions to kindergarten. To bring in the option of "professional judgment" would open up the process again. The Department will retain the criteria as described. The Councils suggested removing the words "in conjunction with other appropriate personnel" in line 1.1. The Department will retain the existing language because the intent is to bring in other personnel such as teachers or counselors to assist with the determination for admission to kindergarten.

II. Findings of Fact

The Secretary finds that it is appropriate to adopt 14 **DE Admin. Code** 940 in order to clarify what a school must do if they choose to admit gifted students to kindergarten before they are five years of age.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt 14 **DE Admin. Code** 940. Therefore, pursuant to 14 **Del.C.** §3101(3) (a) or (b) and 14 **Del.C.** §2702(b), 14 **DE Admin. Code** 940, attached hereto as *Exhibit "B"* is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 940 hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 940 adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 940 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on March 17, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of March 2005.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education
Approved this 17th day of March 2005

STATE BOARD OF EDUCATION

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940 Early Admission to Kindergarten for Gifted Students

1.0 When providing early enrollment into kindergarten of children who are gifted pursuant to the provisions of 14 **Del.C.** § ~~3103 (a) (b)~~ 3101(3)(a) or (b), local school districts and charter schools shall comply with the following requirements:

1.1 At the request of any parent, legal guardian or person acting as a caregiver pursuant to 14 **Del.C.** §202 (f), the district or charter school shall conduct an evaluation of any such potentially gifted child by a school psychologist or other professionally qualified person, in conjunction with other appropriate personnel, to determine ~~the child's outstanding if the child possesses outstanding~~ mental/cognitive abilities and to determine if the child can demonstrate the social, emotional, and physical maturity, normally expected for successful participation in kindergarten. A discussion shall be held to determine the parent, guardian or Relative Caregiver's reason for requesting the child's early admission to kindergarten prior to the legal age.

[1.1.1 The evaluation shall be conducted at no cost to the parent, guardian or Relative Caregiver.]

1.2 ~~The evaluation shall be conducted at no cost to the parent, guardian or caregiver. In order to qualify for early enrollment, the results of the evaluation must indicate that the child achieved a measured score at least 1.5 standard deviations above the mean score for the~~

~~assessment instrument used to determine the child's outstanding mental/cognitive abilities, and that the child possesses the social emotional and physical maturity to successfully participate in kindergarten.] In order to qualify for early enrollment, the child must achieve a measured score at least 1.5 standard deviations above the mean score for the assessment instrument used to determine the child's mental/cognitive abilities. In addition, the evaluation must indicate that the child possesses the social, emotional and physical maturity to successfully participate in kindergarten.]~~

1.3 Following the completion of the evaluation, a representative of the school district or charter school who is knowledgeable of the evaluation process and any assessments used during the evaluation shall talk with the parent, guardian or [caregiver Relative Caregiver] to discuss the evaluation results.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 223 (16 Del.C. §223)
16 DE Admin. Code 4108

ORDER

Nature of the Proceedings

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Autism Surveillance and Registration Program Regulations. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 223.

On January 1, 2005 (Volume 8, Issue 7), 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 January 31, 2005, or be presented at a public hearing on January 24, 2005, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

Summary of Evidence

A public hearing was held on January 24, 2005, at 10:00 a.m. in the Third Floor Conference Room of the Jesse Cooper Building located on Federal and Water Streets, Dover, Delaware before David P. Walton, Hearing Officer. The purpose of the hearing was to discuss the proposed Department of Health and Social Services (DHSS) Autism Surveillance and Registration Program Regulations. Announcements regarding the public hearing were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations* in accordance with Delaware Law. Dennis Rubino, of the Community Health Care Access Branch of the Division of Public Health (DPH) made the agency's presentation. One individual attended and offered comments at the hearing on the proposed Regulations. Written comments were also received on the proposed regulations during the public comment period (January 1, 2005 through January 31, 2005). Organizations represented at the hearing and those offering comments included:

- Autism Society of Delaware
- State Council for Persons with Disabilities (SCPD)
- Delaware Developmental Disabilities Council (DDDC)
- Governor's Advisory Council for Exceptional Citizens (GACEC)
- Delaware Healthcare Association

Public comments and the DHSS (Agency) responses are indicated below:

Section 3.2: This section states, “The Department shall have access to information in the medical records of children with suspected autism.” It is unclear if the Department will have access to the entire medical records of the children or only the portion of the medical record pertaining to the diagnosis of autism. This should be clarified prior to publication of final regulations.

Agency Response: After careful review of the law and Section 3.2 of the regulations, the intent is to have access to all information in the medical record. While the Agency may not always require information from the entire medical record, based on the goals and purpose of the Autism Registry it may as the situation dictates require access to the entire medical record. The Agency is satisfied that section 3.2 is clear enough to gain access to required information

Section 3.5.2: This section requires that, “the designated representative of any clinical laboratory conducting assessment, evaluation or research that performs any test which identifies a child or children under age 18 with confirmed autism” to report this to the

Division of Public Health within 30 days. Medical professionals have stated that there are no laboratory tests that would be performed in a clinical laboratory that would identify a child with confirmed autism. It is unclear why this section is included in the proposed regulations as the related Statute does not make any references to clinical laboratories being required to report occurrences of autism.

Agency Response: The Agency agrees that there currently is no laboratory test that could be performed to identify a child with confirmed autism. However, Section 221 of the law refers to health care practitioners and all hospitals and 'clinical laboratories'. It is the intent of the Agency to have confirmed autism reported from assessments, evaluations, and research as conducted by the health care practitioners in any clinical laboratory setting.

Although the definition of autism is taken directly from the Statute there are some concerns that the definition is incorrect. Specifically, the portion of the definition referring to structural or biochemical abnormalities that may be diagnosed prior to the birth of a child. At this time there are no tests that are performed on a child prior to birth that would allow for the diagnosis of autism.

Agency Response: The Agency has maintained the definition of autism as per the law but has further refined the definition according to ICD 9 and DSM IV. Additionally, to add further clarity, a list of diagnoses is contained in the Appendix.

It is recommended that occupational and physical therapists be included in the regulations since motor functioning is part of the diagnostic criteria for autism. For example, the definition of "confirmed autism or diagnosed autism" in section 2.0 includes "stereotyped and repetitive motor mannerisms (e.g. hand and finger flapping or twisting or complex whole-body movements)".

Agency Response: The Agency agrees and maintains that occupational and physical therapists are included under the term 'health care practitioners' (Section 3.5.1).

The statutory [16 Del.C. Section 223(b)(c)] exemptions for 1) health care providers who treat with prayer alone and 2) caretakers of infants who oppose reporting on religious grounds should be included in the regulations.

Agency Response: The Agency agrees and language from the law has been incorporated

into the final Regulations.

Section 5.1: There is a concern that the first sentence could be construed to mean that reporting agencies identified in section 3.5 should be reporting information without personally identifiable information. It is inferred that DPH intended the first sentence of this section to only apply to disclosure of information already obtained by the Division. To obviate any ambiguity, the phrase "received by Division" could be inserted after the word "autism".

Agency Response: The Agency agrees with this comment and this section has been amended for clarity purposes.

It was recommend that DPH include a voluntary registration process whereby parents or guardians of Delaware citizens, regardless of age, may of their own free will, register their dependent child after the point of original diagnosis of autism. To that end, the following wording should be considered for inclusion in the regulations.

"Section 3.7 Voluntary Reporting: For the purposes of fulfilling the intent of this act, specifically to collect and reflect accurate and complete census data on citizens with autism in Delaware, a voluntary registration process has been established. Individuals may report their autistic dependent of any age by completing from XYZ. Having it attested by means of a signature of the autistic individual's attending physician and submitting this form to DHSS, DPH, at the following address. Individuals identified using this voluntary process will become part of the Delaware registry."

Agency Response: The Agency has investigated the recommendation and found that: 1) the statute does not give the authority to collect information for persons over the age of 18; and 2) the Division is requiring that health care practitioners confirm and report the children with an autism diagnosis. Accordingly, any parent can therefore request that their health care provider submit the report. In this way, the accuracy of the report is guaranteed.

In addition to written comments made above, positive comments were shared about Delaware enacting such a regulation to capture information in order to better understand autism.

The public comment period was open from January 1, 2005 to January 31, 2005.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the

Delaware Attorney General's office and the Cabinet Secretary of DHSS.

Findings of Fact

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include minor modifications from those published in the January 1, 2005, *Register of Regulations*, based on public comment. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Autism Surveillance and Registration Program Regulations are adopted and shall become effective May 10, 2005, after publication of the final regulation in the *Delaware Register of Regulations*.

Vincent P. Meconi, Secretary, 3/14/2005

4108 Autism Surveillance and Registration Program

1.0 Purpose

1.1 Autism is a severe neurodevelopmental disorder whose prevalence appears to be increasing in Delaware and across the United States. An Autism Surveillance and Registration, or an Autism Registry, will enable the Department of Health & Social Services (DHSS), Division of Public Health (DPH) to collect basic descriptive information on the individuals with autism, to track changes in prevalence over time, to inform the planning of service delivery to children with autism and their families, and to facilitate autism research.

1.2 The purpose of the Autism Registry is to provide an accurate and continuing source of data concerning autism to provide information to Public Health officials to help to ultimately decrease the autism morbidity burden associated with the disorder. The Autism Registry will gather data to assist with: prevalence estimation, cluster investigation, risk factor identification, and outcome assessment.

1.3 The usefulness of the data collected in the Autism Registry will depend upon the full and accurate reporting of the confirmed diagnosis of autism by health care practitioners, hospitals, and clinical laboratories.

1.4 The Autism Registry will be a separate component of the Newborn Screening Management System.

2.0 Definitions

The following words shall have the meanings indicated:

"Autism" means any structural or biochemical abnormality, regardless of cause, diagnosed at any time before or after birth, that requires medical or surgical intervention or that interferes with normal growth or

development. Reportable autism diagnoses are listed in Appendix A of these Regulations.

"Confirmed Autism Or Diagnosed Autism" means an abnormality characterized by each of the following symptoms:

- Impaired social behavior:
 - marked impairment in the use of multiple nonverbal behaviors, such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction
 - failure to develop peer relationships appropriate to developmental level
 - a lack of spontaneous seeking to share enjoyment, interest, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest)
 - lack of social or emotional reciprocity
- Abnormal development of communication skills:
 - delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime)
 - in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others
 - stereotyped and repetitive use of language or idiosyncratic language
 - lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level
- Lack of awareness of the need for emotional support and little emotional response to family members:
 - encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus
 - apparently inflexible adherence to specific, nonfunctional routines or rituals
 - stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting or complex whole-body movements)
 - persistent preoccupation with parts of objects

"Division" refers to the Division of Public Health under the Department of Health and Social Services.

"Infant" refers to a newborn from birth to 1 year of age.

"Registry" means a central data bank containing collected, classified, coded, and sorted data relating to confirmed autism in children from birth through age 17, as

reported by health care practitioners, hospitals and clinical laboratories.

"Surveillance" means the process of identifying and investigating confirmed autism in children under age 18.

"Suspected Autism" is a term used for an infant or young child who is showing some developmental variations that do not meet the criteria for autism but whose variations have been shown to be associated with a risk of eventually developing all of the traits of autism.

3.0 Reporting Requirements

The provisions of this section shall apply to the Delaware Health and Social Services, Division of Public Health, Autism Registry:

3.1 The registry shall collect information on any child under the age eighteen (18) who is a resident of the state of Delaware, or whose parent is a resident of Delaware, and who is diagnosed at any time prior to age eighteen (18) as having confirmed autism. For the purposes related to the registry the Department shall have access to any medical record of the child with confirmed autism.

3.2 The Department shall have access to information in the medical records of children with suspected autism. On request of the Department all mandated reporting sources should identify children who have suspected autism. The Department shall have access to records of such children.

3.3 Any diagnosis of confirmed autism shall be reported for all infants and children up to age 18, including those who have since died (if the data is still available).

3.4 For purposes of these reporting requirements, reportable diagnoses are those diagnoses, from the International Classification of Diseases (ICD) and DSM IV as listed in Appendix A of these regulations; as well as the 6-digit modified Pediatric Association system (BPA/ICD-9). The reportable diagnoses listed in Appendix A may be revised, upon notice, to reflect changes in publications accepted for use by the Centers for Disease Control and Prevention.

3.5 The following persons and organizations are required to report occurrences of autism within 30 days of diagnosis to the Division of Public Health.

3.5.1 Any physician, surgeon, dentist, podiatrist, or other health care practitioner who diagnoses a child with autism under age 18 who is not known to be previously reported. Other health care practitioners will include but not be limited to: psychiatrists, clinical and school psychologists, speech and language pathologists, licensed clinical social workers, and nurses including school nurses;

3.5.2 The designated representative of any clinical laboratory conducting assessment, evaluation or research that performs any test which identifies a child or children under age 18 with confirmed autism not known to be previously reported; and

3.5.3 The designated representative of any

hospital that diagnoses a child or children under age 18 with confirmed autism.

3.6 The administrative officer of every health care facility shall be responsible for establishing reporting procedures at that facility, using the identified Autism Registry Reporting Form. Reporting procedures must ensure that, on the effective date of these regulations, each child up to the age of 18 diagnosed as having confirmed autism or currently under care with a diagnosis of confirmed autism must be reported to the Division.

3.7 Reporting sources shall complete the Division of Public Health Autism Surveillance Form for each reported case, and forward the completed form to the Division of Public Health Director or designee within 30 days of the diagnosis.

4.0 Follow-up Information from Reporting Sources

Any follow-up information, including family, physician, hospital or clinical laboratory contact deemed necessary by the Department, shall be submitted to the Department at least 1 time each year by those required to report occurrences of autism. The required follow-up information for the Autism Surveillance and Registry system will be sent to the same address as the Autism Registry Report Form.

5.0 Exemption Based on Religious Grounds

5.1 The provisions of these regulations shall not apply to any person or private institution that, as an exercise of religious freedom, treats the sick or suffering by spiritual means through prayer alone.

5.2 A parent, custodian or guardian of an infant having autism may refuse disclosure to surveillance system and registry of the infant's name and identifying information on the grounds that such autism identification is contrary to the religious tenets and practices of the infant's parent, custodian or guardian.]

[5-0 6.0] Confidentiality of Reports

[5-1 6.1] No report of a diagnosis or treatment of confirmed autism [received by the Division] shall be disclosed in such a way as to identify the child who is the subject of the report, or as to identify the child's family. However, patient-identifying information may be exchanged among authorized entities as approved by the Department and upon receipt by the Department of satisfactory assurances by those entities of the preservation of the confidentiality of such information. Those entities will maintain the confidentiality of any information exchanged for the purpose of delivery of program services, evaluation, early intervention and epidemiological investigation.

[5-2 6.2] No individual or organization providing information pursuant to these regulations shall be held liable for divulging such information to the Division.

[5-3 6.3] Inclusion on the registry does not

determine the eligibility for services through any state agency.

[6-7.0] Penalties

Any person or organization required to report the diagnosis or treatment of confirmed autism pursuant to these regulations, and who violates these regulations, shall be subject to a fine of up to \$100 for each violation, pursuant to 16 Del.C. Sec. 226. Justices of the Peace Courts have jurisdiction over such violations.

[7-8.0] Severability

In the event any particular clause or section of the regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effective.

APPENDIX A

**DELAWARE AUTISM REGISTRY REPORTABLE
DIAGNOSES**

| <u>Broad Categories</u> | <u>Specific Categories</u> | <u>Codes</u> |
|--|--|---|
| <u>Autism spectrum disorder (ASD)</u> | <u>ICD-9</u> | |
| | <u>Infantile autism</u> | <u>299.0</u> |
| | <u>Infantile autism, active state</u> | <u>299.00</u> |
| | <u>Infantile autism, residual state</u> | <u>299.01</u> |
| | <u>DSM-IV</u> | |
| | <u>Autistic disorder</u> | <u>299</u> |
| | <u>Childhood disintegrative disorder</u> | <u>299.1</u> |
| | <u>Rett's Disorder</u> | <u>299.8</u> |
| | <u>Asperger's Disorder</u> | <u>299.8</u> |
| | | <u>Pervasive developmental disorder NOS</u> |

DIVISION OF SOCIAL SERVICES

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

ORDER

Nature of the Proceedings

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the policies of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to joint application processing. The Department’s proceedings to

amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the February 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

Citations

- 7 CFR 273.2(j): PA, GA and Categorically Eligible Households
- Federal Final Rules of Food Stamp Program: Noncitizen Eligibility and Certification Provisions of Public Law 104-193, as Amended by Public Laws 104-208, 105-33, and 105-185.

The changes require DSS to notify TANF/GA/RCA households:

- that time limits or other requirements that apply to the receipt of TANF/GA/RCA benefits do not apply to the receipt of food stamp benefits; and
- that households no longer receiving TANF/GA/RCA may still be eligible for food stamp benefits.

Additionally, the proposed changes:

- encourage applicants to continue to apply for food stamp benefits even if the household determines not to apply for TANF/GA/RCA; and
- inform households that receiving food stamps will have no bearing on any other program’s time limits that may apply to the household.

Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC) and the State Council for Persons with Disabilities (SCPD) provided the following comment:

We endorse the proposed regulation because DSS must advise recipients losing eligibility under TANF, GA, or RCA that may still be eligible for Food Stamps. Indeed, DSS must encourage continued participation in the Food Stamp program. However, the word “for” appears to have been omitted in Section 9028.1, first sentence between the words “applying” and “TANF”.

Agency Response: Thank you for your endorsement. The word “for” was inadvertently omitted during

publication. The Final Regulation shows the correct version, as intended.

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Stamp Program as it relates to joint application processing is adopted and shall be final effective April 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 3/14/2005

DSS PROPOSED REGULATION #05-01 REVISIONS:

9028.1 Joint Application Processing

Notify households applying [for] TANF/GA/RCA of their right to apply for food stamp benefits at the same time and permit them to do so. DSS will notify such households that time limits or other requirements that apply to the receipt of TANF/GA/RCA benefits do not apply to the receipt of food stamp benefits. DSS will also notify such households, which cease receiving TANF/GA/RCA because they have reached a time limit, have begun working, or were closed for other reasons, that they may still be eligible for food stamp benefits. DSS will encourage applicants to continue to apply for food stamp benefits even if household determines not to apply for TANF/GA/RCA due to the requirements or disadvantages of that program. DSS will inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household. These households' food stamp eligibility and benefit levels are to be based solely on food stamp eligibility criteria. However, any household in which all members are recipients of TANF/GA/RCA and/or SSI benefits are to be considered eligible for food stamps because of the TANF/GA/RCA/SSI status in accordance with DSSM 9042.2.

Recipients include individuals authorized to receive TANF/GA/RCA and or SSI benefits but who have not yet received payment. In addition, persons are considered recipients if the TANF/GA/RCA or SSI benefits are suspended or recouped. Persons entitled to TANF/GA/RCA benefits because the grant is less than \$10 are also considered TANF/GA/RCA recipients.

Households, whether jointly processed and/or eligible because of their TANF/GA/RCA/SSI status, will be certified in accordance with the notice, procedural and timeliness requirements of the food stamp regulations.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

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

Secretary's Order No.: 2005-A-0019

I. Background

A public hearing was held on January 25, 2005 in the Priscilla Building Conference Room, 156 South State Street, Dover, Delaware, to receive comment on a proposed revision to the State Implementation Plan (SIP) for the Attainment and Maintenance of the National Air Quality Standards for Ozone. The proposed revision will contain a new regulation, Regulation No. 45: *Excessive Idling of Heavy Duty Vehicles*. Delaware has been designated moderate non-attainment for the eight hour ozone standard. In order to curb air emissions that adversely impact air quality in the State, the Department is proposing to regulate the engine idling time for the operation of most heavy-duty vehicles having a gross vehicle weight rating of over 8,500 pounds, regardless of the state in which the vehicle is registered. This regulation will continue the efforts by the State to reduce the emissions of NOx (nitrogen oxides), and will also assist in the reduction of particulate emissions and other tailpipe pollutants from vehicles operated in Delaware.

A workshop was held regarding this proposed new regulation on January 4, 2005, in order to help provide a draft of the proposed regulation before the time of the public hearing, and to provide an opportunity for the public to ask questions on this proposal. Written comments which suggested changes to the proposed new regulation were received by the Department during both the pre-hearing phase and at the time of the hearing from two members of the public. After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Report to the Secretary dated March 10, 2005, and that Report is expressly incorporated herein by reference. Proper notice of the hearing was provided, as required by law.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Report dated March 10, 2005 are

expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed regulatory revision be promulgated in final form, in accordance with the customary and established rule-making procedure required by law and as recommended in the Hearing Officer's Report.

IV. Reasons

Adopting the proposed SIP revision and addition Regulation No. 45 – *Excessive Idling of Heavy Duty Vehicles* - will be beneficial to the State of Delaware, in that the same will enable the State of Delaware to improve and/or enhance the overall performance of the Air Quality Management Section of the Division of Air and Waste Management. Furthermore, Regulation No. 45 will continue the efforts by the State of Delaware to reduce the emissions of NOx and assist in the reduction of particulate emissions and other tailpipe pollutants from vehicles operated in Delaware.

John A. Hughes, Secretary

Regulation 45 **Excessive Idling of Heavy Duty Vehicles**

1.0 Applicability

This regulation applies to all on-road heavy-duty motor vehicles with a gross vehicle weight rating (GVWR) of greater than 8,500 pounds operating in the State of Delaware.

2.0 Definitions

The following definitions are applicable to this regulation:

“Emergency vehicle” means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated vehicle which is in response to an emergency call. Any publicly owned vehicle operated by the following persons, agencies, or organizations: (a) any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties, and.; (b) any forestry or fire department of any public agency or fire department. Any vehicle owned or operated for the purpose of: (a) fighting fires, (b) towing or servicing other vehicles, (c) caring for injured persons, or (d) repairing, maintaining and restoring public utility services necessary for the health and/or safety by any of the following: (1) the state, (2) a bridge and highway district, (3) a municipality and (4) a public or private utility Any state-owned vehicle used in

responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle. Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work. Any emergency vehicle which a permit has been issued by the Superintendent of the Delaware State Police.

“On-road heavy-duty motor vehicle” means any vehicle with a gross vehicle weight rating (GVWR) of greater than 8,500 pounds which is self-propelled and designed for transporting persons or property, including but not limited to trucks, buses, and farm vehicles.

3.0 Severability

Each section of this regulation shall be deemed severable. If any section of this regulation is held to be invalid, the remainder shall continue in full force and effect.

4.0 Operational Requirements for Heavy Duty Motor Vehicles.

The owner or operator of an on-road heavy duty motor vehicle shall comply with the following operational requirements unless specifically exempted from the operational requirements for these motor vehicles:

No on-road heavy duty motor vehicle shall be allowed to operate for more than three (3) consecutive minutes when the vehicle is not in motion.

5.0 Exemptions

5.1 any on-road heavy duty motor vehicle which is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control; or

5.2 any situation where it is necessary to bring the on-road heavy duty vehicle to the manufacturer's recommended operating temperature; or

5.3 any situation when the on-road heavy duty vehicle is being repaired; or

5.4 any emergency vehicle defined in Section 2.0 of this regulation; or

5.5 any vehicle using auxiliary power for equipment to perform the intended operation of the vehicle, including, by way of example, a power take off generator for any utility truck; or

5.6 any vehicle idling for the necessary power for a heater, air conditioner, or any ancillary equipment during sleeping or resting in a sleeper berth such that the vehicle's location is not within 25 miles of a parking facility with available truckstop electrification equipment, either shore power or an advance system [that is approved by the

Department including meeting all compatibility requirements with existing onboard truck shorepower equipment]; or

5.7 any vehicle idling to verify that the vehicle is in safe operating condition as required by law and that all equipment is in good working order, either as part of a daily vehicle inspection or as otherwise needed, provided that such engine idling is mandatory for such verification; or

5.8 any transit or school bus for up to five (5) minutes prior to passenger boarding; or

5.9 any transit or school bus when passengers are onboard; or

5.10 any vehicle when providing heat to the occupant and when the temperature is between -23 and 0 C, or -10 and 32 F, an engine shall not idle for more than 15 consecutive minutes; or when the temperature is below -23 C or -10 F, and where no nuisance is created, an engine shall not be subject to idling restrictions [, or

5.11 any military tactical vehicle engaged in training operations.]

6.0 Enforcement and Penalty

This regulation is enforceable under Title 7 Chapter 60, §§6005 and 6013 of the Delaware Code. Violators are subject to a penalty of not less than fifty dollars (\$50) and not more than five-hundred dollars (\$500) for each offence.

DIVISION OF FISH AND WILDLIFE

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

Order No. 2005-F-0018

Summary of Evidence and Information

Pursuant to due notice 8, issue 8 DE REG page 1080, (2/1/05), The Department of Natural Resources and Environmental Control proposes to amend Tidal Finfish Regulation Nos. 3511 and 3507 pertaining to summer flounder and black sea bass respectively. For summer flounder eight options were proposed to restrain the recreational harvest to conform to the harvest cap of 150,000 fish imposed on Delaware for the 2005 fishing season by the Atlantic States Marine Fisheries Commission's (ASMFC) regional fisheries management plan. The proposed regulation for black sea bass would eliminate the current season closure and permit the fishery to remain open throughout the year.

The options presented for summer flounder and the changes associated with the black sea bass regulation are necessary for Delaware to remain in compliance with the

Atlantic States Marine Fisheries Commission fishery management plan provisions for these species and all of the options presented have been pre-judged to be in compliance with the mandatory provisions of these fishery management plans.

A public hearing was held on the proposed amendments to Regulations 3511 and 3507 on March 8, 2005. Comments were taken on the eight options for summer flounder and the proposed elimination of a seasonal component for management of black sea bass. Written testimony was received and included into the record.

Findings of Fact

- There was no opposition to the proposed elimination of the season for black sea bass. The nine people that attended the public hearing all supported this change in the regulation.

- Among the nine people who spoke on the record at the public hearing seven supported summer flounder option 7 or status quo. The justification for their support of option 7 focused on concerns that by adding additional fish to the creel limit or reducing the minimum size requirement the harvest cap could be exceeded thus requiring more stringent management measures in 2006. The majority of the speakers were opposed to any closed season and they wanted to try and avoid an overage in 2005 that may require a closed season in 2006 as part of a more restrictive approach to restrain the recreational harvest of summer flounder.

- Four written comments were received that pertained to the options for summer flounder. One person supported the status quo (option 7), while one person favored option 3 with a 17 inch minimum size limit and two people supported option 2 with a 16.5 inch minimum size.

- Two people endorsed option 8 which included an additional two fish bag limit. These individuals commented that most anglers only catch one fish per trip so consequently these two additional fish will not cause an overage in the harvest cap. It would provide additional incentive for people to go fishing if a larger bag limit were available.

- Those individuals supporting option 7, status quo, indicated that this basic approach has been successful during the last four years in restraining Delaware's recreational summer flounder landings within the harvest cap. As such, they support a continuation of this program for the 2005 recreational fishery.

Conclusions

I have reached the following conclusions:

- Delaware and the surrounding states are required to restrain the recreational harvest of summer flounder to a harvest cap level that is calculated individually for each state. This cap is predicated on state landings of

recreationally caught summer flounder in 1998 and consequently all states have different caps. The individual state harvest cap is a compliance requirement in the ASMFC summer flounder FMP. In order to avoid any action by ASMFC, which under a worse case scenario could result in a Federal moratorium on fishing for summer flounder in Delaware, it will be necessary to require management measurers in 2005 that have in the past proven to restrain the harvest.

- Information presented at the public hearing by the Department indicates that in 2001 under a restrictive management program of 17.5 inch minimum size and 4 fish creel limit the estimated harvest was 143,000 fish. This estimated harvest is just slightly below the 150,000 fish harvest cap in place for 2005 and consequently suggests that even these measures may not be restrictive enough to restrain the fishery in 2005 if fish are available in substantial numbers in Delaware waters and fishing effort increases.

- The overwhelming majority of people who attended the public hearing and commented on the record supported option 7 which is more restrictive than option 8 and theoretically should prove more effective in restraining the harvest.

- Delaware's minimum size limit for summer flounder should remain at 17.5 inches and the creel limit should remain at 4 fish for the 2005 fishing season.

- The current regulation for black sea bass should be amended to permit harvesting during the entire year. This change in regulations will insure that Delaware's management program is consistent with the majority of coastal states from Massachusetts to North Carolina.

ORDER

It is hereby ordered this 14th day in March in the year 2005 that an amendment to Tidal Finfish Regulation No. 3507, copies of which are attached hereto, is adopted pursuant to 7 Del.C. § 903(e)(2)(a) and is supported by the Departments findings of evidence and testimony received. This Order shall become effective on April 11, 2005.

John A. Hughes, Secretary

Department of Natural Resources and
Environmental Control

3507 Black Sea Bass Size Limit; Landing Permits; Qualifying Criteria; Seasons; Quotas (Formerly Tidal Finfish Reg. 23)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length.

2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve (12) inches total length.

6 DE Reg. 1230 (3/1/03)

6 DE Reg. 1360 (4/1/03)

3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

6 DE Reg. 1358 (4/1/03)

4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.

6 DE Reg. 1230 (3/1/03)

5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.

6 DE Reg. 1230 (3/1/03)

6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.

1 DE Reg.1767 (5/1/98)

2 DE Reg 1900 (4/1/99)

3 DE Reg 1088 (2/1/00)

4 DE Reg 1665 (4/1/01)

4 DE Reg 1859 (5/1/01)

5 DE Reg 2142 (5/1/02)

6 DE Reg. 348 (9/1/02)

6 DE Reg. 1230 (3/1/03)

7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.

Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.

6 DE Reg. 1230 (3/1/03)

8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery by 4:30 PM on a date no later than 15 days after this regulation is signed by the Secretary of the Department.

6 DE Reg. 1230 (3/1/03)

9.0 It shall be unlawful for a commercial food fisherman to transfer quota allocation shares of black sea bass to another commercial food fishermen.

6 DE Reg. 1230 (3/1/03)

10.0 Each commercial food fishermen participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.

6 DE Reg. 1230 (3/1/03)

11.0 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

6 DE Reg. 1230 (3/1/03)

~~**12.0** It shall be unlawful for any recreational fisherman to take and reduce to possession or to land black sea bass during the periods beginning at 12:01 AM on September 8, 2004 and ending at midnight on September 21, 2004 and beginning at 12:01 AM on December 1, 2004 and ending at midnight on December 31, 2004.~~

~~[(Note: Seasonal measures were eliminated by SASMFC for the 2005 season)]~~

7 DE Reg. 1575 (5/1/04)

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~four (4)~~ **[four (4)]** summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

~~[(Note: creel limit to be determined in combination with seasonal closure and size limit.)]~~

6 DE Reg. 1358 (4/1/03)

2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~seventeen and one-half (17.5)~~ **[seventeen and one-half (17.5)]** inches between the tip of the snout and the furthest tip of the tail.

~~[(Note: size limit to be determined in combination with seasonal closure and creel limit.)]~~

6 DE Reg. 1358 (4/1/03)

7 DE Reg. 1575 (5/1/04)

3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~seventeen and one-half (17.5)~~ **[seventeen and one-half (17.5)]** inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

~~[(Note: size limit to be determined in combination with seasonal closure and creel limit.)]~~

6 DE Reg. 1358 (4/1/03)

4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

4.3 A bill of lading while transporting fresh or frozen summer flounder.

4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.

6 DE Reg. 1358 (4/1/03)

5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

6 DE Reg. 1358 (4/1/03)

6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

6 DE Reg. 1358 (4/1/03)

7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four~~ (4) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.

~~[(Note: Creel limit to be determined in combination with seasonal closure and size limit.)]~~

~~1 DE Reg 1767 (5/1/98)~~

~~2 DE Reg 1900 (4/1/99)~~

~~3 DE Reg 1088 (2/1/00)~~

~~4 DE Reg 1552 (3/1/01)~~

~~5 DE Reg 462 (8/1/01)~~

~~5 DE Reg. 2142 (5/1/02)~~

~~6 DE Reg. 1358 (4/1/03)~~

~~7 DE Reg. 1575 (5/1/04)~~

~~[(Note: Proposed options for seasonal closures associated with creel limits and minimum size limits to restrict the recreational summer flounder harvest in Delaware in 2004-2005.]~~

| Opening Option | Final Day | Number of Bag Open Days | Minimum Limit | Size |
|---------------------------|----------------------|------------------------------------|--------------------------|--------------------------------|
| 1 | 01-Jan | 08-Sep | 220 | 7 16²² |
| 2 | 01-Jan | 14-Aug | 226 | 5 16.5²² |
| 3 | 01-Jan | 6-Sep | 249 | 5 17²² |
| 4 | 25-May | 10-Aug | 78 | 7 16²² |
| 5 | 25-May | 18-Aug | 86 | 5 16.5²² |
| 6 | 01-Jan | 31-Dec | 365 | 4 17.5²² |
| 8 | 01-Jan | 31-Dec | 365 | 6 17.5²² |

DIVISION OF WATER RESOURCES

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

Secretary's Order No.: 2005-W-0020

I. Background

On September 13, 2004, a public hearing was held in Downes Lecture Hall, Terry Campus, at the Delaware Technical & Community College in Dover to receive comment on the Department's proposed 2005 revisions to the *Delaware Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems*. These regulations were initially adopted in 1985, when the Department changed its approach from a "perk test" (hydraulic approach) to a soils-based approach for siting on-site wastewater systems. The Department chose this approach in order to protect the State of Delaware's groundwater, which is used for the State's supply of drinking water. These regulations were formally revised by the Department in 2002, after holding a series of workshops and a public hearing back on October 29, 2001. During the process of promulgating the 2002 revisions to these regulations, the Ground Water Discharges Section realized that they did not have the authority to implement some of the proposed changes, specifically, the creation of a Class "H" System Inspector. The regulation amendment process was reopened with a Start Action Notice issued in October 2003, subsequent to the passing of new legislation which allowed the licensing of the Class "H" System Inspector.

Over the past year, the Department scheduled and conducted four public workshops to help educate the public with regard to the proposed changes to these regulations, with the final workshop having been held on June 21, 2004. In addition to these public workshops, the Department also conducted several community meetings to further enlighten the public as to the Department's approach to these proposed revisions to Delaware's regulations governing such on-site wastewater treatment and disposal systems. As a result of the comments received from the public at these various public forums, the Ground Water Discharges Section of the Division of Water Resources proposed modifications to the previously noticed changes, and the initial public hearing concerning the proposed revisions to these regulations was held, as noted above, on September 13, 2004.

Subsequent to the conclusion of the initial public hearing in September of 2004, the Department reviewed all of the comments and concerns voiced by the public with regard to these proposed regulation revisions, and determined that the matter should go to a second public hearing to specifically address the proposed requirement for the use of a community-large on-site wastewater treatment and disposal system. Thus, these proposed revisions were the subject of a second public hearing, which took place at the DNREC R & R Building in Dover on January 10, 2005.

Following the second public hearing, the Ground Water Discharges Section of the Division of Water Resources met once again to review and consider the comments arising from this supplemental hearing. These considerations, along with the Department's conclusions regarding same, are contained within the Division of Water Resources' Final Response Document Memorandum submitted to the Hearing Officer on March 14, 2005. This Response Document was incorporated into the Hearing Officer's report for the sake of brevity, and to aid the Secretary in his review of this regulatory promulgation. Proper notice of both the initial public hearing of September 13, 2004, and the supplemental public hearing of January 10, 2005, were provided as required by law.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Report dated March 14, 2005 are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above findings, it is hereby ordered that the proposed 2005 revisions to the *Delaware Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Disposal Systems*, as revised through the public comment process and Departmental review, be promulgated in final form in the customary manner and established rule-making procedure required by law and as recommended in the Hearing Officer's Report.

IV. Reasons

This rulemaking represents careful, deliberate and reasoned action by this agency to address the serious problem which affects Delaware's on-site wastewater treatment and disposal systems. In developing these revised regulations, the Department remains committed to enhancing and improving its ability to require on-site systems that are capable of adequately treating and disposing of wastewater that meets or exceeds pollutant load reduction targets established in existing TMDLs in order to address statewide water quality impairments. Furthermore, these revised regulations will help DNREC to achieve administrative consistency with other State agencies such as the Public Service Commission, the Division of Public Health, and the State Fire Marshall's Office, and to comply, where possible, with Executive Order #59. Finally, the promulgation of these revised Regulations demonstrates a balance of the absolute environmental need for the State of Delaware to revise its present regulations concerning this matter with the important interests and wide array of public

concerns surrounding the design, installation, and operation of these on-site wastewater treatment and disposal systems, in furtherance of the policy and purposes of 7 Del.C., Ch. 60.

John A. Hughes, Secretary

Date of Issuance: March 16, 2005

Effective Date of the Amendment: April 11, 2005

*** PLEASE NOTE: DUE TO THE LENGTH OF THE REGULATION IT IS NOT BEING PUBLISHED IN THE PRINTED VERSION OF THE REGISTER. FOR A COPY OF THE REGULATION PLEASE CONTACT THE REGISTRAR'S OFFICE.**

PDF Version (Adobe Acrobat Required)

GOVERNOR'S APPOINTMENTS

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| BOARD/COMMISSION OFFICE | APPOINTEE | TERM OF OFFICE |
|---|---|-----------------------------|
| Board of The First State Preservation Revolving Fund | Ms. Leslie Davis | Pleasure of the Governor |
| Board of Pharmacy | Mr. Donald E. Holst | 7/1/2008 |
| Board of Professional Counselors of Mental Health and Chemical Dependency Professionals | Mr. Russel D. Buskirk Mr. Michael T. Kriner | 2/14/2008 2/11/2008 |
| Department of Finance, Secretary | The Honorable Richard S. Cordrey | Pleasure of the Governor |
| Kent County, Justice of the Peace | The Honorable Frederick W. Dewey, Jr. | 2/18/2011 |
| New Castle County, Justice of the Peace | The Honorable Stanley J. Petraschuk | 2/18/2011 |
| Superior Court, Kent County, Associate Judge | Mr. Robert B. Young | 2/17/2017 |
| Sussex County, Justice of the Peace | The Honorable John R. Hudson The Honorable Marcealeate S. Ruffin | 2/12/2011 2/8/2011 |
| Wilmington Area Planning Council (WILMAPCO) | Ms. Lee Ann Walling | Pleasure of the Governor |

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

DSS NOTICE OF INTENT #05-18

**Pharmaceutical Services:
Prior Authorization, Preferred Drug List and
Supplemental Drug Rebates**

The purpose of this action is to implement a preferred drug list and prior authorization for pharmacy services. The agency's intent is to submit an amendment to the Title XIX Medicaid State Plan to the Centers for Medicare and Medicaid Services (CMS) to implement:

- a prior authorization process with a preferred drug list (PDL) for certain designated drugs in selected therapeutic classes covered under the prescription drug program;
- revisions to prescription quantity and duration provisions; and,
- supplemental drug rebates.

Statutory Basis:

- Social Security Act, Title 19, Section §1927
- 42 United States Code s1396r-8

Amending the Following State Plan Pages:

Attachment 3.1-A, Page 5 Addendum, Limitations

Summary of Provisions:

To ensure that the state delivers a medical assistance prescription drug program, which is both cost effective and prudently administered, the following describes the proposed coverage changes for prescribed drugs and/or supplies, effective April 1, 2005 for Prior Authorization with Preferred Drug List and Supplemental Rebates:

1. Prior Authorization with a Preferred Drug List
 - a. A prior authorization process is established which utilizes a preferred drug list (PDL) for selected therapeutic classes. Drugs included on the preferred drug list (PDL) are automatically prior authorized. Drugs in those classes that are not included on the PDL shall require prescribers to obtain prior authorization.
 - b. Providers will be notified of the drugs selected for placement on the PDL by selected therapeutic classes prior to implementation of the prior authorization process and as

additional drugs are subsequently added to the list. This information will be posted on the DMAP website.

c. The prior authorization process provides for a turn-around response within 24 hours of receipt of a completed prior authorization request from a prescribing provider by telephone, mail or electronic communication. In emergency situations, providers may dispense at least a 72-hour supply of medication as mandated and pursuant to 42 United States Code s1396r-8.

d. The Drug Utilization Review (DUR) Board will make recommendations to the Department regarding drugs to be considered for prior authorization.

2. Prescription Quantity and Duration

a. Other drug product restrictions may include dosage and quantity limits, refill limits, and other parameters necessary to ensure appropriate utilization or to prevent fraud and abuse.

b. Prescriptions are limited to a quantity not to exceed the greater of 100 dosing units or a 34-day supply.

3. Supplemental Drug Rebates

a. The state intends to enter into agreements with pharmaceutical manufacturers to collect supplemental rebates for the benefit of the state's Medicaid clients providing such agreements are authorized by CMS.

b. Division of Social Services (DSS) will contract with an independent organization to negotiate supplemental rebate agreements with manufacturers.

By implementing these processes, the Department will ensure that all eligible Medicaid beneficiaries have the same comprehensive pharmacy coverage available to them, while reducing the cost of pharmaceutical products to the state. Physicians and patients will continue to have access to the same FDA-approved drugs as they have had in the past.

DIVISION OF SOCIAL SERVICES

Temporary Assistance for Needy Families (TANF) Caseload Reduction Credit Report

SUMMARY OF PROVISIONS

Section 407(b)(3) of the Social Security Act (the ACT) requires a reduction of the State's required participation rate for a fiscal year by the number of percentage points that the average monthly number of families receiving assistance in the State in the immediately preceding fiscal year is less than the average monthly number of families that received assistance in the State in fiscal year (FY) 1995.

The statute prohibits this reduction from including any caseload declines due to requirements of Federal law or due to differences in State eligibility criteria. This reduction in the participation rate is termed the TANF Caseload Reduction Credit.

To receive a caseload reduction credit, a State must complete Form ACF-202, the Caseload Reduction Report, in

accordance with the regulations at 45 CFR 261.40 et seq. The FY 2004 report provides the information needed to calculate a caseload reduction credit (FY 2005 vs. FY 1995), and thus determine the participation standard the State must meet for the fiscal year. Form ACF-202 and Attachment 1 to Form ACF-202 are available upon request via mail or fax.

ACF-202 TANF Caseload Reduction Credit Report

Part I - Implementation of All Eligibility Changes Made by the State Since FY 1995

Part II - Application Denials and Case Closures, By Reason

Part III - Description of the Methodology Used to Calculate the Caseload Reduction Estimates (Attachment 1 to Form ACF-202)

Part IV- Certification

Delaware TANF Caseload Reduction Credit Report for FY 2005

| State <u>Delaware</u> | | Fiscal Year 2005 | |
|---|---|---------------------|---|
| PART I – Implementation of All Eligibility Changes Made by the State Since FY 1995 | | | |
| # | Eligibility Change | Implementation Date | Estimated Impact on Caseload Since Change (positive or negative impact) |
| Changes Required by Federal Law | | | |
| 1 | Parents/caretakers must work after 24 months of assistance | March 1997 | 0 |
| 2 | Teen parents must live in adult-supervised settings | Prior to FY 1995 | 0 |
| 3 | Deny assistance for 10 years for fraudulently misrepresenting residence to obtain assistance in more than one State | March 1997 | 0 |
| 4 | Deny assistance for fugitive felons, probation violators, or parole violators | March 1997 | 0 |
| 5 | Deny assistance for certain individuals convicted of drug-related felonies | March 1997 | 0 |
| 6 | Deny assistance to non-qualified aliens | March 1997 | -123 |
| State-Implemented Changes | | | |
| Changes Related to Income and Resources | | | |
| 1 | Fill-the-gap budgeting for earnings | October 1995 | +830 |
| 2 | Increased resource limit | October 1995 | +283 |
| | | | |
| Changes Related to Categorical or Demographic Eligibility Factors | | | |
| | None. | | |
| | | | |
| Changes Related to Behavioral Requirements | | | |

GENERAL NOTICES

| | | | |
|---|---|--------------|---|
| 3 | Contract of Mutual Responsibility sanctions | October 1995 | -684 |
| 4 | Sanctions for noncompliance with employment and training requirements | October 1995 | -822 |
| Changes Due to Full-Family Sanctions | | | |
| | | | |
| Other Eligibility Changes | | | |
| 5 | Work for your welfare requirement | October 1995 | -1,532 |
| 6 | Time limit | October 1995 | -76 |
| Estimated Total Net Impact on the Caseload of All Eligibility Changes | | | -2,124 |
| Total Prior Year Caseload | | | 5,735 |
| Estimated Caseload Reduction Credit | | | 32.4 percent (includes adjustment for excess MOE) |

| | | | | |
|--|-------------------------------------|-------------------------|-------------------------|-------------------|
| State <u>Delaware</u> | | Fiscal Year <u>2005</u> | | |
| PART II – Application Denials and Case Closures, By Reason | | | | |
| | Fiscal Year 1995¹ | | Fiscal Year 2004 | |
| Reason for Application Denials | Number | Percentage | Number | Percentage |
| Failure to comply with procedural requirements | 18 | 31.6 | 2,441 | 26.8 |
| Income exceeds standards | 15 | 26.3 | 3,818 | 41.9 |
| Application withdrawn | 14 | 24.6 | 0 | 0.0 |
| No eligible child | 0 | 0 | 1,677 | 18.4 |
| Resources exceed limits | 6 | 10.5 | 323 | 3.6 |
| Not deprived of support or care | 1 | 1.8 | 0 | 0.0 |
| Ineligible alien | 1 | 1.8 | 141 | 1.5 |
| Other | 2 | 3.5 | 704 | 7.7 |
| ¹ Delaware's FY 1995 denial and closure numbers are based on the State's quality control sample | | | | |
| Total Application Denials | 57 | 100.1 | 9,104 | 100.0 |

| | | | | |
|--|---------------|-------------------|---------------|-------------------|
| Reasons for Case Closures | Number | Percentage | Number | Percentage |
| Failure to comply with procedural requirements | 60 | 46.5 | 1,475 | 15.9 |
| Earnings exceed standard of need | 29 | 22.5 | 1,304 | 14.0 |
| Voluntary withdrawal/recipient initiative | 16 | 12.4 | 2,501 | 26.9 |
| No longer eligible child | 10 | 7.8 | 3,115 | 33.6 |
| Moved or cannot locate | 8 | 6.2 | 798 | 8.6 |
| No longer deprived of support or care | 3 | 2.3 | 0 | 0.0 |

GENERAL NOTICES

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| | | | | |
|--|------------|--------------|--------------|--------------|
| Support increased from person inside or outside home | 0 | 0 | 7 | 0.1 |
| Resources exceed limits | 0 | 0 | 69 | 0.7 |
| Other cash income | 2 | 1.6 | 0 | 0.0 |
| Failure to comply with JOBS program requirements | 0 | 0 | 0 | 0.0 |
| Other | 1 | 0.8 | 15 | 0.2 |
| Total Case Closures | 129 | 100.1 | 9,284 | 100.0 |

| | |
|---|-------------------------|
| State <u>Delaware</u> | Fiscal Year <u>2005</u> |
| Part III – Description of the Methodology Used to Calculate the Caseload Reduction Estimates (attach supporting data to this form) | |
| See attachment. | |

State Delaware Fiscal Year 2005

PART IV -- Certification

I certify that we have provided the public an appropriate opportunity to comment on the estimates and methodology used to complete this report and considered those comments in completing it. Further, I certify that this report incorporates all reductions in the caseload resulting from State eligibility changes and changes in Federal requirements since Fiscal Year 1995. (A summary of public comments is attached.)

(signature)

(name)

(title)

Attachment 1 to Form ACF-202

Part III—Description of the Methodology Used to Calculate the Caseload Reduction Estimates

A. Actual Caseload Reduction and Adjustment for Excess MOE Funds

- Taking into account the pro rata reduction in the FY2004 caseload due to excess MOE spending, Delaware's average monthly TANF caseload declined by 52.1 percent between FY1995 and FY2003. This caseload reduction number includes child-only cases, as instructed in ACF guidance.

| Delaware AFDC/TANF Caseload for FY95 and FY04 | |
|--|--------|
| FY 1995 monthly average caseload | 10,775 |
| FY 2004 monthly average caseload, actual (= 5,643 TANF + 126 SSP families) | 5,769 |
| FY 2004 monthly average caseload, adjusted for excess MOE spending | 5,162 |
| Caseload decline, FY1995 to FY2004 (not including the effect of eligibility changes) | 5,613 |
| Sources: FY1995 and FY2004 TANF caseloads from ACF/OPRE; SSP caseload from DE DSS | |

- The following table shows how the pro rata reduction for excess MOE was calculated.
 - Because Delaware served its two-parent caseload under a separate state program in FY2004, and because the State met its all-family work participation rate requirement in FY2004, the relevant spending floor is 75 percent of the basic MOE amount.
 - The pro rata reduction takes into account the use of federal TANF funds. The pro rata reduction is calculated as the State excess MOE divided by the average cost per case, where cost is the sum of State and federal TANF funds.
 - The end result is a pro rata reduction of 607 cases. This number is subtracted above from the actual FY2004 monthly average caseload to yield the adjusted FY2004 caseload of 5,613.

| Pro Rata Reduction for Excess MOE | | |
|-----------------------------------|--------------------|--------------|
| (a) | DE FY1994 spending | \$29,028,092 |
| (b) | MOE (75% of (a)) | \$21,771,069 |

| | | | |
|-----|--|--------------|---|
| (c) | DE FY2004 MOE spending | \$27,210,684 | |
| (d) | Federal TANF block grant funds spent in FY2004 | \$24,477,872 | |
| (e) | Total TANF spending for FY2004 | \$51,688,556 | = (c) + (d) |
| (f) | Average spending per case | \$8,959 | = (e) / FY2004 caseload = (e) / (5,643 TANF + 126 SSP) |
| (g) | Excess MOE for FY2004 | \$5,439,615 | = (c) - (b) |
| (h) | Cases funded by excess MOE | 607 | = (g) / (f) |

B. Changes Required by Federal Law

1. Parents/caretakers must work after 24 months of assistance or when job-ready

- The estimated impact of this federal policy on Delaware's caseload is 0, because the State's "work for your welfare" requirement effectively supplants the federal policy. The caseload impact of the State policy is described below in Section C.5.

2. Teen parents must live in adult-supervised settings to receive assistance

- The estimated impact of this federal policy since FY1995 is 0, because the policy has been codified in the State manual for many years prior to FY1995.

3. A State must deny assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in more than one State

- For fraudulently misrepresenting residence, Delaware removes the adult's needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult's needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware's automated TANF eligibility system is currently unable to identify such instances, if any exist.

4. A State must deny assistance for fugitive felons, probation violators, or parole violators

- For fugitive felons, probation violators, and parole violators, Delaware removes the adult's needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult's needs reduces the payment standard for a case

so that it is no longer greater than countable income. Delaware's automated TANF eligibility system is currently unable to identify such instances, if any exist.

5. A State must deny assistance for certain individuals convicted of drug-related felonies

- For persons convicted of drug-related felonies, Delaware removes the person's needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult's needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware's automated TANF eligibility system is currently unable to identify such instances, if any exist.

6. Non-qualified aliens are ineligible for Federal TANF assistance

- The total number of cases denied as non-qualified aliens since the federal policy took effect is 153. This includes denials in FY1998, FY1999, FY2000, FY2001, FY2002, FY2003, and FY2004.
- The count of denied non-qualified aliens was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2004 if they had not been denied as non-qualified aliens. See Section D for a description of this adjustment.

C. State-Implemented Changes

1. Fill-the-Gap Budgeting for Earnings

- The average monthly number of cases in FY2004 that were subject to fill-the-gap budgeting for earnings is 830. This number is based on a monthly query to the Delaware Client Information System (DCIS) on all open cases with earnings. Cases were counted as subject to fill-the-gap budgeting for earnings in a month only if earnings minus applicable disregards were above the payment standard for the relevant family size.

2. Increased Resource Limit

- The average monthly number of cases open in FY2004 because of the increased resource limits is 283. This number is based on a count of the number of cases open in a month whose assets (cash plus vehicle) were above the previous limits and below the current limit.
- Some cases were subject to both the increased resource limit and fill-the-gap budgeting for earnings. To avoid such double-counting, the

number of cases open because of the increased resource limit (283) *excludes* cases that were also open due to fill-the-gap budgeting.

3. Sanctions for Noncompliance with Contract of Mutual Responsibility (CMR) Provisions

- The average monthly number of cases closed in FY2004 because of CMR sanctions is 788. This number is based on monthly cumulative counts of cases closed due to CMR sanctions for FY 1996 through September 2004.
- The CMR sanction is a graduated fiscal sanction. Sanctions for noncompliance are initially \$50 and increase by \$50 every month until there is compliance, or until the sanction amount exceeds the grant amount. Cases are counted as closed due to CMR sanctions only when the sanction amount exceeds the grant amount.
- The CMR count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2004 if they had not been closed due to CMR sanctions. See Section D for a description of this adjustment.

4. Sanctions for Noncompliance with Employment and Training Requirements

- The average monthly number of cases closed in FY2004 because of noncompliance with employment and training (E&T) requirements is 822.
- The sanction for noncompliance with E&T requirements is a 1/3 reduction of the grant amount for the first occurrence, a 2/3 reduction for the second occurrence, and permanent case closure for the third occurrence. Cases are counted as closed due to E&T sanctions only for the third occurrence.
- Because the E&T level 3 sanction is permanent, the number of cases closed due to E&T sanctions as of the beginning of FY2003 is a cumulative count of all cases closed prior to FY2003. To this number we add the average monthly number of cases closed due to E&T sanctions *during* FY2004.
- The E&T sanction count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2004 if they had not been closed due to E&T sanctions. See Section D for a description of this adjustment.

5. Work for Your Welfare Requirement

- The average monthly number of cases closed in

FY2004 because of noncompliance with the “Work for Your Welfare” work requirement is 1,532.

- The workfare count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2004 if they had not been closed due to noncompliance with the workfare requirement. See Section D for a description of this adjustment.

6. Time Limit

- Prior to January 2000, Delaware limited receipt of Temporary Assistance for Needy Families (TANF) - for families in the Time Limited Program - to 48 cumulative months, subject to compliance with Contract of Mutual Responsibility and Work for Your Welfare requirements.
- Effective January 1, 2000 the time limit for receipt of TANF cash benefits is 36 cumulative months. Individuals found eligible for TANF prior to January 1, 2000 will still have a 48 month time limit even if they reapply for benefits after January 1, 2000.
- Fifty-four (54) cases reached the four-year time limit during FY2004. Eight (8) cases had reached the newer three-year time limit by the end of FY2004.

D. Impacts of Eligibility Changes: Adjusting for Cases that Would Have Left TANF for Other Reasons

- As noted in ACF’s guidance for submitting caseload reduction credit information, “a State may adjust its estimate of the impact of a change over time to account for likely caseload decline that would have occurred due to other factors, such as earnings, not associated with any eligibility change.” A given cohort of TANF cases will leave TANF over time, even absent sanctions and time limits. Most research shows a monotonic decline over time in the rate of TANF receipt for a given cohort, even when recidivism is accounted for.
- We estimated the rate at which cases would have left over time in the absence of eligibility changes *using TANF receipt rates for the control group from the random assignment evaluation of the State’s ABC program*. The control group is close to an ideal counterfactual because control group members were not subject to the eligibility changes. In addition, the control group receipt rates are measured taking into account recidivism.
- More specifically, we used TANF receipt rates for control group cases that were *ongoing* at the point of random assignment, because cases that are

sanctioned off or reach the time limit are ongoing cases at the time they are sanctioned or reach the time limit. Using TANF receipt rates for ongoing control group cases is more conservative than using TANF receipt rates for all control group cases, because exit rates are lower for ongoing cases.

- The TANF receipt rates for ongoing control group cases show that:
 - On average over the first year since random assignment, 5.1 percent of cases left TANF;
 - On average over the two years since random assignment, 7.1 percent of cases left TANF;
 - On average over the three years since random assignment, 15.4 percent of cases left TANF;
 - On average over the four years since random assignment, 43.3 percent of cases left TANF;
 - On average over the five years since random assignment, 63.3 percent of cases left TANF;
 - On average over the six years since random assignment, 79.0 percent of cases left TANF; and
 - On average over the seven years since random assignment, 88.7 percent of cases left TANF.
- These net exit rates were applied to the counts of cases that closed due to eligibility changes to get the adjusted number of cases closed due to eligibility changes. For example, the average monthly number of cases closed due to CMR sanctions in FY1998 was 489. Using the control group net exit rates, we assume that 63.3 percent of these cases would have left for other reasons by the end of FY2004, so the adjusted number of cases closed due to CMR sanctions in FY1998 was 179, which is $489 * (1 - .633)$. A similar adjustment was made to cases closed due to sanctions during other years.
- This approach has two limitations. First, on average, ongoing control group cases became subject to welfare reform policies during follow-up quarter 6 or 7. Even so, few or no control group cases would have reached the “work for your welfare” two-year time limit before another eight quarters, meaning follow-up quarters 14 or 15. The second limitation is that, at this point follow-up data are available only through quarter 10. Consequently, net exit rates were extrapolated for quarters 11 through 20, because the adjustment requires exit rates for five full years.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS IN OPTOMETRY**

NOTICE OF PUBLIC HEARING

The Delaware Board of Examiners in Optometry is proposing an amendment to Rule 3.4 of its rules and regulations pursuant to 24 **Del.C.** §2104(a)(1) and 29 **Del.C.** §10115. The Board proposes to amend Rule 3.4 to strike the limitation on the number of interns or externs permitted in a practice at any period of time.

A public hearing will be held on May 12, 2005 at 6:45 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed amendment to the rules and regulations may obtain a copy from the Delaware Board of Optometry, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF PHARMACY
Notice of Public Hearing**

The Delaware Board of Pharmacy in accordance with 24 **Del.C.** §2509 has proposed changes to its rules and regulations. The proposal makes clerical and clarification changes to Regulations 1.0, 3.0, 5.0, 9.0, and 10.0. Regulation 1.2 is modified to recognize the role of preceptors from Pharmacy Colleges when students are participating in coordinated practical experience programs in Delaware pharmacies. Regulation 1.6 regarding to re-entry is deleted. Regulation 5.0 is changed to permit students of Pharmacy College to dispense and provide counseling. The provisions for emergency use medication in Regulation 9.0 are changed to correspond to the provisions in 11.0. The reference material in Regulation 10.0 is modified.

A public hearing will be held on the proposed changes on May 11, 2005 at 10:00 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. The Board will receive and consider input from any person on the proposed changes. Written comment can be submitted at any time

prior to the hearing in care of David Dryden, Executive Secretary, at the above address. In addition to publication in the *Register of Regulations*, copies of the proposed regulation can be obtained from David Dryden, Executive Secretary, by calling (302)739-4798. Notice of the hearing and the nature of the proposal are also published in two Delaware newspapers of general circulation.

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

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF GEOLOGY
Notice of Public Hearing**

The Delaware Board of Geologists in accordance with 24 **Del.C.** §3606 has proposed changes to Rule 7.0 of its rules and regulations to clarify that the ASBOG Fundamentals Of Geology (FG) exam may be taken at any time after the applicant meets the educational requirements set forth in the statute. This rule clarifies that the ASBOG Fundamentals Of Geology (FG) exam and ASBOG Practice of Geology (PG) may be taken at separate times allowing the Fundamentals exam to be taken immediately after graduation if an applicant so desires.

A public hearing will be held on May 6, 2005 at 10:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Geologists, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF FUNERAL SERVICES
Notice Of Rescheduled Public Hearing**

The Delaware Board of Funeral Services in accordance with 24 **Del.C.** §3105(a)(1) has proposed changes to its rules and regulations relating to continuing education. The proposal authorizes the automatic approval of courses offered by the Academy of Funeral Services Practitioners

(AFSP) or state boards that license funeral directors.

A public hearing will be held at 10:30 a.m. on May 25, 2005, in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rule may obtain a copy from the Delaware Board of Funeral Services, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

PUBLIC SERVICE COMMISSION

Notice of Public Hearing

The Delaware General Assembly has enacted legislation granting the Delaware Public Service Commission (“the Commission”) jurisdiction over Wastewater Utilities serving fifty or more customers in the aggregate. The law is found at **74 Delaware Laws**, Chapter 317.

In connection with the exercise of jurisdiction over Wastewater Utilities, the Commission is promulgating proposed new regulations governing the Minimum Standards For Service Provided by Wastewater Utilities subject to the jurisdiction of the Commission. The first regulation sets forth: (a) the Commission’s authority to promulgate the regulations; (b) the applicability of the regulations; and (c) the definitions used in the regulations. The second regulation addresses: (a) the records and reports to be maintained by wastewater utilities; (b) information to be filed with the Commission; (c) the complaint records that are to be maintained; and (d) customer billing. The third regulation governs engineering subjects, including: (a) the authorization needed for operation or construction of a wastewater system; (b) wastewater plant operation; and (c) wastewater plant inspection. The fourth regulation deals with wastewater system safety programs. The fifth regulation governs customer relations, including: (a) applications for service; and (b) billing statement adjustment. The sixth regulation governs front-end capital contributions.

Copies of the proposed Regulations are available for public inspection at the Commission’s address set out below during normal business hours. The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 *et seq.*

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before May 5, 2005.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before April 5, 2005.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission’s Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801 and will also be available for review on the Commission’s website: www.state.de.us/delpsc.

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

DEPARTMENT OF AGRICULTURE DELAWARE STANDARDBRED BREEDERS’ FUND

Notice of Public Hearing

The State of Delaware, Department of Agriculture’s Standardbred Breeders’ Fund (herein “the Fund”) hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly’s delegation of authority to adopt such measures found at 29 **Del.C.** §4815(b)(3)b.2.D and in compliance with Delaware’s Administrative Procedures Act, 29 **Del.C.** §10115. The proposed amended regulations constitute a clarification of two existing regulations. The first is an amendment which will allow a wider participation by stallions seeking to register with the Fund’s Program. The second is a clarification of the term “Satisfactory Performance Line” that was at issue in a recent Delaware lawsuit.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups

concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*.

Any such submissions should be mailed or delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by May 1, 2005.

THOROUGHBRED RACING COMMISSION

Notice of Public Hearing

The Delaware Thoroughbred Racing Commission, pursuant to 3 **Del.C.** §10103, proposes to amend rules 15.0 and 19.3.1.1 to permit the Commission to blood gas test, outlining quarantine procedures for positive tests, clarifying the current rules regarding furosemide, and to raise the appeal bond from \$250 to \$400 to cover the increased administrative costs including court reporter costs associated with appeals brought before the commission. The Commission will hold a public hearing on the proposed rule change on Saturday, April 30, 2005. Written comments should be sent to John Wayne, Administrator of Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, April 21, 2005 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Food Stamp and Cash Assistance Programs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the policies of the Food Stamp Program

and the Cash Assistance Program in the Division of Social Services Manual (DSSM) as it relates to trafficking victims.

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

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Long Term Care Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal gives direction on counting gifts to minors under the Uniform Gifts to Minors Act (UGMA) for the eligibility process.

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

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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

DIVISION OF FISH AND WILDLIFE
Statutory Authority: 7 Delaware Code,
Sections 903(e)(2) (7 Del.C. §§903(e)(2))

NOTICE OF PUBLIC HEARING

NOTICE OF PUBLIC HEARING

Title Of The Regulations:

Tidal Finfish Regulation 3504 STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS. (Formerly Tidal Finfish Reg. 7)

Tidal Finfish Regulation 3541 ATLANTIC SHARKS. (Formerly Tidal Finfish Reg. 25)

Tidal Finfish Regulation 3566 MINIMUM AGE FOR A COMMERCIAL FINFISH LICENSEE OR A RECREATIONAL GILL NET LICENSEE.

Shellfish Regulation 3701 MINIMUM AGE FOR A COMMERCIAL SHELLFISHING LICENSEE OR NON-COMMERCIAL CLAMMING PERMITTEE.

Brief Synopsis Of The Subject, Substance And Issues:

To clarify what the minimum size limit is for striped bass taken commercially in gill nets in the Delaware River and Bay during the extended two-week season in February and the extended season during the month of May. During these season extensions, the minimum size for striped bass taken commercially from Delaware River and Bay shall be 20 inches total length, just as it is 20 inches total length during March and April in the Delaware River and Bay. The commercial gill net minimum size during the extended two-week season in February shall also be 20 inches total length in the Nanticoke River and its tributaries.

To set a minimum size of 54 inches, fork length and a one shark per person per day harvest limit for shoreline and pier fishermen for any large coastal shark, any pelagic shark or any small coastal shark exclusive of dogfish sharks.

To establish the age of 16 years as the minimum age to qualify for a commercial foodfish license and commercial foodfish equipment permits, for a recreational gill net permit, or for commercial shellfish licenses or a non-commercial clamming permit.

Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment will be held at the Department of Natural resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on April 27, 2005. The record will remain open for written or e-mail comments to roy.miller@state.de.us until 4:40 PM May 2, 2005.

Title Of The Regulations:

Tidal Finfish Regulation 3512 Winter Flounder Size Limit; Possession Limit; Seasons. (Formerly Tidal Finfish Reg. 20)

Brief Synopsis Of The Subject, Substance And Issues:

The Atlantic States Marine Fisheries Commission recently approved Amendment 1 to the Interstate Fishery Management Plan for inshore Stocks of Winter Flounder. In order to come into compliance with this amendment, this proposed regulation would raise the minimum size for winter flounder (*Pseudopleuronectes americanus*) from 10 inches to 12 inches, total length and would establish a possession limit of 10 winter flounder per day (a day being 24 hours) for recreational fisherman. The above referenced plan also requires that the open season for recreational fishing be no longer than 60 days and that at least 20 continuous days must be closed in the months of March and April. Therefore it is proposed that:

Option 1 (Preferred) - It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 10 in any given calendar year.

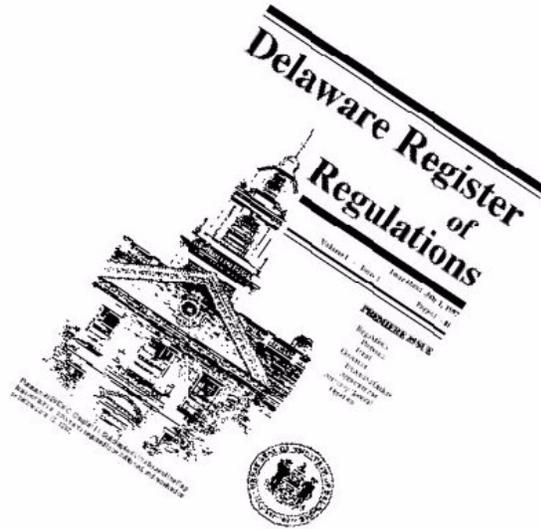
Option 2 - It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 30 in any given calendar year. Further, it shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder between 12:01 AM March 1 and 12:00 midnight March 20 in any given calendar year. Other options for an open fishing season may be considered as long as they include the required 20-day closure during the months of March and April and a 60-day open season.

Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302) 739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on April 27, 2005. The record will remain open for written or e-mail comments to roy.miller@state.de.us until 4:40 PM May 2, 2005.

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