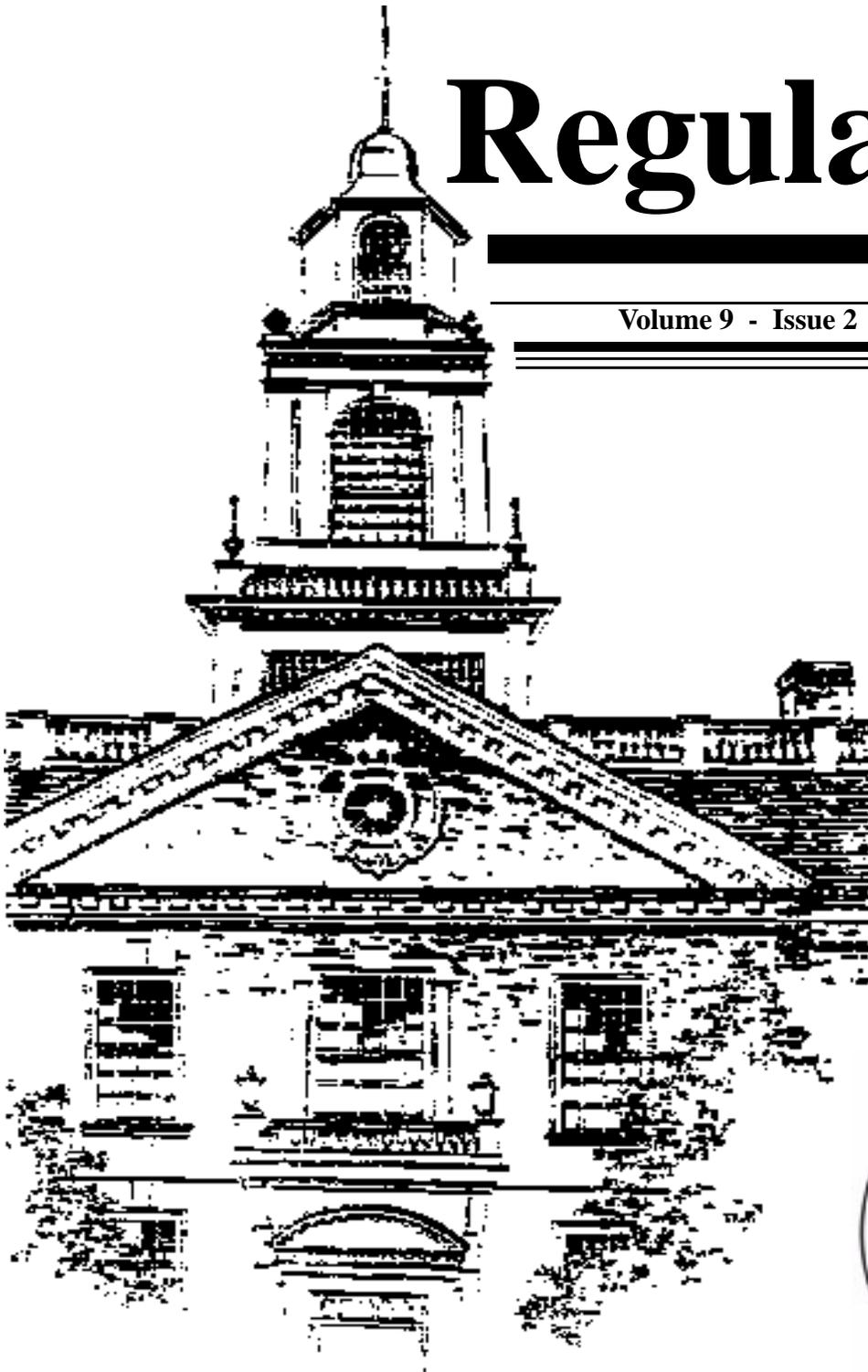

Delaware Register of Regulations

Issue Date: August 1, 2005

Volume 9 - Issue 2

Pages 157 -296



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Proposed

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Calendar of Events &

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before July 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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section, no judicial review of a regulation is available

unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.

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Moved to Department of State, 75 Del. Laws, Ch. 88, June 30, 2005.

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Moved to Department of State, 75 Del. Laws, Ch. 88, June 30, 2005.

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Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

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.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

EMERGENCY REGULATION

Client Cost Sharing for Pharmaceutical Services: Cumulative Maximum

Nature of the Proceedings:

This Emergency Regulation is being promulgated to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to establish a cumulative maximum on pharmacy co-payments effective July 1, 2005. Delaware Health and Social Services ("Department") must take this action on an emergency basis to ensure access to quality healthcare. The Department has determined that a threat to the public welfare exists if it is not implemented without prior notice or hearing.

Nature of Proposed Amendment:

Statutory Basis:

- 42 CFR §447.54(d)

Amending the Following Title XIX Medicaid State Plan Pages:

- Page 56a
- Attachment 4.18-A, Page 3

Amending the Following Sections of the Division of Social Services Manual:

- 14960.1
- 14960.1.1

Summary of Amendment Provisions:

On June 1, 2005, DSS published a Notice of Intent to amend its client cost-sharing regulations for pharmacy services. The purpose of this action is to give public notice of the agency's intent to submit an amendment to the Title XIX Medicaid State Plan to the Centers for Medicare and Medicaid Services (CMS) to establish a cumulative maximum on pharmacy co-payments, effective July 1, 2005.

To encourage and facilitate client access to pharmaceutical care services, an emergency regulation is needed for the immediate implementation of a cumulative

maximum. This action is necessary to minimize adverse impacts to clients.

To ensure that the state delivers an accessible medical assistance prescription drug program, the following describes the proposed change for pharmacy co-payments, effective July 1, 2005:

A cumulative maximum is established as described below:

\$15.00 cumulative monthly maximum co-payment amount aggregated for pharmacy services.

Once a client has met the individual monthly maximum co-payment for his or her prescriptions, the Point of Sale (POS) System will NOT indicate a co-payment is due. Medicaid will keep track of the cumulative number of prescriptions for a client with co-payments. Any prescriptions dispensed after the cumulative maximum monthly co-payment amount is met are not subject to a co-payment. Reversal of a previously filled prescription with a co-payment will require a refund of the co-payment to the individual, and will cause the next prescription filled for that client to be adjudicated with a co-payment.

By implementing this process, the Department ensures that a cumulative maximum is likely to benefit all eligible Medicaid clients with continued access to prescription medications.

The proposed cumulative maximum pharmacy requirements are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Findings of Fact:

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

THEREFORE, IT IS ORDERED, that the proposed amendment to the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to establish a cumulative maximum on pharmacy co-payments be adopted on an emergency basis without prior notice or hearing, and shall become effective July 1, 2005.

Vincent P. Meconi, Secretary, DHSS

**DSS EMERGENCY ORDER #05-36a
Page 56a**

Revision: HCFA-PM-91-4 (BPD) OMB No.: 0938-AUGUST 1991

State/Territory: Delaware

Citation 4.18 (b) (3) (Continued)

42 CFR 447.51 through 447.58

(iii) For the categorically needy and qualified Medicare beneficiaries, ATTACHMENT 4.18-A specifies the:

- A. Service(s) for which a charge(s) is applied;
 - B. Nature of the charge imposed on each service;
 - C. Amount(s) of and basis for determining the charge(s);
 - D. Method used to collect the charge(s);
 - E. Basis for determining whether an individual is unable to pay the charge and the means by which such an individual is identified to providers;
 - F. Procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b); and
 - G. Cumulative maximum that applies to all deductible, coinsurance or co-payment charges imposed on a specified time period.
- ~~Not applicable. There is no maximum.~~
- ~~Not applicable. There is no maximum.~~

DSS EMERGENCY ORDER #05-36b

maximum monthly co-payment amount is met are not subject to a co-payment.

ATTACHMENT 4.18-A

Page 3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

E. Cumulative maximums on charges:

 State policy does not provide maximums. Cumulative maximum has been established as described below:\$15.00 cumulative monthly maximum co-payment amount aggregated for pharmacy services.Once a client has met the individual monthly maximum co-payment for his or her prescriptions, the Point of Sale (POS) System will NOT indicate a co-payment is due. Medicaid will keep track of the cumulative number of prescriptions for a client with co-payments. Any prescriptions dispensed after the cumulative maximum monthly co-payment amount is met are not subject to a co-payment. Reversal of a previously filled prescription with a co-payment will require a refund of the co-payment to the individual, and will cause the next prescription filled for that client to be adjudicated with a co-payment.

DSS EMERGENCY ORDER #05-36c

14960.1 Co-Payment Requirement

Effective January 10, 2005, clients have a nominal co-payment ~~will be imposed~~ for generic and brand name prescription drugs as well as over-the-counter drugs prescribed by a practitioner.

The co-payment is based upon the cost of the drug as follows:

Medicaid Payment for the Drug	Co-payment
\$10.00 or less	\$.50
\$10.01 to \$25.00	\$1.00
\$25.01 to \$50.00	\$2.00
\$50.01 or more	\$3.00

The co-payment is imposed for each drug that is prescribed and dispensed.

149601.1 Cumulative Maximum Monthly Co-payment

Effective July 1, 2005, there is a cumulative maximum monthly co-payment amount equal to \$15.00 for each recipient. Any prescriptions dispensed after the cumulative

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 HEALTH AND
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES**

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

PUBLIC NOTICE**Child Care Development Fund Services October 1, 2003
through September 30, 2005**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Development Fund Services for the period October 1, 2003 through September 30, 2005.

On June 1, 2005, DSS published a Notice of Intent to amend its state plan for Child Care Development Fund Services. Because of the substantive nature of these changes, DSS is now republishing this regulation as a proposal for public comment pursuant to 29 **Del.C.** §§10115 and 10118.

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 August 31, 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 PROVISIONS**Statutory Basis**

- "Section 658E of the Child Care & Development Block Grant of 1990, as amended; and,
- "45 CFR §§98.10 98.18

Summary of Amendment

1) Beginning June 2005 license exempt in-home providers are required to complete 45 hours of training consisting of Health, Safety & Nutrition (9 hours); CPR and First Aid (6 hours); Child Development (15 hours); Understanding Children's Behavior (12 hours); and Understanding Early Literacy and Language Development (3 hours).

2) Existing providers have six months upon notice from The Family & Workplace Connection (FWC) to enroll and complete required training.

3) New providers must complete training within 90 days of beginning their contract with the Division of Social Services. Classes are provided by the FWC and are offered during the day and evening.

DSS PROPOSED REGULATION #05-38

Section 6.4 - Health and Safety Requirements for In-Home Providers (658E(c)(2)(F), §§98.41, 98.16(j))

6.4.3 For in-home care that is NOT licensed, and therefore not reflected in NRCHSCC's compilation, the following health and safety requirements apply to child care services provided under the CCDF for:

- The prevention and control of infectious disease (including age-appropriate immunizations)

In-home providers: provide or maintain clean furnishings, free from rodents and insects; maintain documentation of immunization status; separate children with symptoms of illness from other children in care; provide a clean and sanitary place for storing and changing diapers; wash hands before and after diapering and before serving meals. In-home providers must self-certify that they intend to operate a healthy and safe facility.

- Building and physical premises safety

In-home providers: Screens must be in good repair; protective receptacle covers for electrical; outlets have or have access to a working telephone; operable flash lights; first aid kits; adequate space for play and movement; storage of flammable materials away from children; kitchens must be clean and food storage areas clean; compliance with applicable community regulations; play equipment must be safe; outdoor area must be accessible by a safe route; play areas near hazards must be fenced or otherwise protected, in-home providers must self-certify.

- Health and safety training

~~In-home providers: must read and review information provided about health and safety, and attend Office of Child Licensing workshops as deemed necessary.~~

~~In addition, these providers must attend an initial DSS sponsored workshop. This workshop explains DSS rules for care, its reimbursement policies, payment and attendance reporting requirements, and provides tips for good child care and safety practices.~~

~~Also, the providers are required to have both a child abuse registry and criminal history check. A negative outcome results in termination of service.~~

Providers are required to have both a child abuse registry and criminal history check. A negative outcome results in termination of service.

In addition, these providers must attend an initial DSS sponsored workshop. This workshop explains DSS rules for care, its reimbursement policies, payment and attendance reporting requirements.

Beginning June 2005 license exempt in-home providers are required to complete 45 hours of training consisting of Health, Safety & Nutrition (9 hours); CPR and First Aid (6 hours); Child Development (15 hours); Understanding Children's Behavior (12 hours); and Understanding Early Literacy and Language Development (3 hours).

Existing providers have six months upon notice from The Family & Workplace Connection (FWC) to enroll and complete required training.

New providers must complete training within 90 days of beginning their contract with the Division of Social Services. Classes are provided by the FWC and are offered during the day and evening.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Self-Employment Income

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 several policies in the Division of Social Services Manual (DSSM) to implement a simplified way to calculate self-employment income.

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 August 31, 2005.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

Summary of Proposed Changes**Citations**

- Section 812 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996;
- 7 CFR 273.11(a)(2)(i); and,
- 7 CFR 273.2(b)(3)(v).

1. Instead of detailing each cost of doing business, Delaware proposes to mandate a flat percentage deduction of 44 percent to gross self-employment income as the cost of producing income. The 44 percent flat rate applies to all self-employment income cases for all assistance programs, including Cash Assistance, Child Care, Food Stamps and applicable Medicaid/Medical Assistance Programs.

2. The standard will be updated annually to reflect changes in the economy and the cost-of-living adjustment (COLA).

3. The standard deduction reflects an average of the self-employment costs which is 44 percent.

4. The change shall also be applied to ongoing cases at the time of the next review/redetermination or interim change involving the affected policy unless otherwise indicated.

DSS PROPOSED REGULATIONS #05-33 REVISIONS:**CASH ASSISTANCE**

4004.1 Sources of Earned Income

1. Wages – Gross earnings paid to the employee before deductions for taxes, FICA, insurance, etc. are counted. Sick pay or vacation pay is considered as a wage as long as it is paid as a wage. If sick pay is paid through an insurance company as disability pay, it is considered unearned income.

NOTE: Earnings paid to employees under contract are averaged over the number of months covered by the contract. EXAMPLE: A teacher is under contract for a full calendar year, but may choose to collect his pay during the school year. His wages for public assistance purposes are budgeted over the full year.

2. Self-employment – Gross earned income from self-employment is determined by subtracting business expenses (supplies, equipment, etc.) from gross proceeds. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the standard allowance for work connected expenses (See DSSM 4004.2 and 4004.3).

Self-Employment Standard Deduction for Producing Income

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October.

The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify they have business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all their business costs to receive the standard deduction.

Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.

The self-employment standard deduction will be reviewed annually to determine if an adjustment in the percentage amount is needed.

Self-employed persons must submit evidence of gross proceeds and business expenses or income tax statements to verify earnings.

~~3. Farming — Farming is defined as raising crops, livestock, or poultry for profit. Gross earned income from farming is determined by subtracting the farmer's operating expenses from sales. Produce grown for home consumption is not considered income.~~

~~4. Room and Board Income — [See 4006 for treatment of cash payments for shared living expenses.] Income from the operation of a rooming and/or boarding home is considered earned income. The following disregards are deducted from gross proceeds as operating expenses. These expenses are deducted before any earned income disregards are subtracted from income.~~

~~Roomers only — subtract \$10.00 per month per person. (A roomer is a person who rents living space in the home.)~~

~~Boarders only — subtract \$30.00 per month per person. (A boarder is a person who purchases meals provided in the home, but does not live there.)~~

~~Roomers and Boarders — subtract \$46.00 per month per person. (A roomer and boarder does both.)~~

~~EXAMPLE: An individual operates a rooming and boarding home. She has three (3) roomers who each pay~~

~~\$60.00 per month and two (2) roomers and boarders who each pay \$100.00 per month:~~

~~\$180.00 Payment from roomers \$60 x 3
-30.00 Disregards for roomers \$10 x 3
\$150.00
\$200.00 Payment from roomers and boarders (\$100 x 2)
-92.00 Disregard for roomers and boarders (\$46 x 2)
\$108.00~~

~~\$150.00
+108.00
\$258.00 Total gross income from roomers and boarders~~

~~(Earned income disregards appropriate to the category of assistance are subtracted in the budgeting process. See DSSM 4004.2 and 4004.3):~~

(Break in Continuity of Sections)

FOOD STAMPS

9074.2 Allowable Costs of Producing Self-Employment Income

(1) Allowable costs of producing self-employment income include, but are not limited to:

- The identifiable costs of labor;
- stock;
- raw material;
- seed and fertilizer;
- payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods;
- interest paid to purchase income-producing property;
- insurance premiums; and
- taxes paid on income-producing property.

(2) The following items are not allowable costs of doing business:

- net losses from previous periods;
- Federal, State and local income taxes, money set aside for retirement purposes, and other work-related personal expenses like transportation to and from work. (Work-related personal expenses are covered under the 20 percent earned income deduction.)
- depreciation; and
- any amount that exceeds the payment a household receives from a boarder for lodging and meals.

~~(3) Calculate the costs of producing self-employment income using the actual costs according to (b)(1) or determine self-employment expenses as follows:~~

- For income from day care, use the current reimbursement amounts used in the Child and Adult Care Food Program.
- For income from boarders, other than those in commercial boarding houses or from foster care boarders, use the maximum food stamp allotment for a household size that is equal to the number of boarders.
- For income from foster care boarders, refer to DSSM 9013.1.

9074.2 Self-Employment Standard Deduction for Producing Income

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and is listed in the Cost-of-Living Adjustment (COLA) notice each October.

The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The 20% earned income deduction is then applied to the net self-employment income and any other earned income in the household.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, self-employed households must provide and verify they have business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all its business costs to receive the standard deduction.

Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.

The self-employment standard deduction will be reviewed annually to determine if an adjustment in the percentage amount is needed.

(Break in Continuity of Sections)

9075 Procedure for Calculating Income Which Can Be Annualized to Reflect Monthly Calculations

1) Add all gross self-employment (including capital gains) for the period of time over which the self-employment income is determined.

2) Subtract the total cost of producing the income self-employment standard deduction.

3) Divide the income by the number of months over which the income will be averaged.

4) For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis, add any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divide this amount by 12. This amount shall be used in successive certification periods during the next 12 months, except that a new average monthly amount shall be calculated over this 12-month period if the anticipated amount of capital gains changes. Add the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtract the cost of producing the self-employment income. ~~The cost of producing the self-employment income will be calculated by anticipating the monthly allowable costs of producing the self-employment income.~~ self-employment standard deduction.

Calculation I - Gross Income

- (a) Anticipated capital gains for 12-month period beginning with date of application.
- (b) + Anticipated gross self-employment income.
- (c) = Gross self-employment income.

Calculation II - ~~Costs of Operations~~

- ~~(a) Gross allowable costs of operation.~~
- ~~(b) + Gross depreciation.~~
- ~~(c) = Total cost of operation.~~

Calculation III - Net Self-employment Income

- (a) Gross self-employment income.
- (b) - ~~Total cost of operation~~ self-employment standard deduction
- (c) Divided by 12
- (d) = Net monthly self-employment income.

(Break In Continuity of Sections)

CHILD CARE

11003.9.1 Countable Income

A. All sources of income, earned (such as wages) and unearned (such as child support, social security pensions, etc.) are countable income when determining a family's monthly gross income. Monthly gross income typically includes the following:

1. Money from wages or salary, such as total money earnings from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses earned before deductions are made for taxes, bonds, pensions, union dues, etc.

2. Gross income from farm or non-farm self-employment is determined by subtracting ~~business expenses such as supplies, equipment, etc. from gross proceeds~~ the self-employment standard deduction for producing income as described below. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the TANF standard allowance for work connected expenses. In the case of unusual situations (such as parent/caretaker just beginning business), refer to DSSM 9056 and 9074.

Self-Employment Standard Deduction for Producing Income

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October.

The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify they have business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all their business costs to receive the standard deduction.

Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.

(Break in Continuity of Sections)

MEDICAID/MEDICAL ASSISTANCE

15120.2 Financial Eligibility

TANF rules on income standards and methodologies (disregards, exclusions, allocations) apply to Section 1931 Medicaid except as provided in this section.

For Section 1931 Medicaid, there are two income tests to determine financial eligibility. The first test is a gross income test and the second is a net income test. For the gross income test, compare the family's gross income to 185% of the applicable standard of need. For the net income test, compare the family's net income to the applicable standard of need.

Financial eligibility for both applicant and recipient families will be calculated using the 30 and 1/3 disregard if

applicable. This disregard allows the deduction of \$30 plus 1/3 of the remaining earned income after the standard allowance for work connected expenses is subtracted.

The \$30 plus 1/3 disregard is applied to earned income for four (4) consecutive months. If Medicaid under Section 1931 or employment ends before the fourth month, the earner is eligible for the disregard for four (4) additional months upon reapplication or re-employment.

When an earner's wages are so low (\$90 or less in the month) that the income is zero before any part of the \$30 plus 1/3 disregard can be applied, that month does not count as one of the four (4) consecutive months and the earner is eligible for the disregard for four (4) additional months.

After the \$30 plus 1/3 disregard has been applied for four (4) consecutive months, the 1/3 disregard is removed from the budget. The \$30 disregard continues to be deducted from earned income for eight (8) consecutive months. The \$30 disregard is not repeated if an individual stops working or 1931 Medicaid ends before the completion of the eight (8) consecutive months. If 1931 Medicaid ends and the family reapplies, the \$30 disregard from earned income is continued until the end of the original eight (8) consecutive months.

Unlike the \$30 plus 1/3 disregard which is dependent upon the family having sufficient earned income and being 1931 Medicaid recipients, the \$30 disregard is for a specific time period. This time period begins when the \$30 plus 1/3 disregard ends and is not dependent upon the family having earned income or 1931 Medicaid.

When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received Medicaid under Section 1931 for twelve (12) consecutive months.

All earned income is disregarded for the second and third months of eligibility.

All earned income is disregarded for 12 months after employment causes ineligibility.

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self-employment standard deduction. The result is the amount included in the gross income test (185% of the applicable standard of need). Standard earned income deductions are then applied to the

self-employment income for the net income test (the applicable standard of need).

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section 1931.

(Break in Continuity of Sections)

~~16230.1.2 Self Employment~~

~~Determine gross earned income from self-employment by subtracting allowable business expenses from gross proceeds. Business expenses are expenses directly related to producing the goods or services and without which the goods or services could not be produced. Allowable business expenses for the eligibility determination do not include all expenses that are allowed by the Internal Revenue Service.~~

~~Allowable business expenses include but are not limited to accounting fees, advertising, auto expense for business only, business travel expenses, cost of goods sold, employee wages, excess utilities (if business is in home), food costs for daycare, interest on loans, legal fees, liability insurance, licensing fees, repairs and maintenance.~~

~~Business expenses that are not allowable include depreciation, personal and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal of loans for capital assets or durable goods, rent or mortgage when business is in the home.~~

16230.1.2 Self-Employment Income

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self-employment standard deduction. The result is the amount included in the individual's gross income. Standard earned income deductions are then applied to the individual's gross income.

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

(Break in Continuity of Sections)

17300.3.2.4.1 Self-Employment Income

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self-employment standard deduction. The result is the amount included in the individual's gross income. Standard earned income deductions are then applied to the individual's gross income.

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

(Break in Continuity of Sections)

LONG TERM CARE MEDICAID

20210.16 Self Employment

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October.

The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household. See DSSM 20240.3.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify they have business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all their business costs to receive the standard deduction.

Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.

The self-employment standard deduction will be reviewed annually to determine if an adjustment in the percentage amount is needed.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

**Client Cost Sharing for Pharmaceutical Services:
Cumulative Maximum**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Pharmaceutical Services Program.

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 August 31, 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 Provisions

Citation

- 42 CFR §447.54(d)

payment. Reversal of a previously filled prescription with a co-payment will require a refund of the co-payment to the individual, and will cause the next prescription filled for that client to be adjudicated with a co-payment.

DSS PROPOSED REGULATION #05-37c**14960.1 Co-Payment Requirement**

Effective January 10, 2005, clients have a nominal co-payment ~~will be imposed~~ for generic and brand name prescription drugs as well as over-the-counter drugs prescribed by a practitioner.

The co-payment is based upon the cost of the drug as follows:

Medicaid Payment for the Drug	Co-payment
\$10.00 or less	\$.50
\$10.01 to \$25.00	\$1.00
\$25.01 to \$50.00	\$2.00
\$50.01 or more	\$3.00

The co-payment is imposed for each drug that is prescribed and dispensed.

149601.1 Cumulative Maximum Monthly Co-payment

Effective July 1, 2005, there is a cumulative maximum monthly co-payment amount equal to \$15.00 for each recipient. Any prescriptions dispensed after the cumulative maximum monthly co-payment amount is met are not subject to a co-payment.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE**Child Care Subsidy 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 Child Care Subsidy Program.

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 August 31, 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 Provisions**Statutory Basis**

- TANF - Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code;
- Title 7, Chapter II of the Code of Federal Regulations, Part 273.7(d)(iv)(3)(i);
- The Child Care and Development Block Grant (part of Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996; and,
- Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act (OBRA) of 1981 establishes child care under the Social Services Block Grant (part of Categories 31 and 41).

DSS is proposing to amend several sections in the Division of Social Services Manual (DSSM) to clarify and update existing Child Care Subsidy policy.

This includes updating, revising, clarifying, renumbering (and deleting where necessary) the following policy sections due to the integration of the previous Child Care Management system into the current DCIS II Child Care eligibility system:

- DSSM 11002.1, 11002.4, 11002.6.2, 11002.9, 11003, 11003.4, 11003.7, 11003.7.5, 11003.9.1, 11003.9.2, 11003.9.3, 11003.9.5, 11003.10, 11004, 11004.1, 11004.2, 11004.2.1, 11004.3, 11004.3.1, 11004.4, 11004.4.1, 11004.5, 11004.6, 11004.8, 11004.9, 11004.9.1, 11004.11, 11004.12, 11005.2 and 11005.3;
- Updating DSSM 11003.3 to reflect the same language as the Food Stamp State Plan.

Additionally, DSSM 11003.7.8 is a new section establishing procedures for special needs cases.

11002.1 Purpose of Delaware's Child Care Subsidy Program

The purpose of Delaware's Child Care Subsidy Program is to provide support to Delaware families who need care and who need otherwise cannot pay for all or part of the cost of care.

11002.4 Persons Eligible

DSS provides child care services to eligible Delaware families with children who need care and who are under the age of 13, or children 13 ~~to~~ through 18 years of age who are physically or mentally incapable of caring for themselves or who are in need of protective services.

Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, asylee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who ~~have~~ worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction. For more detailed child care policy on citizenship, aliens and refugee's see DSSM 3024, these policies apply to the Child Care Subsidy Program.

The Division can provide Child Care services for eligible families where there is at least one U.S. citizen, legal alien or qualified refugee in the family. If one member of the family is a U.S. citizen, legal alien or qualified refugee and he/she meets both technical and financial eligibility criteria, Child Care services can be provided. The Division will evaluate non-US citizen cases on an individual basis.

Non-US citizens referred to the Child Care Subsidy Program through the Division of Family Services, due to a protective need, are eligible to receive services regardless of their citizenship status.

This policy must also be read in accordance with Section 11003, Eligibility Requirements. DSS provides a guarantee for certain forms of Child Care (~~Category~~ Categories 11, 12, ~~13~~, and 21). This guarantee means that eligible families will receive child care services under these programs. Eligibility for other child care services (~~Category~~ Categories 31, 41 and 51) does not come with this same

guarantee. Funding for child care services in these programs is capped. Though families may have an eligible child for whom they need care, and though families may meet other requirements of need and income, this does not guarantee that DSS will provide child care. DSS reserves the right for its capped programs to limit, where appropriate, its child care services based on available resources and funding.

Eligible families generally include:

A. TANF recipients who work, ~~or must~~ attend school or ~~are be involved~~ participating in TANF Employment and Training activities, training which leads to work as part of DSS' Food Stamp Employment & Training (FS E&T) program or families who are participating in TANF activities,

B. ~~f~~Families with low incomes, who work,~~;~~

C. ~~f~~Families with low incomes who attend a job training or education program as defined in section 11002.9,

~~D. families who work and are transitioning off TANF,~~

~~E-D.~~ fFamilies who receive Food Stamps and who must participate in E&T,~~;~~

~~F-E.~~ Families who receive or need to receive protective services through the Division of Family Services, ~~and;~~

~~G-F.~~ Eligible-families with a special need (either a child or parent).

11002.6.2 Federal Law/Regulation

In addition to the State Law noted above, Delaware's Child Care Subsidy Program operates under the authority of several rules, including:

A. Providing child care to families receiving TANF benefits who must participate in Delaware's TANF Employment and Training activities or to persons who work and receive TANF (Categories 11 and 12).

~~B. Establishes child care for certain TANF recipients who lose TANF because of work.~~

~~C-B.~~ Title 7, Chapter II of the Code of Federal Regulations, Part 273.7(A)(d)(iv)(3)(i) states: "A dependent care reimbursement shall be provided to an Employment and Training participant for all dependents requiring dependent care unless otherwise prohibited by this section...if dependent care is necessary for participation of a household member in the Employment and Training program." "The State agency will reimburse the cost of dependent care it determines to be necessary for the participation of a household member in the E&T program up to the actual cost of dependent care, or the applicable payment rate for child care, whichever is lowest. The payment rates for child care are established in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, and

are based on local market rate surveys. The State agency will provide a dependent care reimbursement to an E&T participant for all dependents requiring care unless otherwise prohibited by this section." Such child care is provided as part of the State's Food Stamp Employment and Training Program previously known as First Step - Food Stamps (Category 21).

~~D.C.~~ The Child Care and Development Block Grant (part of ~~Category~~ Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The purpose of the CCDBG as stated in Rule 98.1 of the CFR is, "to increase the availability, affordability, and quality of child care services." The goals of the grant are:

1. to provide low-income families with the financial resources to find and afford quality child care,
2. to enhance the quality and increase the supply of child care for all families,
3. to provide ~~parent/caretakers~~ parents/caretakers with a broad range of options in addressing their child care needs,
4. to strengthen the role of the family,
5. to improve the quality and coordination of child care programs and early childhood development programs, and
6. to increase the availability of early childhood development and before and after school services.

~~E.D.~~ Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act of 1981 establishes child care under the Social Services Block Grant (part of ~~Category~~ Categories 31 and 41).

The purpose of child care services provided under SSBG is to provide support to families with young children in order for parents to work, obtain training, or receive an education. The program also allows child care to meet the special needs of the child or for the child's protection in cases of abuse and/or neglect.

11002.9 Definitions and Explanation of Terms

The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings.

A. TANF - Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to needy children who are deprived of parental support and care. While on TANF, families are eligible for child care only as long as they are working or ~~involved with Food Stamp Employment & Training (FS E&T)~~ participating in a TANF Employment and Training activity TANF (Category Categories 11 and 12).

~~B. At-Risk Families~~ — ~~Low income, working families who need child care in order to work, and are otherwise at risk of becoming eligible for TANF. Under the Division's CCMIS, At-Risk Families are part of Category 31.~~

~~C.B.~~ Authorization - Form 618d is the ~~parent/caretaker's~~ parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible ~~parent/caretakers~~ parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what ~~parent/caretakers~~ parents/caretakers must pay as part of their fee.

~~D.C.~~ Caregiver/Provider - The person(s) whom DSS approves to provide child care services or the approved place where care is provided.

~~E.D.~~ Caretaker - The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.

~~F.E.~~ CCDBG - Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without State match to:

1. provide child care to low income families,
2. enhance the quality and increase the supply of child care,
3. provide parents the ability to choose their provider, and
4. increase the availability of early childhood programs and before and after school services.

Under the Division's ~~CCMIS~~ DCIS II Child Care Sub system, CCDBG is part of ~~Category~~ Categories 31 and 41.

~~G.F.~~ CFR - Code of Federal Regulations. These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.

~~H.G.~~ CCMIS - Child Care Management Information System, the name used to describe the Division's ~~information payment~~ system for child care.

~~I.H.~~ Child - A person under the age of 13, or children 13 ~~to~~ through 18 years of age if they are physically or mentally incapable of caring for themselves or in need of protective services.

~~J.I.~~ Child Care Category - The ~~CCMIS DCIS II Child Care Sub system~~ code for the child care funding source. Case Managers choose category codes based on the

~~parent/caretaker's~~ parents/caretaker's technical eligibility for service. The codes are:

11 – Participants receiving TANF and not working, but participating in TANF E&T;

12 – Participants receiving TANF and working;

~~13 – Transitional Child Care;~~

21 – Participants receiving Food Stamps who are mandatory or voluntary participants in E&T and not receiving TANF;

31 – SSBG, CCDBG, ~~At Risk~~ and State funds: Income eligible participants. Participants who receive FS and are not E&T mandatory or voluntary;

41 – A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or nonqualified alien to receive child care services. (Example: One child is a citizen and one is not. The citizen child is a 41)

51 – A participant is coded category 51 when s/he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41.

~~K.~~J. Child Care Certificate - A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but a parent who wishes to select a non-contracted provider of their choice cannot get care unless the provider completes one.

~~L.~~K. Child Care Fee - The amount the parent/caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type.

~~M.~~L. Child Care Services - Those activities that assist eligible families in the arrangement of child care for their children.

~~N.~~M. Child Care Centers - A place where licensed or license-exempt child care is provided on a regular basis for periods of less than 24 hours a day to 12 or more children, who are unattended by a parent or guardian.

~~O.~~N. Child Care Type - Refers to the setting or place where child care is provided. The four types of care are:

1. Center based (under ~~CCMIS~~ DCIS II Child Care Sub system Site #17 or 18),

2. Group Home (under ~~CCMIS~~ DCIS II Child Care Sub system Site #16),

3. Family Home (under ~~CCMIS~~ DCIS II Child Care Sub system Site #15), and

4. In-Home (under ~~CCMIS~~ DCIS II Child Care Sub system Site #19).

~~P.~~O. DCIS II - Delaware Client Information System, the automated client information system for the Department of Health and Social Services.

~~Q.~~P. Educational Program - A program of instruction to achieve:

1. a basic literacy level of 8.9;

2. instruction in English as a second language;

3. a GED, Adult Basic Education (ABE), or High School Diploma;

4. completion of approved special training or certificate courses; or

5. a post-secondary degree where the degree is part of an approved ~~Employability Development Plan.~~ DSS Employment and Training program.

The above definition excludes the pursuit of a graduate degree or second four-year college degree. A second associates degree may be attained if it leads to a bachelors degree. The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.

~~R.~~Q. Employment - Either part-time or full time work for which the parent/caretaker receives income. It also includes periods of up to one month when ~~parent/caretakers~~ parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.

~~S.~~R. Family Size - The total number of persons whose needs and income are considered together. This will always include the parent(s) and all their dependent children under 18.

~~T.~~S. Family Child Care Home - A place where licensed care is provided for one to six children who are not related to the caregiver.

~~U.~~T. TANF Child Care - The name of the child care program for TANF recipients who work or who are participating in a TANF Employment and Training program-in Food Stamp Employment & Training (FS E&T) - TANF. Under the ~~CCMIS~~ DCIS II Child Care Sub system, this is Category 11 and 12.

~~V.~~U. Food Stamp Employment and Training - The program by which certain unemployed mandatory and/or voluntary Food Stamp recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food Stamp Employment & Training ~~Food Stamps (FS E&T).~~ Under the Division's ~~CCMIS~~ DCIS II Child Care Sub system, this is Category 21.

~~W.V.~~ In-Home Care - Care provided for a child in the child's own home by either a relative or non-relative, where such care is exempt from licensing requirements. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements.

~~X.W.~~ Income - Any type of money payment that is of gain or benefit to a family. Examples of income include; wages, social security pensions, public assistance payments, child support, etc.

~~Y.X.~~ Income Eligible - A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.

AA. Income Limit - The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.

AB. Job Training /Training - A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Stamp Employment & Training (FS E&T) contracted programs, ~~JTPA~~ WIA sponsored training programs, recognized school vocational programs, and on-the-job training programs.

AC. Large Family Child Care Home - A place where licensed care is provided for more than six but less than twelve children.

AD. Legal Care - Care which is either licensed or exempt from licensing requirements.

AE. Parent - The child's natural mother, natural legal father, adoptive mother or father, or step-parent.

AF. Parental Choice - The right of ~~parent/ caretakers~~ parents/caretakers to choose from a broad range of child care providers, the type and location of child care.

AG. Protective Services - The supervision/ placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.

AH. Physical or Mental Incapacity - A dysfunctional condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.

AI. Reimbursement Rates - The maximum dollar amount the State will pay for child care services.

AJ. Relative - Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.

AK. Residing With - Living in the home of the parent or caretaker.

AL. SSBG - Social Services Block Grant. Under the ~~ECMS~~ DCIS II Child Care Sub system, this is Category 31 child care.

AM. Seamless Services - To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.

AN. Self-Arranged Care - Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the ~~parent/ caretakers~~ parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. ~~Parent/Caretakers~~ Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.

AO. Self-Initiated - Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Stamp Employment & Training (FS E&T) - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.

AP. Special Needs Child - A child under ~~48~~ 19 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the competence to do so.

AQ. Special Needs Parent/Caretaker - An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the competence to do so.

AR. Technical Eligibility - ~~Parent/caretakers~~ Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.

AS. Verification - Written or oral documentation, demonstrating either need for service or sources of income.

AT. Purchase of Care Plus (POC+) - Care option that allows providers to charge for fee paying clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined parent fee, and any additional provider-determined co-pay.

AU. Work Force Investment Act (WIA) - Federal Legislation that consolidates Employment and Training programs and funding streams. This legislation

embodies the One Stop Employment and Training Service system under DOL.

8 DE Reg. 1154 (2/1/05)

11003 Eligibility Requirements

DSS provides child care services to eligible Delaware families with a child(ren) who resides in the home and who is under the age of 13, or children 13 to 18, under 19 who are physically or mentally incapable of caring for themselves or are active with the Division of Family Services.

Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, asylee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who have worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction.

The Division will provide Child Care services for eligible families where there is at least one U.S. citizen or legal alien in the family. If one member of the family is a U.S. citizen or legal alien and they meet both technical and financial eligibility criteria Child Care Services can be provided. The Division will evaluate non-U.S. citizen cases on an individual basis.

Non-US citizens referred to the Child Care subsidy program through the Division of Family Services, due to a protective need, are eligible to receive services regardless of their citizenship status.

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

A. ~~Parent/caretakers~~ Parents/caretakers need service to:

1. accept employment,
2. keep employment,
3. participate in training leading to employment,
4. participate in education,
5. work and the other parent/caretaker or adult household member is chronically ill or incapacitated,
6. have someone care for the children because of a parent/caretaker special need.

B. A child(ren) needs service to:

1. provide for a special need (physical or emotional disabilities, behavior problems, or developmental delays, etc.);
2. provide protective supervision in order to prevent abuse or neglect.

In addition to having an eligible child and a child care need, certain DSS child care programs require ~~parent/caretakers~~ parents/caretakers to meet income limits. Under certain other child care programs, DSS guarantees child care. These financial requirements along with other technical requirements help determine the parent/caretaker's child care category. Categories relate to the funding sources used by DSS to pay for child care services. The following sections discuss the technical requirements for child care services based on category and need.

11003.3 Parent/Caretaker On Food Stamps

A. DSS provides child care for a dependent child when a parent/caretaker receives Food Stamps and the parent/caretaker needs to:

1. participate in Food Stamp Employment and Training activities, or
2. volunteer to participate in Employment and Training activities (both are Category 21).

B. Persons can volunteer to participate in E&T - Food Stamps activities only as long as the activity for which they volunteer is a component activity of E&T - Food Stamps. Acceptable E&T - Food Stamps component activities are:

1. Independent Job Search,
2. ~~Self Directed Job Search Training, One Stop Delivery System,~~
3. ~~Basic Life Skills Enrichment, Adult Education, and Training,~~
4. ~~High School and/or Adult Education, Workfare Program (ABAWD only),~~
5. Post-Secondary Education (first degree only), and
6. ~~Vocational Skills Training, Refugee and Asylee Services.~~

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

11003.4 ~~Transitional Child Care (RESERVED)~~

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

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

~~Parent/caretakers who meet the above requirements need to also meet financial eligibility requirements. They must have income equal to or under 200 percent of poverty. Parent/caretakers also need to be working in order to qualify.~~

~~Those TANF families not previously receiving any child care will get a letter from DSS alerting them to the possibility that they could be eligible for child care. They are told to contact the nearest child care office and to request TCC. Case Managers will need to make appointments for these families and the family will need to complete an application.~~

11003.7 Income Eligible Child Care

A. DSS provides child care to families who are financially eligible to receive care because the family's gross income is equal to or under 200 percent of the federal poverty level and they have one or more of the following needs for care:

1. a low-income (200 percent or less of the federal poverty level) parent/caretaker needs child care in order to accept employment or remain employed and would be at risk of becoming eligible for TANF if child care were not provided (At-Risk Child Care, Category 31); or

2. a low-income (200 percent or less of the federal poverty level) parent/caretaker needs child care in order to work, attend a job training program, or participate in an educational program, or ~~are~~ is receiving or needs to receive protective services (CCDBG Child Care, Category 31); or

~~or~~

3. a parent/caretaker needs child care to work or participate in education or training; searches one month for employment after losing a job; because the child or the parent/caretaker or other adult household member has special needs; because they care for a protective child who is active with the Division of Family Services or the parent/caretaker is homeless. (SSBG Child Care, Category 31).

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

They are:

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

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

2. CCDBG Child Care will include:

a. ~~parent/caretakers~~ parents/caretakers who need child care to accept or keep a job, and/or
b. participate in education or training, or
c. children who receive or need to receive protective services.

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

3. SSBG Child Care will include:

a. ~~parent/caretakers~~ parents/caretakers who need child care to accept or keep a job,
b. ~~parent/caretakers~~ parents/caretakers who need child care to participate in education or training,
c. ~~parent/caretakers~~ parents/caretakers whose only need is a special need child or special needs adult household member,
d. children who need protective services, or
e. ~~parent/caretakers~~ parents/caretakers who are homeless.

11003.7.5 Income Eligible/Education and Post-Secondary Education

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

A. their participation will lead to completion of high school, a high school equivalent or a GED; or

B. their participation in post-secondary education was part of a TANF ~~Employability Development Plan; Employment and Training program;~~ or

C. their participation in post-secondary education began ~~as a requirement for~~ while participating in the Food Stamp Employment & Training (FS E&T) program; and

D. there is a reasonable expectation that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, medical technology students, secretarial or business students.

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

11003.7.8 Special Needs Children

Policy is yet to be decided.

The designation of special needs impacts both eligibility and parent fees.

See section 11004.7 to determine eligibility for waiving the parent fee.

Eligibility

A family can be eligible for Child Care for a child that is between ages 13 and under 19 if the child has a special need that requires child care. This would mean the child is unable to care for himself physically or emotionally, or Division of Family Services (DFS) has referred the child for care due to a protective need.

Families with special needs children or adults must meet the need for services and income eligibility.

EXAMPLE: A financially eligible family with two working parents requests child care for their 14 year old child with Down Syndrome. The 14 year old is incapable of caring for himself due to the Down Syndrome. They would be eligible for Child Care due to the special needs of the child.

The special need of a child or an adult that directly results in the need for child care can in itself be the need for care when determining eligibility as long as they meet financial eligibility.

EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their 12 month old child with a developmental delay. In this case if it is verified that the child needs child care services to assist in increasing the development of the child, they would be eligible.

EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their two children ages 2 and 4. The mother was involved in a car accident and is unable to get out of bed. The special need of this mother would be the need for care.

All special needs for both the child and adult must be verified by using the Special Needs form.

Parent fees can be waived only in accordance with section 11004.7.

Special circumstances within a family may be considered on a case by case basis when determining the need for child care. These cases must be approved by the Child Care Administrator.

EXAMPLE: Two older grandparents have custody of their 4 yr old grandchild. The grandmother is unable to

care for the child due to health reasons and the grandfather would like to look for work. There is no need for care since the grandfather is in the home. The circumstances of this four year old could qualify the grandparents for special needs child care. In this case still try to get a special needs form filled out that would address the 4 yr olds need to be in a day care setting with other children to enhance the child's social and emotional development.

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DFS cases meet the need for service due to the DFS referral. DFS cases do not need to meet financial eligibility. DFS cases that are non citizens and do not meet our citizenship criteria are eligible for services due to the DFS referral. DCIS II Child Care Sub system would place these cases in Category 51.

11003.9.1 Countable Income

A. Countable income. All sources of income, earned (such as wages) and unearned (such as child support, social security pensions, etc.) are countable income when determining a family's monthly gross income. Monthly gross income typically includes the following:

1. Money from wages or salary, such as total money earnings from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses earned before deductions are made for taxes, bonds, pensions, union dues, etc.

2. Gross income from farm or non-farm self-employment is determined by subtracting business expenses such as supplies, equipment, etc. from gross proceeds. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the TANF standard allowance for work connected expenses. In the case of unusual situations (such as parent/caretaker just beginning business), refer to DSSM 9056 and 9074.

3. Social Security pensions, Supplemental Security Income, Veteran's benefits, public assistance payments, net rental income, unemployment compensation, workers compensation, pensions, annuities, alimony, adoption assistance, disability benefits, military allotments, Rail Road Retirement, and child support.

B. Disregarded Income

Monies received from the following sources **are not** counted:

1. per capita payments to, or funds held in trust for, any individual in satisfaction of a judgement of Indian Claims Commission or the Court of Claims;

2. payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act;

3. money received from the sale of property such as stocks, bonds, a house or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds are counted as income from self-employment);

4. withdrawal of bank deposits;

5. money borrowed or given as gifts;

6. capital gains;

7. the value of USDA donated foods and Food Stamp Act of 1964 as amended;

8. the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;

9. any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

~~10. earnings of a child under the age of 14 years of age~~

~~11.10.~~ loans or grants such as scholarships obtained and used under conditions that preclude their use for current living costs;

~~12.11.~~ any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act;

~~13.12.~~ home produce utilized for household consumption;

~~14.13.~~ all of the earned income of a minor or minor parent (under 18) who is a full-time student or a part-time student who is working but is not a full-time employee (such as high school students who are employed full-time during summer);

~~15.14.~~ all payments derived from participation in projects under the Food Stamp Employment & Training (FS E&T) (~~such as CWEP~~) program or other job training programs; ~~and~~

~~16.15.~~ all Vista income; and

~~17.16.~~ all income derived as a Census taker ~~during the period between April 1, 2000 and December 31, 2000.~~

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

11003.9.2 Whose Income to Count

In all ~~Category Categories 13 and 31~~ cases, count all income attributable to the parent(s) as family income.

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

Income of active DFS referrals/cases is excluded. Active DFS referrals/cases do not need to meet financial eligibility.

11003.9.3 Family Size

The people whose **needs** and **income** are considered together comprise the definition of family size. Family size is the basis upon which DSS looks at income to determine a family's financial eligibility. Therefore, knowing who to include in the determination of family size is an important part in deciding financial eligibility. Rules to follow when considering family size are relationship and whose income is counted.

A. Parents (natural, legal, adoptive, or step) and their children under 18 living in the home, will always be included together in the make up of family size.

EXAMPLE 1: Ms. Brown, a single mother, lives together with her two year old daughter. She is applying for child care as a Category 31, income eligible case. Mrs. Brown and her daughter are a family size of two.

EXAMPLE 2: Susan Jones and Mark Evans live together as unmarried partners. Susan has a one year old child from a previous relationship. She applies for Category ~~13~~ 31 child care. Susan and her child are a family size of two. Mark is not counted. His income is not considered since he is not the father of the child. (NOTE: If Mark Evans admits to being the natural parent of the child, his income is counted and this is a family of three.)

EXAMPLE 3: Ms. Johnson, a single parent, has three children ages 13, 10, and 5. She works and needs child care for her youngest child who attends preschool. She is applying for Category 31 child care. Even though she needs care for only one child, her family size is a family size of four when looking at financial eligibility.

EXAMPLE 4: Ms. Green cares for her three year old niece. Ms. Green works and needs child care. Since Ms. Green is not the parent of the child, she is considered a caretaker. Therefore, Ms. Green's income is not counted and she is not included in the family composition. Ms. Green's niece is considered a family size of one and any income attributable to the niece is countable income.

EXAMPLE 5: Mom and step-dad live with mom's two children, ages two and five, from a previous marriage. Mom and step-dad both work and need child care. Mom,

step-dad, and her two children are a family size of four. Step-dad is included.

EXAMPLE 6: Mom and step-dad live with mom's three year old child from a previous marriage. Step-dad also has a five year old child from a previous marriage living in the home. Mom and step-dad both work and need child care. This family is a family size of four.

EXAMPLE 7: Mom and her unmarried partner have a child in common. Mom and the unmarried partner also have one child each from previous relationships. Since Mom and the unmarried partner have a child in common the needs and income of each parent will be considered for all three children. This would be a family size of 5. In this example the Child Care Sub system will first build the family together as one AG. If the AG fails the system will break this family down into 3 AG's to determine as many persons eligible as possible. The three AG's would be Mom, unmarried partner and child in common, Mom and child from a previous relationship, unmarried partner and his child from a previous relationship.

B. Adults who are not the natural, legal, adoptive, or step-parent of the child or children under 18 living in the home are not included.

EXAMPLE: Mom lives with her grandmother. Mom has two children ages 10 and 6 for whom she needs after-school care. Mom and her two children are considered a family size of three. Grandmother is not included because she is not the parent of the children nor is her income counted.

NOTE: In all instances, the people counted together for family size when considering financial eligibility are the same people counted for family size when considering the family's child care fee.

11003.9.5 Making Income Determinations

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

In the event of system failure, use 4 1/3 weeks per month to compute a person's monthly gross income. If there is a variance in wages, use the average of the last month's wages or the average of the last three month's wages, whichever is less.

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

A. Client A is paid \$200.00 per week - $\$200 \times 4.33 = \$866/\text{month}$.

B. Client A is paid \$200 per week, but has a varying work schedule. Week one - \$200; week two - \$100; week three - \$176; week four - \$200. $\$200 + \$100 + \$176 + \$200 = \$676$ divided by 4 = \$169/week average. $\$169 \times 4.33 = \$731.77/\text{month}$.

C. Client B is paid \$400 every other week. $\$400 \times 2.16 = \864 .

D. Client C is paid \$950 twice a month. $\$950 \times 2 = \$1900/\text{month}$.

E. Other sources of income, such as child support, are added to wages either as the actual amount received or as an average of the amount received in the past three months.

11003.10 Changes In Need Or Income

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

A. loss of job;

B. new employment;

C. ~~for Category 13, 21, or 31 cases,~~ any increase or decrease in wages or income resulting in a change to income of \$75 or more per month;

~~D. for Category 13, 21, or 31 cases, any other change to income which will result in an increase or decrease to income of \$75 or more (such as a change in child support); or~~

~~E. D.~~ any change in education/training or other status which would impact the ~~parent/caretakers~~ parents/caretakers need for care.

11004 Application Processing

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

An informal inquiry typically involves a parent/caretaker's phone call or unannounced ~~child-care~~ office visit to seek information about eligibility for child care services. Process all informal inquiries by doing a simple review of the parent/caretaker's need in the creation of a child care case in the ~~CCMIS DCIS II Child Care Sub system,~~ but will likely include a CCMIS search for any information which might be on file. Following this simple screening, ~~parents/caretakers~~ parents/caretakers are told they either appear

eligible or ineligible for service. ~~Case Managers will schedule a formal interview for those parent/caretakers who appear eligible, while For those applicants who appear to be eligible, proceed with the formal application process, schedule an appointment or send them the application and outline the necessary information to be returned with the signed application.~~ Case Managers will inform those ~~parent/caretakers~~ parents/caretakers who do not appear eligible of their right to file a formal application if they still so choose.

During the informal process, no obligation exists to provide ~~parent/caretakers~~ parents/caretakers with a written decision of the eligibility finding nor are ~~parent/caretakers~~ parents/caretakers able to appeal an informal decision. In either case, however, Case Managers will always conduct or schedule a formal interview for parent/caretakers parents/caretakers who appear eligible or those who assert their right to make a formal request.

The formal application process is detailed below, including the requirements for authorizing child care services, the minimum requirements for verifying eligibility information, the standards for determining child care fees, and conditions for when and why a child care case should either continue or close. ~~Review this information in close conjunction with the Client Management Section of the CCMIS User Manual. The Client Management Section of the User Manual details the automated process for creating cases, authorizing service, and for reauthorizing or closing service. Where appropriate, the policy information presented here will make specific reference to the User Manual.~~

11004.1 ~~Formal~~ Application Process

The ~~formal~~ application process will always consist of the following:

- A. a Case Manager, parent/caretaker interview; (in person or over the phone)
- B. a review and verification of eligibility requirements;
- C. a review of the parent information about child care certificates;
- D. a determination of eligibility along with written parent/caretaker notification of the eligibility decision;
- E. completion of the ~~Child Care Eligibility Screening Form (Form 600);~~ Application for Child Care Assistance;
- F. as necessary, a determination of the child care fee;
- G. creation of a case in the ~~CCMIS~~ DCIS II Child Care Sub system;
- H. as appropriate, completion of the Service Authorization Form (~~Form 618d~~);

I. completion of the Child Care Payment Agreement (~~Form 626~~); and

J. a review of the parent/caretaker's rights and responsibilities, such as keeping their Case Manager informed of changes.

11004.2 Interviews

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

Complete an interview either over the phone or in person.

~~EXAMPLE: A parent is receiving Food Stamp Employment & Training (FS E&T)AFDC Child Care (Category 12). The parent has an increase in income which closes her AFDC. Her AFDC child care also closes. She is still working and needs child care. The parent qualifies for Transitional Child Care. In this instance, sends the parent CCMIS generated AFDC letter 4030 (AFDC closing with text noting the possibility for getting another form of care). If the parent calls and requests continuation of child care, the Case Manager need not schedule the parent for a face-to-face interview to allow this.~~

~~Other instances may exist when face-to-face interviews may be waived before authorizing care (for example, because of a job, a parent needs to start care immediately). However, consult a supervisor before doing so.~~

~~Schedule appointments for formal interviews in the following manner:~~

When scheduling an applicant for an interview do so in the following manner.

A. As soon as reasonably possible after the parent/caretaker makes an informal contact set a specific day and time for an interview. Consider the parent/caretaker's schedule and attempt to schedule appointments at parent/caretaker convenience.

B. Advise the ~~parent/caretakers~~ parents/caretakers of the information they will need to bring to the ~~formal~~ interview. At a minimum ~~parent/caretakers~~ parents/caretakers should bring:

1. if employed, current pay stubs covering the 30 days immediately before from the most recent month of the date of application or a letter or employer statement (on company letterhead) noting the employer's name, the parent/caretaker's work schedule, earnings, frequency of pay, and start date;
2. if in training and/or school, a statement from the school/training program with starting and completion

dates and days and hours required to attend or a copy of a registration form and class schedule;

3. any other income information;

4. any other information which may have a bearing on establishing need, such as:

a. in cases of a special need for either a child or an adult, ~~parent/caretakers~~ parents/caretakers must complete the Special Needs Form (~~Form #601~~);

b. for a protective need, a completed ~~the~~ Division of Family Services Referral; or

c. ~~provide some other~~ written documentation from a recognized professional (such as doctor, social worker, nurse, school counselor, etc.) of the special needs.

C. Along with appointment information, send and/or give ~~parent/caretakers~~ parents/caretakers a child care certificate package and a list of approximately five available contracted providers. Instruct ~~parent/caretakers~~ parents/caretakers to select a provider prior to the ~~formal~~ interview. Even though ~~parent/caretakers~~ parents/caretakers may ultimately select providers under contract with DSS, provide them with enough information to make an informed choice. Therefore, in all instances, send and/or give ~~parent/caretakers~~ parents/caretakers a certificate package and Guide to Quality Child Care booklet. Inform clients that if they fail to provide the DSS Case Manager with a provider within 60 days of eligibility confirmation and noticing, their case will close.

D. For ~~parent/caretakers~~ parents/caretakers who come into the office without a scheduled appointment, conduct the formal interview process that same day if possible. However, the ~~parent/caretakers~~ parents/caretakers need to select a child care provider before care can be authorized.

E. Though verification of the appropriate information to establish need is important, the system will authorize Presumptive Child Care service ~~can be authorized~~ for approximately one month while certain information verification is pending, in an emergency. In this case, the system will, give notice of needed information, authorize child care for approximately one month (depending on the date of application) and end date the authorization, ~~allow~~ ~~parent/caretakers~~ If the system does not authorize Presumptive Child Care, parents/caretakers will be given ten days from the date of the initial application to secure and provide the necessary documentation. If the parents/caretakers receive Presumptive Child Care and the initial application date in this case occurs between the first and the ninth of the month, the authorization for care will extend to the end of the current month. If the initial application in this case occurs from the tenth of the month or after, authorization for care will extend to the end of the following month. (For more information on Presumptive Child Care

see section 11004.8.) If after the ten days, documentation is not provided, send the parent/caretaker a Failure To Provide Information Closing letter notice (CCMIS letter 4020) informing the parent/caretaker that services will end. If the parent/caretaker provides documentation, extend the authorization accordingly.

EXAMPLE 1: A parent comes into the office on January 6 and needs to start work beginning January 7. The parent meets eligibility criteria. The system will ~~Authorize~~ authorize Presumptive Child Care until January 31 and give the parent until January 22 16 to provide proof of employment. If by January 22 16 the parent provides proof, Create a new authorization to reflect a new authorization end date of June 30., enter the information and verification into the system and run SFU/EDBC. The system will generate a new authorization with the end date of June 30th. If by January 17 the parent fails to provide proof, ~~CCMIS a DCIS II Child Care Sub system letter 4020 notice~~ is mailed informing the parent that child care services will end as of January 31.

EXAMPLE 2: A parent comes into the office on January 12 and needs to start work beginning January 13. The parent meets eligibility requirements. The system will ~~Authorize~~ authorize care until February 28 and give the parent until January 22 to provide proof. If By by January 22 the parent provides proof, enter the information and verification into the system and run SFU/EDBC. The system will generate a new authorization with an end date of June 30th. ~~Create a new authorization to reflect the new authorization end date of June 30.~~ If by January 22 the parent fails to provide proof, ~~CCMIS a DCIS II Child Care Sub system letter notice 4020~~ is mailed informing the parent that child care will end as of February 28.

11004.2.1 Conducting the Interview

The ~~formal~~ interview will include:

A. an evaluation of ~~parent/caretaker~~ parents/caretakers need for child care services (see Section 11003);

B. a determination of financial eligibility as needed;

C. an assessment of the family's child care needs as well as the needs of the child(ren) to be placed in care;

D. an explanation of the available types of child care; the choices ~~parent/caretakers~~ parents/caretakers have regarding these provider types; the various provider requirements regarding licensure, possible co-pays, health, and safety, including record of immunization; and required child abuse and criminal history checks;

E. an explanation of DSS payment rates and parent fee scale, including a discussion of how fees are

assessed, where fees are to be paid, what happens if the fee is not paid, and how ~~parent/caretakers~~ parents/caretakers are to keep DSS informed of changes that affect fees;

F. an explanation of ~~parent/caretakers~~ parents/caretakers rights and responsibilities;

G. completion of the ~~Child Care Screening Application~~ Application for Child Care Assistance, and as applicable completion of the Child Care Authorization and the Child Care Payment Agreement form; and

H. verification of appropriate information establishing need and income.

~~Upon concluding the interview, generate a CCMIS Approval (2000) or Denial (3000 or 3010) letter. This letter informs the parent/caretaker of the eligibility decision, the reason for the decision if eligibility is denied, and each child who is eligible or ineligible to receive services.~~

The entire process, from the time when ~~parent/caretakers~~ parents/caretakers make an informal request for child care to the time when a decision is finally made, should take no longer than one month.

~~Parent/caretakers~~ Parents/caretakers who fail to keep their initial appointment for a ~~formal~~ an interview are given the opportunity to reschedule.

11004.3 Review and Verification of Eligibility Requirements

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

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

A. Is the parent/caretaker employed or ~~in do they~~ need of child care to accept employment? (Category 12 for ~~Non-Food Stamp Employment & Training (FS E&T) TANF~~ employed or Category 31 if not on TANF)? The caretaker must be part of the TANF grant to be a Category 12.

B. ~~Is the parent/caretaker a former AFDC recipient who is now employed and no longer receiving AFDC because of this employment (Category 13 TCC)?~~ Is the parent a TANF Employment and Training participant and needs care to participate in a TANF Employment and Training activity? (Category 11)

C. Is the parent/caretaker a Food Stamp Employment & Training (FS E&T) participant? ~~(Remember, for a caretaker to be a Food Stamp Employment & Training (FS E&T) AFDC participant, she/he must be part of the AFDC grant. This is Category 11 or 21.)~~

D. Is the parent/caretaker a self-initiated participant (~~Food Stamp Employment & Training (FS E&T), AFDC/TANF, or a volunteer (Food Stamp)~~ for mandatory or voluntary Food Stamp Employment & Training (FS E&T)? (This ~~includes is~~ includes is Categories ~~11 or 21~~.)

E. Is the parent/caretaker ~~enrolled~~ in and regularly attending a training program or going to school? (Category 31)?

F. Is a special needs child or parent/caretaker in the household? (Category 31) ?

G. Is there a protective referral from Family Services? (Category 31)?

H. If the parent/caretaker meets a Category ~~13 or 31~~ need, is ~~their~~ the family income equal to or below 200 percent of the federal poverty level ~~needs~~?

Use the appropriate documents identified in Section 11004.2 to verify the need for service. However, verification will not delay authorization of service in the event documentation is not immediately available. ~~See Section 11004.3.1 Service Priorities, to determine what may delay service.~~ Authorize service while allowing ~~parent/caretakers~~ parents/caretakers ten days to provide the appropriate verification. If the client is applying for services the system will automatically determine eligibility for Presumptive Child Care. The system will generate the appropriate notices, request the information and end date the authorization. If the client does not meet Presumptivepresumptive requirements and fails to provide requested information the system will close the case and give appropriate notice. (For more detail on Presumptive Child Care see section 11004.8) If after this time documentation is not provided, send the parent/caretaker the Failure to Provide Information Closing letter (CCMIS letter 4020) informing the parent/caretaker that services will end (see Section 11004.2 for details).

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

11004.3.1 Service Priorities

In addition to the eligibility questions in Section 11004.3, determine if the applicant meets a priority for service. If the applicant has a need, but is not a service priority, services may be delayed. Delay services by placing non-service priority applicants on a waiting list while

authorizing service for those who are a priority. The following families qualify for priority service:

~~A. Food Stamp Employment & Training (FS E&T) – AFDC participants in approved Food Stamp Employment & Training (FS E&T) components~~ TANF recipients who are Workfare mandatory and not working (Category 11);

~~B. Non-Food Stamp Employment & Training (FS E&T) families in Child Care~~ TANF recipients who are working; (Category 12);

~~C. families who qualify for Transitional Child Care in Category 13;~~

~~D. families qualifying for child care services under the Food Stamp Employment & Training (FS E&T) program in an approved Food Stamp Employment & Training (FS E&T) – AFDC component~~ Individuals receiving FS who are mandatory E&T participants; (Category 21);

~~E. Families in Category 31 with the following need for service:~~

1. teen parents who attend high school or ABE or GED programs,
2. special needs parent/caretaker or child, and
3. homeless families as defined in Section 11003.7.2;
4. families who meet the 75% of FPL criteria in Section 11004.7

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

~~Parent/caretakers~~ Parents/caretakers in the above circumstances will continue to receive child care services as long as they meet the service need and they continue to meet program requirements, e.g., they continue in Food Stamp Employment & Training (FS E&T).

11004.4 Child Care Certificates

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

11004.4.1 Explanation of Certificates

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

A. ~~Parents/caretakers~~ Parent/caretakers can use this package to select a child care provider of their choice. However, they must select care that is legal. Legal care is care that is licensed or that is exempt from licensing requirements.

B. Licensed Care: In Delaware, all family child care homes, group homes, and child care centers must have a license to operate. Do not allow a parent to select an unlicensed family, group, or center child care provider.

C. License-exempt Care: The following provider types are exempt from licensing requirements in Delaware:

1. persons who come into the child's own home to care for the parent/caretaker's child,
2. relatives who provide care in their home for the parent/caretaker's child;
3. public or private school care,
4. preschools and kindergarten care, and
5. before and after school care programs.

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

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

D. Once parents/caretakers ~~parent/caretakers~~ know the appropriate provider to select, they also need to know how DSS will pay for the care provided. DSS has established rates above which it will not pay (see Appendix II for current reimbursement rates).

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

If the provider contracted purchase of care slots are full, the provider may offer the parent/caretaker the option of receiving service as a purchase of care plus client. The provider then receives the regular DSS subsidy from the

Division, the DSS determined parent fee and any additional fee determined by the provider from the parent/caretaker.

If the provider is not willing to accept purchase of care plus, the parent/caretaker will self-arrange care with the individual provider. The parent/caretaker will pay the provider and submit an original receipt to DSS for reimbursement. The parent/caretaker, however, will only receive reimbursement up to the DSS statewide limit.

E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the Child Abuse/Neglect History Clearance Form or forms for all members 18 and older living in the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member.

F. Service will not be delayed because of an incomplete child abuse clearance check, but remind parents/caretakers ~~parent/caretakers~~ that DSS will not pay for care if, after authorization, the check should reveal a history of abuse or neglect.

G. Allow parents/caretakers ~~parent/caretakers~~ one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the parents/caretakers ~~parent/caretakers~~ will need to obtain a new certificate if they still wish to receive service.

H. The original copy of the child care certificate is completed and returned by the provider. The certificate package provides instructions for completion. The provider should keep a copy.

I. The client has 60 days from confirmation of eligibility to provide the DSS Case Manager with the name of his/her provider. If the client fails to provide this information his/her case will close.

8 DE Reg 1153 (2/1/05)

11004.5 Determination Of Eligibility

DSS programmed the ~~CCMIS~~ DCIS II Child Care Sub system to make eligibility decisions. As Case Managers enter the appropriate parent/caretaker information, the ~~CCMIS~~ DCIS II Child Care Sub system will notify Case Managers whether they can proceed to authorize service. As a case is determined either eligible or ineligible, ~~use the appropriate letter of the CCMIS letter function~~ the DCIS II Child Care Sub system will send the appropriate notice to inform the parent/caretaker of the DSS child care eligibility decision. Letters are not automatically generated by the CCMIS; therefore, ensure they complete this step. Parent/caretakers Parents/caretakers, whether ~~ineligible~~ eligible or

not, will always receive a written decision regarding their official request for child care services.

11004.6 Child Care Eligibility Screening Application

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

When it is necessary to authorize new child care services to ~~parent/caretakers~~ parents/caretakers because of a category change (such as ~~parent/caretakers~~ parents/caretakers going from a Category 11 to ~~13~~ 31), it is not necessary to have ~~parent/caretakers~~ parents/caretakers complete a new ~~child care screening~~ application. This enables DSS to maintain the concept of seamless service.

~~11004.8 - Creation Of A Case In The CCMIS - Presumptive Child Care Services~~

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

~~In creating a case, observe the following rules:~~

~~A. The first person entered in the case is the casehead, e.g. parent/caretaker.~~

~~B. Complete a search of the Master Client Index (MCI) for each participant before initiating new records (see the User Manual for instructions). If clients are not currently receiving DSS benefits, ask if clients ever received benefits in the past. This will assist the MCI search.~~

~~C. Register each participant (i.e. parent/caretaker or child) who is not already registered in the Master Client Index.~~

~~D. CCMIS data screens have required data fields. These fields are "starred" on the CCMIS data screens. It is necessary to complete the data for these fields before the system will allow case processing to proceed.~~

~~E. When entering a "new" case, enter an "N" for Action Type (see the User Manual for coding instructions).~~

~~F. Review dates for new cases on the CASE INFORMATION screen should have a maximum time period of six months from the date of application (use end of month dates, e.g. January 31). Time periods can be for less time, but must never exceed six months. This date does not correspond to the authorization ending date, but is used for Case Manager worklisting purposes. The next review period is the time during which redetermination of parent/caretaker eligibility is done to ensure that child care services can either continue or should close.~~

~~G. DSS programmed the CCMIS to allow for entry of information related to category and need at the child level instead of the case level. DSS did this to enable Case Managers to split children into different categories when all the children from the same household cannot be placed into one category.~~

~~EXAMPLE: Two children are in the home, one child is part of the AFDC grant and can receive care under Category 12 and the other child in the home is not part of the AFDC grant. The parent/caretaker also needs child care for this child. By entering information at the child level, it is possible to place this child into a Category 31 and split the two children by category for funding purposes.~~

~~Case Managers, therefore, determine category and need based on the parent/caretaker's circumstances, but enter this information in the CCMIS at the level of the child.~~

~~H. It is not possible to add income sources or employers for active DCIS cases (i.e. open in AFDC or Food Stamps). However, it is possible to adjust wages or other income sources. Remember it is from these income sources that the CCMIS will determine financial eligibility and fees. Case Managers should make every effort, therefore, to ensure this information is accurate.~~

~~I. Once all appropriate casehead information has been entered, add the "child" participant(s) to the case. Add child participant(s) in the same way as the casehead. However, enter information related to category and need, and the fee waived reason (if the fee is to be waived), at the child level for this information to register in the CCMIS. If this is a Category 11 or 12 case, the CCMIS waives the fee automatically.~~

~~Presumptive Child Care is a limited one to two month eligibility period and authorization for child care. This will be automatically generated when a mandatory verification~~

field is in the "pending verification" status and the parent/caretaker did not receive Child Care in the previous month.

When the case is entered into the DCIS II Child Care Sub system and the status is pending due to verification needed, the system automatically calculates the 10 day period allowed for the return of necessary information. If the case is entered and the 10 day calculation falls prior to adverse action, the system will generate an authorization for the current month only. If the case is entered and the 10 day calculation falls after adverse action the system will generate an authorization for the current month and the next month only. Eligibility will be denied after the presumptive period if the client does not return the necessary information. It will be necessary to change the appropriate fields and check verified if the client returns the necessary information. The system will generate the appropriate notices.

If a client was opened in Presumptive Child Care or denied Presumptive Child Care in the previous determination, Presumptive Child Care will not be issued.

11004.9 Authorizing Service

See Administrative Notice: A-7-99 Child Care Issues

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

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

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

B. ~~Parent/caretakers~~ Parents/caretakers can only choose providers who are either self-arranged, licensed exempt or who can be matched to existing information in the Site Referral function of the ~~CCMIS~~ DCIS II Child Care Sub system. If the provider selected has a contract with DSS, this provider will be listed in ~~the CCMIS~~ DCIS II under the Site Referral section. Access these providers through their site ID# or site search. Finally, if ~~parent/caretakers~~ parents/

caretakers use a certificate and they select a contracted provider, consider this as contracted care even though the parent/caretaker used a certificate.

C. When ~~parent/caretakers~~ parents/caretakers wish to self-arrange child care, ensure the parent submits the information on the Self-Arranged Provider Agreement and Registration Form. When ~~parent/caretakers~~ parents/caretakers wish to arrange certificate child care, ensure the parent submits the information on the Child Care Certificate Provider Agreement and Registration Form. Send the appropriate form to the Child Care Monitor for CCMIS processing. The monitor will notify the Case Manager when the information is data entered.

D. When the monitor notifies the Case Manager that data has been entered in CCMIS, enter effective and expiration dates on the authorization. Effective dates will always start when service is due to begin. In most cases, service will begin either the same day the authorization is completed or on a date in the near future. However, there may be occasions when service will begin prior to the actual date of the child care interview.

EXAMPLE 1: The TANF parent who self-initiates a Food Stamp Employment & Training (FS E&T) training or education component. In this case, make the authorization effective as of the date the parent started the component activity if the parent needed child care for the activity: and was financially eligible.

EXAMPLE 2: When a ~~Child Care~~ Case Manager receives a protective referral from Family Services after child care services have already started.

EXAMPLE 3: ~~A parent/caretaker who has already obtained child care, but who meets the eligibility criteria for Transitional Child Care, e.g. the parent/caretaker's AFDC case closed because of employment, they are now getting child care on their own, but did not realize until now that they could qualify for TCC.~~

The ending date for the authorization period means the last day for which Case Managers can authorize care. The authorization period ~~will differ depending upon the child care category~~ can not exceed the recertification date. This is for all categories of care.

~~1. For categories 11, 12, and 21 child care, authorize care for periods of up to one year.~~

~~2. For Category 13, Transitional Child Care, authorize care for the parent/caretaker's entire eligibility period up to a maximum of 12 months.~~

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

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

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

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

~~EXAMPLE: A Category 11, 12, or 21 case has an effective date of January 17 and an ending date of December 31 of the same year, the last day of the one year authorization period.~~

F.E. Ensure that service is authorized only for the days and hours that ~~parent/caretakers~~ parents/caretakers actually need care. Therefore, only enter the following on the DCIS II Child Care Authorization Detail screens, authorization:

1. the appropriate number of days per week that ~~parent/caretakers~~ parents/caretakers will need care, for example 1, 2, 3, 4, or 5 days;

2. the appropriate type of care needed, half-day (P), full-day (X), day and a half (T), or two full days (D) (supervisory approval is necessary for T and D care);

3. whether absent days are paid (absent days correspond to the number of authorized days, however, when care is self-arranged, DSS pays only for the days the child attends care). If a client is authorized for 7 days s/he does not receive paid absent days;

4. whether extended care is authorized; and

5. whether school care is authorized.

~~Refer to the User Manual to enter the appropriate codes.~~

G. ~~When completing authorizations for Food Stamp Employment & Training (FS E&T) participants (Categories 11 or 21), complete the Employment and Training type and the Employment and Training component fields of the authorization screen. Employment and Training type refers to whether the participant is mandatory or a volunteer. Components refer to participant activities. The User Manual contains the appropriate codes.~~

H.F. The remaining fields (Category, Waive Fee Reason, Family Size, and Family Income) of the authorization screen are system completed, depending upon the information previously entered, ~~on the CHILD CARE CASE INFORMATION screen.~~ The authorization is now complete. Press the appropriate key to post the authorization in the system. Click the 'save' button. Complete separate authorizations if there are more children who need care.

11004.9.1 Changing Authorizations

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

- A. a change in the authorized level of service, for example number of days, type of service, absent days, etc.;
- B. a change of provider;
- C. a change in category;
- D. a change in parent/caretaker need;
- E. a change in family size;
- F. a change in income; or
- G. a change in the child care fee.

To make any changes necessary to the current Authorization, navigate to the Child Care Authorization Details II screen, make the change and re-run SFU/EDBC.

Change Authorizations always affect future events, meaning the change will affect future transactions (i.e., future payments for child care).

~~If the change, however, needs to be made to old transactions (authorizations for which DSS already made payment), complete a "Correct Transaction". See the Correct Transaction Section of the User Manual. The Correct Transaction function will, however, only affect positive changes, meaning the change caused an increase in service or a change in the child care fee, thereby increasing the provider payment. If the change were negative, meaning a decrease in service, process as an overpayment.~~

When changes to an authorization cause a decrease in parent/caretaker service (e.g., less care, increase in fee), DSS considers this a negative change. According to the ECMIS DCIS II Child Care Sub system, negative changes will occur the first day of the next month. Provide the parent/caretaker with adequate and timely notice whenever such a negative change occurs. DSS programmed the ECMIS DCIS II Child Care Sub system to allow for timely notice. Therefore, any negative change will not cause a change to the authorization unless sufficient time remains in the current month for Case Managers to send the parent/caretaker notice of this change. If there is not sufficient time, the change will not occur until the first day of the month following the next month.

EXAMPLE: On January 20, Case Manager X is notified by parent Y of an increase in parent Y's income. Case Manager X posts the adjusted income to the ACTIVE CLIENT EMPLOYMENT SUMMARY DCIS II income screen, (enter an "X" for Change on the CHILD CARE CASE INFORMATION screen).

The adjusted income will increase the child care fee on the authorization, which is a negative change (i.e., parent Y

will have to pay a higher fee). Since this change occurs after January 20 (change does not occur until the next work day), the ECMIS DCIS II Child Care Sub system will not make parent Y's new fee effective until March 1. ~~Case Manager X~~ The DCIS II Child Care Sub system sends parent Y a letter notifying parent Y of the higher fee, (see the Letter function in the User Manual).

~~NOTE: The ECMIS does not automatically produce letters. Case Managers must complete this function.~~

DSS considers changes which increase the level of parent/caretaker service (e.g., increase in the number of days, reduction in fee) a positive change. The ECMIS DCIS II Child Care Sub system is programmed to allow positive client changes to occur the first day of the current month.

A neutral change, like a change in category, will generally take place the first day of the next month. However, some category changes, going from a Category 11 or 12 (no fee) to a Category ~~43~~ 31 will cause a negative change. The parent/caretaker will now have to pay a fee.

EXAMPLE: Parent Y who was a ~~Food Stamp~~ Employment & Training (FS E&T) TANF participant and a Category 11 obtains a job. The job causes parent Y's TANF case to close. Parent Y can no longer get Category 11 child care, but qualifies for Category ~~43~~ 31, TCC. ~~Complete a Change Authorization to do a category change. Enter new income in the DCIS II income screens.~~ Parent Y's TANF case is due to close on January 31, but the change is not completed until after January 21. Notify parent Y of the TANF closing. Verify parent Y's request for TCC and then make the category change from 11 to 13. Notify parent Y of the new child care fee. The category change takes place as of March 1. The DCIS II Child Care Sub system will automatically change the category code from 11 to 31, and give notice once the client is no longer eligible for TANF but continues to be eligible under category 31.

The expiration dates for Change Authorizations will remain the same as on the original authorization.

Correct Transactions

If a change needs to be made to an old transaction (authorizations for which DSS already made payment), go to the Correct Transaction screen. The Correct Transaction function is located in DCIS II Child Care Sub system. Correct transactions can only be completed for positive changes, meaning the change caused an increase in service or a change in the child care fee, thereby increasing the provider payment. The only areas that can be changed on a transaction are:

- A. family size increase
- B. income decrease
- C. waive fee code added

- D. absent days change from no to yes
- E. extended care changes from no to yes
- F. days per week
- G. type of day

Case Managers can only make corrections in the above areas to transactions created within the last 3 months. Supervisors may make changes in the above areas to any past transaction. Changes to transactions that are not editable (not listed above) will have to be referred to the Child Care Monitors.

If the change was negative, meaning a decrease in services, process an overpayment.

11004.11 Review/Determination

See Administrative Notice: A-7-99 Child Care Issues-

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

A. For Category 11, 12, and 21 child care cases, perform the following every six months:

- 1. review each Category 11 and 21 case to ensure the parent/caretaker is still active with Food Stamp Employment & Training (FS E&T) by having the parent/caretaker provide some proof they are a Food Stamp Employment & Training (FS E&T) participant;
- 2. review each Category 12 case to ensure that the parent/caretaker is still employed by having the parent/caretaker provide some proof of employment.

For this review, It will not always be necessary to schedule parent/caretakers parents/caretakers for a face-to-face interview or to repeat the application process. As long as parent/caretakers parents/caretakers provide some proof that they remain employed, a Food Stamp or TANF Employment & Training (FS E&T) participant or, remain an employed TANF recipient, and verify income or special needs and remain income eligible, they remain eligible for child care services. However, at least once per year, schedule parent/caretakersparents/caretakers for a face-to-face interview.

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

redetermination and set new dates for the next authorization period.

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

EXAMPLE: A parent fails to keep a redetermination interview scheduled for January 21. Send a notice advising the parent that child care will end February 28, the end of the following month.

If parent/caretakers parents/caretakers fail to show for a recertification interview or fail to provide necessary documentation, close the Child Care case. If the parents/caretakers provide good cause for their failure to act, and the case has not closed, continue service. If the case has closed complete the redetermination and backdate to the first day of the month the authorization would have begun.

Good cause can be anything believed to be reasonable, but generally includes things such as:

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

Do not allow an authorization to end or close a case without first providing ensuring the parent/caretakers parents/caretakers with were given timely and adequate notice.

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

If a Category 11, 12, or 21 case is closed without providing timely and adequate notice, it is to be administratively reopened to ensure uninterrupted service.

B. For Category 13 child care cases, at least every six months:

1. review each Category 13 case to ensure the parent/caretakers are still employed by having them provide some proof of employment;

2. review income and family size information to determine income eligibility and to reset the child care fee (if income changes the fee, do a Change Authorization to set a new fee);

3. complete a new Child Care Payment Agreement Form resulting from a change in fee;

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

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

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

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

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

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

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

C. For Category 31 child care cases, perform the following at least every six months:

See Administrative Notice: A-7-99 Child Care Issues

1. complete a redetermination by scheduling parent/caretakers for a redetermination interview and requesting parent/caretakers to provide verification of need and income;

2. at the redetermination interview, redetermine eligibility using the criteria in Section 11003, Eligibility Requirements;

3. update case information (it will not be necessary for the parent/caretaker to complete a new application);

4. update the child care fee by reviewing income and family size;

5. complete a new Child Care Payment Agreement Form;

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

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

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

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

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

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

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

caretakers will be subject to DSS' priority service order (see Section 11004.3.1).

11004.12 Closing Cases

A parent/caretaker's authorization for service should end when any of the following occurs:

- A. the parent/caretaker need no longer exists,
- B. the parent/caretaker's income exceeds income limits,
- C. the parent/caretaker fails to pay the child care fee fees or fails to make arrangements to pay past fees owed,
- D. the parent/caretaker refuses to provide requested information or verification of eligibility,
- E. the parent/caretaker is a Food Stamp Employment & Training (FS E&T) participant who is sanctioned,
- F. a protective case fails to follow the Division of Family Services case plan,
- G. ~~a TCC parent/caretaker quits a job without good reason;~~
 - H.G. at the request of the parent/caretaker, and
 - I.H. if program funds should be reduced, and,
 - I. if a parent/caretaker is a TANF child care participant who is sanctioned.

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

~~When closing cases for Categories 11, 12, 13, and 21, send the appropriate closing notice which provides a ten day notice. (see discussion above in Section 11004.11). Even though DSS programmed the CCMIS DCIS II Child Care Sub system to allow for ten day notice before an authorization closes, and informs the participant of his/her right to a Fair Hearing, separately send the notice through the CCMIS letter function. For Category 31 cases, send a Generic Closing Letter (Form 630). State the reason for the closing on this form.~~

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

When a case and the authorization is closed the system will end date the case and authorization the last day of the current month or the next month if 10 day notice can not be given.

11005.2 Parent/Caretaker Responsibilities

A. ~~Parent/caretakers~~ Parents/caretakers have the responsibility to give accurate information to Case Managers concerning their financial status and their need for service.

Failure to provide requested and accurate information could lead to a denial and/or termination of service.

B. ~~Parent/caretakers~~ Parents/caretakers have the responsibility to report changes in their financial status and need for service as these changes occur. Failure to do so could lead to termination of service.

C. ~~Parent/caretakers~~ Parents/caretakers have the responsibility to pay their assessed child care fee. ~~Parent/caretakers~~ Parents/caretakers pay the fee directly to the provider at a schedule determined by the provider. Providers have the right to deny service to ~~parent/caretakers~~ parents/caretakers who fail to pay their fees.

D. ~~Parent/caretakers~~ Parents/caretakers have the responsibility to abide by the provider's rules and procedures regarding the operation of their child care facility. Failure to do so could lead to termination from the provider's program. (Such a termination will not cause termination from DSS' subsidized child care services, but can make it difficult for DSS to locate another placement.)

E. ~~Parent/caretakers~~ Parents/caretakers have the responsibility to reimburse DSS for any payments made on their behalf for which they were not eligible. DSS has the right to recoup such overpayments. In cases where fraud is suspected, recovery must be attempted.

11005.3 Child Care Case Records

Child care case records are maintained in accordance with DSSM policies as noted in Section 1000 under the heading Administration. However, ensure that child care case records contain, at a minimum, the following information:

A. a copy of the ~~Child Care Screening Application~~ Application for Child Care Assistance (Form 600);

B. verification of child care need, such as pay stubs and/or employer letter, school or training registration, special needs form;

C. verification of income, such as pay stubs or employer letter;

~~D. as applicable, documentation of a request for Transitional Child Care services;~~

E.D. a copy of the Child Care Payment Agreement (Form 601b); and

F.E. any information pertinent to the child care case, such as protective referral, etc.

Authorizations, client notices, and other pertinent case information is contained in the ~~CCMIS~~ DCIS II Child Care Sub system. The ~~CCMIS~~ DCIS II Child Care Sub system is considered an electronic case file and, therefore, equally or more valuable as the manual record. Maintain both the manual file as well as the electronic file in an up-to-date manner.

***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 Division of Social Services is available at:

<http://www.dhss.delaware.gov/dhss/dss/index.html>

DEPARTMENT OF INSURANCE

18 DE Admin. Code 703

Statutory Authority: 18 Delaware Code,
Sections 311, 2304, 2307 and 2312
(18 Del.C. §§311, 2034, 2307, 2312)

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Thursday September 1, 2005 at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2005-34**, proposed **Regulation 703** relating to **PROHIBITED PRACTICES RELATED TO THE NONRENEWAL OF RESIDENTIAL HOMEOWNERS POLICIES**.

The purpose for proposing Regulation 703 is to prohibit insurance companies from terminating or nonrenewing residential homeowners real and personal property insurance policies under circumstances where a policyholder merely makes an inquiry about the policy or how claims are handled by the insurer.

The hearing will be conducted in accordance with 18 Del.C. §311 and the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 9:00 a.m., Thursday September 1, 2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to michael.rich@state.de.us.

703 Prohibited Practices Related to the Nonrenewal of Residential Homeowners Policies

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§311, 2304, 2307 and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101.

2.0 Scope

This regulation applies to homeowners insurance, as defined herein.

3.0 Definitions

“Homeowners policy” or “homeowners insurance” means property insurance, as defined at 18 Del.C. §4103(4)d and 4120, insuring any real or personal property used by a person as a permanent or temporary place of residence.

“Inquiry” means any contact initiated by an insured that is not the filing or reporting of a claim to an insurer.

“Insurer” shall have the meaning assigned to it at 18 Del.C. §102(3)

“Nonrenew” shall have the meaning assigned to it at 18 Del.C. §4121(c).

“Predicate unfair trade practice” shall mean an act which shall constitute part of the pattern of acts necessary to show activity occurring with sufficient frequency to constitute an unfair trade practice under 18 Del.C. §2304(16).

4.0 Inquiries

An insurer that considers an inquiry regarding (1) a homeowners policy or (2) a loss under that policy to be a claim for purposes of making underwriting decisions, including but not limited to decisions to nonrenew a policy, shall have engaged in a predicate unfair trade practice.

5.0 Nonrenewal

An insurer that nonrenews a homeowners policy solely on the basis of claims asserted against that policy shall have engaged in a predicate unfair trade practice, provided that it shall not constitute a predicate unfair trade practice for an insurer to nonrenew a policy:

5.1 on the basis of claims asserted against that policy if the claim or claims demonstrate that there has been a substantial change or increase in the hazard or in the risk assumed by the carrier subsequent to the date the policy was issued and such nonrenewal is applied to other homeowners policies similarly situated; or

5.2 on the basis of the consumer's refusal or failure to make necessary or material changes or repairs resulting from a notice by the insurer that failure to make such changes or repairs will constitute a breach of contractual duties, conditions or warranties that will change or increase in the hazard or in the risk assumed by the carrier subsequent to the date the policy was issued.

6.0 Non-Exclusive Remedy

Nothing in this regulation shall limit the Commissioner's authority under 18 Del.C. §2307(a) to determine that acts which are not specifically enumerated in Title 18 of the Delaware Code constitute unfair trade practices.

7.0 Severability

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

8.0 Prior Bulletins

This Regulation shall supersede Insurance Department Form and Rates Bulletin No. 28, issued January 20, 2004.

9.0 Effective Date

This Regulation shall become effective October 11, 2005.

DEPARTMENT OF INSURANCE

18 DE Admin. Code 907

Statutory Authority: 18 Delaware Code,
Sections 310, 311, 2301 *et seq.* 2501 *et seq.*
(18 Del.C. §§310, 311, 2301 *et seq.* 2501 *et seq.*)

NOTICE OF PUBLIC HEARING

907 Records Relating To Consumer Complaints

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Thursday September 6, 2005 at 10:30 a.m. (or as soon thereafter as possible) in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2005-35**, proposed

Regulation 907 relating to RECORDS RELATING TO CONSUMER COMPLAINTS.

The purpose for proposing Regulation 907 is to establish a method by which founded consumer complaints against an insurer can be recorded, tracked and such records be made available to the public.

The hearing will be conducted in accordance with 18 Del.C. §311 and the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 9:00 a.m., Thursday September 1, 2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to michael.rich@state.de.us.

907 Records Relating To Consumer Complaints

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§ 310, 311, 2301 *et seq.* and 2501 *et seq.*, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101.

2.0 Scope

Except as indicated herein, this regulation applies to all complaints relating to insurance, as defined below.

3.0 Definitions

"Complaint" shall mean any expression of a grievance against an insurer made in any form to the Delaware Department of Insurance. An allegation of insurance fraud, as defined at 18 Del.C. §2407, shall be treated pursuant to procedures authorized under 18 Del.C. Chapter 24 of the Delaware Code and shall not be considered a complaint for purposes of this regulation. Statements that contain allegations of insurance fraud as well as complaints that would not, if true, constitute insurance fraud shall be treated in relevant part according to 18 Del.C. Chapter 24 and this regulation.

"Department" means the Delaware Department of Insurance.

"Founded," with respect to a complaint, means:

- that the insurer's act, acts, omission, or omissions did not comply with a provision of Title 18 of the Delaware Code, regulations promulgated by the Department, or other

- applicable Delaware statute or regulation; or
- that the insurer's act, acts, omission, or omissions contravened or were inconsistent with a rate filing, form filing, or other filing made with the Department; or
- that the insurer's act, acts, omission, or omissions contravened or were inconsistent with a provision or provisions of the agreement to which the individual making the complaint was a party or third party beneficiary; or
- that the insurer's act, acts, omission, or omissions contravened or were inconsistent with formal standards or practices of the insurer which were relied upon by the insurer in satisfying the requirements any examination conducted by the Department, alone or in conjunction with the Insurance Departments of other states.

"Insurance" shall have the meaning assigned to it at 18 **Del.C.** §102(2).

"Insurer" shall have the meaning assigned to it at 18 **Del.C.** §102(3).

4.0 Tracking of Complaints

It is the policy of the Department that Delaware consumers should be aware of the volume and type of founded complaints that have been resolved against insurers with whom they do business or are contemplating doing business under the provisions of this regulation.

5.0 Intake of Complaints

Any communication with the Department that constitutes a complaint shall be formally recorded as such by the Department, assigned an identifying number, and tracked until it is resolved through one of the methods described in Section 6.0.

6.0 Resolution of Complaints

Complaints shall be resolved in one of the following manners:

6.1 **Complaints Lacking Merit.** The Department may determine that the complaint did not have merit in which case it shall not be deemed to be founded.

6.2 **Resolved In Favor of Consumer.** The Department, through negotiation or mediation, may resolve a complaint, absent any formal proceeding, with some benefit accruing to the consumer. Any resolution in favor of the consumer shall be considered a complaint resolved in favor of the consumer.

6.3 **Referral for Formal Process.** The Department may initiate a proceeding to make a formal determination as to whether the complaint is founded. The Department shall provide a 60 day written notice to the insurer that the complaint has been received and that the complaint will be referred for a formal determination under section 7.0 of this regulation unless the complaint is otherwise resolved within 60 days. Absent a notice from the insurer that the complaint is not subject to informal resolution within 60 days from the time the insurer receives notice of the complaint, the Department will proceed to resolve the complaint formally or informally, in its discretion after the 60 day period without further notice to the insurer. If, within the 60 day notice period, the insurer notifies the Department that the matter is not subject to resolution, such notice shall be a waiver of the balance of the notice period and the Department can proceed to a formal determination. Any resolution in favor of the consumer shall be considered founded complaint. At any time after notice or before the conclusion of a formal proceeding, the parties shall have the right to resolve the complaint informally under sections 6.1 and 6.2 of this regulation.

6.4 **Other.** The Department shall classify complaints resolved in a manner other than those listed in subsections 6.1 through 6.3 as "other" in which case the complaint will not be considered founded.

7.0 Formal Determinations

If the Department initiates a proceeding to determine whether a complaint is founded, it shall follow the procedures outlined in 18 **Del.C.** §§323 through 329, and, where consistent with those sections, shall also treat that proceeding as a case decision under 29 **Del.C.** Chapter 101. A complaint may be resolved in favor of a consumer after a formal proceeding is initiated. This Regulation shall not prohibit the Commissioner from taking any action otherwise permitted by the Delaware Code on behalf of a consumer or consumers related to a complaint prior to the completion of formal proceedings.

8.0 Publication of Findings

The Department shall make available to the public the following information:

8.1 **The details of each founded complaint and action taken by the Insurance Department in response thereto, with information related to the identify of the complaining party deleted;**

8.2 **Statistical information regarding the number of founded complaints against each insurer licensed to do business in the State of Delaware, including information permitting consumers to assess such statistics in the context**

of the total amount of business done in the state by each insurer.

9.0 Severability

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

10.0 Prior Bulletins and Regulations

This Regulation shall supersede any prior bulletin or regulation of the Department to the extent that such bulletin or regulation is inconsistent with the provisions of this Regulation.

11.0 Inconsistent Statutes

This regulation shall not apply to any type of complaint that the Department is expressly required by the Delaware Code to treat in a manner inconsistent with this regulation.

12.0 Effective Date

This Regulation shall become effective October 11, 2005, and information shall be made public pursuant to Section 8.0 commencing January 1, 2006.

DEPARTMENT OF LABOR
DIVISION OF EMPLOYMENT AND TRAINING
Council on Apprenticeship and Training
Statutory Authority: 19 Delaware Code,
Section 202(a) (19 Del.C. §202(a))

PUBLIC NOTICE

The Secretary of Labor in accordance with 19 Del.C. §202(a) has proposed changes to the rules and regulations relating to apprenticeship and training. The proposal defines conduct that can be grounds for refusal of program registration and the conditions for reapplication. Other proposed changes update administrative procedures and renumber the provisions.

A public hearing will be held before the Council on Apprenticeship and Training (Council) at 10:00 a.m. on September 27, 2005, in the second floor conference room at Buena Vista State Conference Center on Route 13, New Castle, DE where members of the public can offer

comments. Anyone wishing to receive a copy of the proposed rule may obtain a copy from Kevin Calio, Manager, Apprenticeship and Training, Department of Labor, P.O. Box 9828, 4425 N. Market St., Wilmington, DE 19809-0828. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

The Council will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public hearing.

Proposed Rules and Regulations
Division of Employment and Training Apprenticeship Programs

106 Apprenticeship and Training Regulations**1.0 Purpose and Scope**

(Formerly 106.1)

1.1 Section 204, Chapter 2, Title 19, **Delaware Code** authorizes and directs the Department of Labor to formulate regulations to promote the furtherance of labor standards necessary to safeguard the welfare of Apprentices and to extend the applications of such standards by requiring their inclusion in apprenticeship contracts.

1.2 The purpose of this chapter is to set forth labor standards to safeguard the welfare of Apprentices and to extend the application of such standards by prescribing policies and procedures concerning the registration of acceptable Apprenticeship Programs with the Delaware Department of Labor.

1.3 These labor standards and procedures cover the Registration and Cancellation of Apprenticeship Agreements and of Apprenticeship Programs; and matters relating thereto. Any questions [and/or] to request a copy of Delaware's Prevailing Wage Regulations regarding the employment of apprentices on state-funded construction projects must be referred to:

Delaware Department of Labor
Office of Labor Law Enforcement
4425 North Market Street
Wilmington, DE 19802
(302) 761-8200

2.0 Declaration of Policy

(Formerly 106.1)

2.1 It is declared to be the policy of this State to:

2.1.1 encourage the development of an apprenticeship and training system through the voluntary cooperation of management and workers and interested State

agencies and in cooperation with other states and the federal government;

2.1.2 provide for the establishment and furtherance of Standards of Apprenticeship and Training to safeguard the welfare of Apprentices and trainees;

2.1.3 aid in providing maximum opportunities for unemployed and employed persons to improve and modernize their work skills; and

2.14 contribute to a healthy economy by aiding in the development and maintenance of a skilled labor force sufficient in numbers and quality to meet the expanding needs of industry and to attract new industry.

3 DE Reg. 641 (11/1/99)

3.0 Definitions

(Formerly 106.2)

3.1 As used in this part:

"**Administrator**" refers to the Administrator of the Office of Apprenticeship and Training for the State Department of Labor.

"**Agreement**" refers to a written agreement between an Apprentice and either his/her employer or an Apprenticeship Committee acting as agent for the Employer which contains the terms and conditions of the employment and training of the Apprentice.

"**Apprentice**" refers to a person at least sixteen years of age who is engaged in learning a recognized skilled trade through actual work experience under the supervision of a Journeyman. This person must enter into a written Apprenticeship Indenture Agreement with a registered apprenticeship sponsor. The training must be supplemented with properly coordinated studies of related technical instruction. All hours worked by a registered apprentice, while in the employ of the apprentice's sponsor, shall be considered apprenticeship hours to be counted toward wage progression increments and completion of his/her on-the-job training hours as set forth in the Apprenticeship Indenture Agreement.

"**Apprenticeship Standards**" refers to the document which embodies the procedure for the selection and the training of apprentices, setting forth the terms of the training, including wages, hours, conditions of employment, training on the job, and related instruction. The duties and responsibilities of the Sponsor, including administrative procedures, are set forth in their company's policies.

"**BAT**" refers to the U.S. Department of Labor, Bureau of Apprenticeship and Training.

"**Cancellation**" refers to the deregistration of a Program or the Termination of an Agreement.

"**Committee**" refers to those persons designated by the Sponsor to act on its behalf in the administration of the

Apprenticeship Program. A Committee may be "joint" i.e., it is composed of an equal number of representatives of the employer(s) and of the employee(s) represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate or administer a Program and enter into Agreements with Apprentices. A Committee may be "unilateral" or "non-joint" and shall mean a Program Sponsor in which a bona fide collective bargaining agent is not a participant.

"**Council**" refers to the Governor's Advisory Council On Apprenticeship and Training.

"**Delaware Resident Contractor**" includes any general contractor, prime contractor, construction manager, subcontractor or other type of construction contractor who regularly maintains a place of business in Delaware. Regularly maintaining a place of business in Delaware does not include site trailers, temporary structures associated with one contract or set of related contracts, nor the holding, nor the maintaining of a post office box within this State. The specific intention of this definition is to maintain consistency with Title 30, Delaware Code, section 2501(3) "Resident Contractor".

"**Director**" refers to the Director of the Division of Employment and Training.

"**Division**" refers to the Division of Employment and Training, Department of Labor, state of Delaware.

"**Employer**" refers to any person or organization employing an Apprentice, whether or not such person or organization is a party to an Apprenticeship Agreement.

"**Journeyman**" refers to a worker who is fully qualified as a skilled worker in a given craft or trade.

"**On-site Visit**" refers to a visit from a representative of the State of Delaware, Department of Labor, Division of Employment and Training to the office and/or the actual field job-site of the Sponsor, for the purposes of inspecting and/or monitoring the progress and training of the Registered Apprentice. This monitoring may include but is not limited to interviewing the Apprentice and the auditing of pertinent documents relative to the maintenance and enforcement of the terms of the Apprenticeship Agreement.

"**Program**" refers to an executed apprenticeship plan which contains all terms and conditions for the qualifications, recruitment, selection, employment and training of Apprentices, including such matters as the requirements for a written Apprenticeship Agreement.

"**Registrant or Sponsor**" refers to any person, association, committee or organization in whose name or title the Program is (or is to be) registered or approved regardless of whether or not such entity is an Employer. To be eligible, the Registrant or Sponsor must be a "Delaware

Resident Contractor" or hold and maintain a "Delaware Resident Business License". The Registrant or Sponsor must hold and maintain a permanent place of business, not to include site trailers or other facilities serving only one contract or related set of contracts. To be eligible to be a Registrant or Sponsor, Employer/Business, association, committee or organization must have the training program and an adequate number of Journey persons to meet the ratio requirements as stated for that particular apprenticeable occupation.

"Registration" refers to the acceptance and recording of an Apprenticeship Program by the Delaware Department of Labor, Office of Apprenticeship and Training, as meeting the basic standards and requirements of the Division for approval of such Program. Approval is evidenced by a Certificate or other written indicia documentation. Registration also refers to the acceptance and recording of Apprenticeship Agreements thereof, by the Delaware Department of Labor, Office of Apprenticeship and Training, as evidence of the participation of the Apprentice in a particular Registered apprenticeship Program.

"Related Instruction" refers to a formal and systematic form of instruction designed to provide the Apprentice with knowledge of the theoretical and technical subjects related to his/her trade.

"Secretary" refers to the Secretary of Labor.

"State" refers to the State of Delaware.

"Supervisory Inspection" shall mean the same as "ON SITE VISIT".

3 DE Reg. 641 (11/1/99)

4.0 Eligibility and Procedure for State Registration

(Formerly 106.3)

4.1 No Program or Agreement shall be eligible for State Registration unless it is in conformity with the requirements of this chapter, and the training is in an apprenticeable occupation having the characteristics set forth in section 5.0 herein.

4.2 Apprentices must be individually registered under a Registered Program with the State of Delaware, Department of Labor, Division of Employment and Training. Such registration shall be ~~effected by filing copies of each Agreement with the State effective when the completed agreement is submitted to and signed by the Administrator.~~ Sponsors registered with states other than the State of Delaware shall not be construed as being registered for State of Delaware Apprenticeship Program Registration purposes.

4.3 The State must be properly notified through the Department of Labor, Division of Employment & Training,

Office of Apprenticeship & Training of cancellation, suspension or termination of any Agreements, (with cause for same) and of apprenticeship completions. The State will attempt, where applicable, to verify the cause of apprenticeship termination.

4.4 Approved Programs shall be accorded Registration, evidenced by a Certificate of Registration. The Certificate of Registration for an approved Program will be made in the name of the Program Sponsor and must be renewed every four (4) years.

4.5 Any modification(s) or change(s) to registered standards shall be promptly submitted to the State through the appropriate office no later than thirty (30) days and, if approved, shall be recorded and acknowledged as an amendment to such standards.

~~4.6 The request for registration and all documents and data required by this chapter shall be submitted in triplicate. Individual Agreements shall be submitted to the State Apprenticeship and Training Office for Registration no later than thirty (30) calendar days after the trainee has started work in the registered Program. Agreements submitted after said time shall be considered a violation of the rules and regulations and will not be honored.~~

~~4.7~~ 4.6 Under a Program proposed for Registration by an Employer or Employer's Association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any way in the operation of the Program, and such participation is exercised, written acknowledgment of a union agreement or "no objection" to the Registration is required. Where no such participation is evidenced and practiced, the Employer shall simultaneously furnish to the union a copy of its Program application. In addition, upon receipt of the application for the Program, the State shall promptly send by certified mail to such local union another copy of the Program application and together with a notice that union comments will be accepted for thirty (30) days after the date of the agency transmittal.

~~4.8~~ 4.7 Where the employees to be trained have no collective bargaining agent, a program plan may be proposed for Registration by an Employer or groups of Employers.

~~4.9~~ 4.8 A Sponsor may register Programs in one or more occupations simultaneously or individually with the provision that the Program Sponsor shall, within sixty (60) days of Registration, be actively training Apprentices on-the-job and related study must begin within twelve (12) months for each occupation for which Registration is granted. At no time shall an individual Apprentice be employed in more than one (1) occupation, nor signed to more than one (1) Apprenticeship Agreement at any given time.

~~4.10~~ 4.9 Each occupation for which a Program Sponsor holds Registration shall be subject to Cancellation if no active training of Apprentices on the job has occurred within a consecutive one hundred eighty (180) day period or if no Related Instruction has begun within a twelve (12) month period from the date of Registration or in any twelve (12) month period during the duration of that Agreement.

~~4.11~~ 4.10 Each Sponsor of a Program shall submit to an on-site inspection or supervisory visit and shall make all documents pertaining to the Registered Program available to appropriate representatives of the Apprenticeship and Training Office or designated service personnel upon request.

~~4.12~~ 4.11 Each Sponsor shall be so routinely examined, by the Office of Apprenticeship and Training, at least annually, but not more than every six (6) months, unless a specific violation is suspected or a specific document is being investigated.

~~4.13~~ 4.12 The Sponsor shall notify the State Registration Agency of termination or lay-off from employment of a Registered Apprentice or of the completion of the terms of the Apprenticeship Agreement within thirty (30) calendar days of such occurrence.

~~4.14~~ 4.13 The Sponsor shall notify the State of failure to obtain and register the Apprentice in an approved course of Related Instruction as stated and detailed on the Apprenticeship Agreement within (30) calendar days of such occurrence.

~~4.15~~ 4.14 It shall be the responsibility of the Sponsor to monitor the progress and attendance of the Apprentice in all phases of training such as, but not limited to, on-the-job and/ or Related Training.

3 DE Reg. 641 (11/1/99)

5.0 Criteria for Apprenticeable Occupations

(Formerly 106.4)

5.1 An Apprenticeable occupation is a skilled trade which possesses all of the following characteristics:

5.1.1 It is customarily learned in a practical way through training and work on the job.

5.1.2 It is clearly identified and commonly recognized throughout the industry, or recognized with a positive view towards changing technology or approved by the Delaware Department of Labor, Office of Apprenticeship & Training.

5.1.3 It involves manual, technical or mechanical skills and knowledge which require a minimum of two thousand (2,000) hours of on-the-job training, not including the time spent in Related Instruction.

5.1.4 It customarily requires Related Instruction to supplement the on-the-job training.

5.1.5 It involves the development of skills sufficiently broad enough to be applicable in similar occupations throughout the industry, rather than a restricted application to the products or services of any one company.

6.0 Standards of Apprenticeship

(Formerly 106.5)

6.1 The following standards are prescribed for a Program.

6.1.1 The Program must include an organized, written plan delineating the terms and conditions of employment. The training and supervision of one or more Apprentices in an apprenticeable occupation must become the responsibility of the Sponsor who has undertaken to carry out the Apprentice's training program.

6.2 The standards must contain provisions concerning the following:

6.2.1 The employment and training of the Apprentice in a skilled occupation;

6.2.2 an equal opportunity pledge stating the recruitment, selection, employment and training of Apprentices during their apprenticeships shall be without discrimination based on: race, color, religion, national origin or sex. When applicable, an affirmative action plan in accordance with the State's requirements for federal purposes must be instituted;

6.2.3 the existence of a term of apprenticeship, not less than one year or two thousand (2,000) hours consistent with training requirements as established by industry practice;

6.2.4 an outline of the work processes in which the Apprentice will receive supervised work experience and on-the-job training, and the allocation of the approximate time to be spent in each major process;

6.2.5 provision for organized related and supplemental instruction in technical subjects related to the trade. A minimum of one hundred forty-four (144) hours for each year of apprenticeship is required. Such instruction may be given in a classroom, through trade, industrial or approved correspondence courses of equivalent value or in other forms approved by the State Department of Labor, Office of Apprenticeship & Training;

6.2.6 a progressively increasing schedule of wage rates to be paid the Apprentice, consistent with the skill acquired which shall be expressed in percentages of the established Journeyperson's hourly wage;

6.2.7 Minimum Wage Progression for 1 through 7 year Apprentice Program as follows:

6.2.7.1 1 to 7 year programs

6.2.7.2 starting pay must be at least minimum

wage

6.2.7.3 final period must be at least 85%

1 YEAR [OR] 2,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%
2nd 1,000 hours: 85%

2 YEAR [OR] 4,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%
2nd 1,000 hours: 51%
3rd 1,000 hours: 63%
4th 1,000 hours: 85%

3 YEAR [OR] 6,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%
2nd 1,000 hours: 48%
3rd 1,000 hours: 57%
4th 1,000 hours: 65%
5th 1,000 hours: 74%
6th 1,000 hours: 85%

4 YEAR [OR] 8,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%
2nd 1,000 hours: 46%
3rd 1,000 hours: 53%
4th 1,000 hours: 59%
5th 1,000 hours: 65%
6th 1,000 hours: 71%
7th 1,000 hours: 78%
8th 1,000 hours: 85%

5 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%
2nd 1,000 hours: 45%
3rd 1,000 hours: 50%
4th 1,000 hours: 55%
5th 1,000 hours: 60%
6th 1,000 hours: 65%
7th 1,000 hours: 70%
8th 1,000 hours: 74%
9th 1,000 hours: 79%
10th 1,000 hours: 85%

6 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%
2nd 1,000 hours: 44%
3rd 1,000 hours: 48%
4th 1,000 hours: 52%
5th 1,000 hours: 56%
6th 1,000 hours: 60%
7th 1,000 hours: 64%
8th 1,000 hours: 68%

9th 1,000 hours: 72%
10th 1,000 hours: 76%
11th 1,000 hours: 81%
12th 1,000 hours: 85%

7 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

1st 1,000 hours: 40%
2nd 1,000 hours: 43%
3rd 1,000 hours: 47%
4th 1,000 hours: 50%
5th 1,000 hours: 54%
6th 1,000 hours: 57%
7th 1,000 hours: 61%
8th 1,000 hours: 64%
9th 1,000 hours: 68%
10th 1,000 hours: 71%
11th 1,000 hours: 74%
12th 1,000 hours: 78%
13th 1,000 hours: 81%
14th 1,000 hours: 85%

6.2.8 that the entry Apprentice wage rate shall not be less than the minimum prescribed by State statute or by the Fair Labor Standards Act, where applicable;

6.2.9.1 In no case other than sickness or injury on the part of the Apprentice, shall a Sponsor hold back an Apprentice's progression more than one period or wage increment without the written consent of the Administrator;

6.2.9 That the established Journeyperson's hourly rate applicable among all participating Employers be stated in dollars and cents. No Apprentice shall receive an hourly rate less than the percentage for the period in which he/she is serving applied to the established Journeyperson's rate unless the Sponsor has documented the reason for same in the individual Apprentice's progress report and has explained the reason for said action to the Apprentice and Registration Agency.

6.2.10 That the established Journeyperson's rate provided for by the Standards be reviewed and/or adjusted annually. Sponsors of Programs shall be required to give proof that all employees used in determining ratios of Apprentices to Journeypersons shall be receiving wages at least in the amount set for Journeypersons in their individual program standards, or are qualified to perform as Journey persons and must be paid at least the minimum journeyperson rate;

6.2.11 That the minimum hourly Apprentice wage rate paid during the last period of apprenticeship not be less than eighty-five (85) percent of the established Journeyperson wage rate. Wages covered by a collective

bargaining agreement takes precedent over this section. However, wages may not be below the State's required minimum progression.

6.3 The Program must include a periodic review and evaluation of the Apprentice's progress in job performance and related instruction, and the maintenance of appropriate progress records.

6.4 The ratio of Apprentices to Journeypersons should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements.

6.4.1 The ratio of Apprentices to Journeypersons shall be one Apprentice up to each five (5) Journeypersons employed by the prospective Sponsor unless a different ratio based on an industry standard is contained in the signed Standards of Apprenticeship Agreement.

6.4.2 The following have been recognized to be the industry standard for the listed trades:

Ratio of Apprentice Journeypersons*

1 up to 4 Sheet Metal Worker

1 up to 4 Insulation Worker

1 up to 4 Asbestos Worker

1 up to 3 Industrial Maintenance Mechanic

1 up to 3 Plumbers/Pipefitters

1 up to 3 Electrician

1 up to 3 Precision Instrument Repairers

1 up to 3 Glaziers

1 up to 2 Roofers

1 up to 1 Sprinkler Fitters

* The ratio has no effect until the second apprentice is registered. Only one Journeyperson is necessary in any trade for the first Apprentice.

6.4.3 Exceptions.

6.4.3.1 If a collective bargaining agreement stipulates a ratio of Apprentices to Journeyperson, it shall prevail provided the Bargaining Ratio is not lower than the State standard.

6.4.3.2 A deviation from the established standard may be granted by the Administrator upon written request after considering the needs of the plant and/or trade with consideration for growth, the availability of relevant training, and the opportunity for employment of skilled workers following the completion of their training. Such exception shall last no more than one year but may be renewed upon written request.

5 DE Reg. 204 (7/1/2001)

~~6.5 At least forty (40) percent of all Apprentices registered must complete training. Apprentices who voluntarily terminate their apprenticeships or employment shall not be counted in reference to this section. Programs~~

~~with fewer than five (5) Apprentices shall not be required to comply with this part.~~

~~6.6 6.5~~ A probationary period shall be in relation to the full apprenticeship term with full credit toward completion of apprenticeship.

~~6.7 6.6~~ Adequate and safe equipment facilities for training and supervision and safety training for Apprentices on the job and in Related Instruction are required.

~~6.8 6.7~~ The required minimum qualifications for persons entering an Apprentice Program ~~as defined in Section 3.1~~ must be met.

~~6.9 6.8~~ Apprentices must sign an Agreement. The Agreement shall directly, or by reference, incorporate the standards of the Program as part of the Agreement.

~~6.10 6.9~~ Advance standing or credit up to 25% OJT hours of the particular trade term in question for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any accorded progression step may be granted. The granting of a greater amount of credit shall be set at the discretion of the Administrator based on supportive documentation submitted by the Sponsor. In no case shall more than one half of the particular trade term in question be granted unless the time in question has been spent in any state or federally registered program.

6.10 When a registered apprentice is no longer employed by a Sponsor, the Sponsor shall determine the time and training earned during his or her employment and send notice of such progress to the Apprenticeship and Training Section of the Delaware Department of Labor and to the apprentice in writing.

6.11 Transfer of Employer's training obligation through the sponsoring Committee if one exists and as warranted, to another Employer with consent of the Apprentice and the Committee or Program Sponsors, with full credit to the Apprentice for satisfactory time and training earned, may be afforded with written notice to, and approval of, the Registration Agency.

6.12 These Standards shall contain a statement of assurance of qualified training personnel.

6.13 There will be recognition for successful completion of apprenticeship evidenced by an appropriate certificate.

6.14 These Standards shall contain proper identification of the Registration Agency, being the Department of Labor, Division of Employment & Training, Office of Apprenticeship & Training.

6.15 There will be a provision for the Registration, Cancellation and Deregistration of the Program, and a requirement for the prompt submission of any modification or amendment thereto.

6.16 There will be provisions for Registration of Agreements, modifications and amendments, notice to the Division of persons who have successfully completed Programs, and notice of Cancellations, suspensions and terminations of Agreements and causes therefore.

6.17 There will be a provision giving authority for the termination of an Agreement during the probationary period by either party without stated cause.

6.18 There will be provisions for not less than five (5) days notice to Apprentices of any proposed adverse action and cause therefore with stated opportunity to Apprentices during such period for corrective action.

6.19 There will be provisions for a grievance procedure, and the name and address of the appropriate authority under the program to receive, process and make disposition of complaints.

6.20 There will be provisions for recording and maintaining all records concerning apprenticeships as may be required by the State or Federal law.

6.21 There will be provisions for a participating Employer's Agreement.

6.22 There will be funding formula providing for the equitable participation of each participating Employer in funding of a group Program where applicable.

6.23 All Apprenticeship Standards must contain articles necessary to comply with federal laws, regulations and rules pertaining to apprenticeship.

6.24 Programs and Standards of Employers and unions in other than the building and construction industry which jointly form a sponsoring entity on a multi-state basis and are registered pursuant to all requirements of this part by any recognized State apprenticeship agency shall be accorded Registration of approval reciprocity by the Delaware Department of Labor if such reciprocity is requested by the sponsoring entity. However, reciprocity will not be granted in the Building and Construction industry based on Title 29 CFR 29 Section 12(b) unless a "memorandum of understanding" has been signed by an individual state and the state of Delaware.

3 DE Reg. 641 (11/1/99)

7.0 Apprenticeship Agreement

(Formerly 106.6)

7.1 The Apprenticeship Agreement shall contain:

7.1.1 the names and signatures of the contracting parties (Apprentice and the program Sponsor or Employer), and the signature of a parent or guardian if the Apprentice is a minor;

7.1.2 the date of birth of the Apprentice;

7.1.3 the name and address of the program Sponsor and the Registrant;

7.1.4 the Apprentice's social security number;

7.1.5 a statement of the trade or craft which the Apprentice is to be taught, and the beginning date and term (duration) of apprenticeship;

7.1.6 the number of hours to be spent by the Apprentice in work on the job;

7.1.7 the number of hours to be spent in Related and Supplemental Instruction is recommended to be not less than one hundred forty-four (144) hours per year;

7.1.8 provisions relating to a specific period of probation during which the Apprenticeship Agreement may be terminated by either party to the Agreement upon written notice to the Registrant;

7.1.9 provisions that, after the probationary period, the Agreement may be suspended, canceled or terminated for cause, with due notice to the Apprentice and a reasonable opportunity for corrective action, and with written notice to the Apprentice and the Registrant of the final action taken;

7.1.10 a reference incorporating, as part of the Agreement, the standards of the Apprenticeship Program as it exists on the date of the Agreement or as it may be amended during the period of the Agreement;

7.1.11 a statement that the Apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training without discrimination based on race, color, religion, national origin, marital status, or sex, or disability;

7.1.12 a statement that, if an Employer is unable to fulfill his obligation under his Agreement, the Agreement may, with consent of the Apprentice and Committee, if one exists, be transferred to another Employer under a Registered Program with written notice of the transfer to the Registrant, and with full credit to the Apprentice for satisfactory time and training earned;

7.1.13 the name and address of the appropriate authority, if any, designated under the program to receive, process and make disposition of controversies or differences which cannot be adjusted locally or resolved in accordance with the established trade procedure or applicable collective bargaining provisions;

7.1.14 a statement setting forth a schedule of work processes in the trade or industry in which the Apprentice is to be trained and the approximate time to be spent at each process;

7.1.15 a statement of the graduated scale of wages to be paid the Apprentice and whether or not the required school time shall be compensated;

7.1.16 a statement that in the event the Registration of the Program has been Canceled or revoked,

the Apprentice will be notified within fifteen (15) days of the event.

3 DE Reg. 641 (11/1/99)

8.0 Complaints

(Formerly 106.7)

8.1 Any controversy or difference arising under an Agreement which cannot be resolved locally, or which is not covered by a collective bargaining agreement, may be submitted by an Apprentice or his/her authorized representative to the State Registration Agency for review. Matters covered by a collective bargaining agreement, however, shall be submitted and processed in accordance with the procedures therein provided.

8.2 The complaint shall be in writing, signed by the complainant, and submitted by the Apprentice or his/her authorized representative within sixty (60) days of receipt of local decision. The complaint shall set forth the specific problem, including all relevant facts and circumstances. Copies of all pertinent documents and correspondence shall accompany the complaint.

3 DE Reg. 641 (11/1/99)

9.0 Related Instruction Requirement

(Formerly 106.8)

9.1 Regulations concerning Apprentices "attendance and tardiness" policy for related instruction.

9.1.1 A registered Apprentice who misses seven (7) classes while enrolled in a related studies program at any of the vocational schools in the three (3) counties of the State of Delaware will be dropped from school. This will result in their Apprenticeship Agreement being terminated by their Sponsor and/or State Registration Agency.

9.1.2 An absence will result when an Apprentice either arrives late or leaves early three (3) times. However, School District Officials may bring to the Administrator's attention, individual cases that may have experienced extenuating circumstances. With the Administrator's approval, such individuals may be granted exemption from this attendance policy.

9.1.3 Courses of fewer sessions will be prorated. Instructors will inform Apprentices of allowable absences.

9.1.4 If you are a Registered Apprentice who is enrolled through a trade union, trade society or any other organization that stipulates attendance rules more stringent than the above, then you are required to follow those regulations.

9.1.5 Related Instruction that is delivered through a state approved "in-house program", correspondence courses or other systems of equivalent value

will require the Apprentice to produce a document detailing satisfactory participation and completion.

3 DE Reg. 641 (11/1/99)

10.0 Deregistration by State Registered Program

(Formerly 106.9)

10.1 It is the policy of this State to discourage violations of the law or these rules and regulations by limiting or revoking the privilege to operate programs when Sponsors demonstrate an indifference to these requirements.

10.2 Where it appears to the Administrator that a program is not being operated in accordance with federal or state law or these rules and regulations, the Administrator shall so notify the Sponsor in writing stating the deficiency and providing a period for corrective action not to exceed 10 days. Such notice shall be sent by certified mail, return receipt requested. The Sponsor shall respond in writing to the letter within 10 days of receipt.

10.3 If the Sponsor fails to correct a deficiency after notice by the Administrator under 10.2, deregistration proceedings will be undertaken.

10.3.1 Voluntary deregistration is available to a Sponsor upon written request to the Administrator. Within fifteen (15) working days of the effective date of deregistration demonstrated by the acknowledgment of the Administrator, the Sponsor must notify all Apprentices of such deregistration, the effective date, and that the deregistration automatically deprives the apprentice of his/her individual registration.

10.3.2 Involuntary deregistration is initiated by the Administrator as follows:

10.3.2.1 If the Sponsor fails to respond to the notice of deficiency, the Administrator shall advise the Sponsor by certified mail, return receipt requested, that the program will be recommended for deregistration unless within 10 days the Sponsor requests a hearing.

10.3.2.2 If the response by the Sponsor to the notice is insufficient to correct the deficiency, the Administrator shall so advise the sponsor by certified mail, return receipt requested. Said letter shall advise the Sponsor that the program will be recommended for deregistration unless within 10 days the Sponsor requests a hearing.

10.3.2.3 If no hearing is timely requested, the Administrator will recommend deregistration to the Secretary. The decision of the Secretary is final and no further appeal is provided. The sponsor will be notified of the effective date of deregistration. In addition, a decision of deregistration and its effective date will be mailed to all Apprentices registered in the program.

10.3.2.4 All recommendations for involuntary deregistration as a result of violations of the

Rules and Regulations will include a recommended period of deregistration of up to three (3) years.

3 DE Reg. 641 (11/1/99)

4 DE Reg. 1852 (5/1/01)

11.0 Hearings on Deregistration

(Formerly 106.10)

11.1 A deregistration hearing will be scheduled before the Council on Apprenticeship and Training within 45 days of receipt of a timely request by the Sponsor.

11.2 Notice shall be in accord with the provisions of the Administrative Procedures Act.

11.3 Each party shall have the right to present evidence, to be represented by counsel, and to cross-examine witnesses.

11.4 A record from which a verbatim transcript can be prepared shall be made of the hearing. A party may request a transcript at his or her expense.

11.5 At the conclusion of the hearing, the Council will determine, by a majority of the quorum, its recommendation to the Secretary.

11.6 The Council shall submit its recommended findings of fact, conclusions of law, and decision to the Secretary. Said recommendations may be authenticated by the chairperson.

11.7 The decision of the Secretary is final and no further appeal is provided. The decision will be sent by certified mail to the Sponsor. In addition, a decision of deregistration and its effective date will be mailed to all Apprentices registered in the program.

3 DE Reg. 641 (11/1/99)

4 DE Reg. 1852 (5/1/01)

12.0 Reinstatement of Program Registration

(Formerly 106.11)

12.1 Program deregistered pursuant to this chapter may be reinstated upon presentation of adequate evidence that the Program is operating in accordance with this chapter. Such evidence shall be presented to the Apprenticeship and Training Council, which shall make a recommendation based on said evidence, past records and any other data deemed appropriate. After such presentation, the Council shall make a recommendation to the Secretary as to whether the Program should be reinstated. The Secretary's decision shall be final and binding.

3 DE Reg. 641 (11/1/99)

13.0 Program Registration Denial

(Formerly 106.12)

13.1 Grounds for denial of program registration include, but are not limited to, violations of apprenticeship

standards or of federal or state labor laws in any state by the applicant.

~~13.1~~ 13.2 Any proposed Sponsor may, within fifteen (15) working days, request a hearing before the Apprenticeship and Training Council. If the proposed Sponsor requests a hearing, the Administrator shall advise the chairman of the Council, who shall convene the Council, for a hearing for the purpose of making a determination on the basis of the record and proposed findings of the Office of Apprenticeship & Training. This determination shall be subject to review and approval by the Secretary, whose decision shall be final and binding.

13.3 An applicant who has been denied registration of a program may reapply by demonstrating to the Council at a hearing that the deficiencies that led to the denial of registration have been remedied and the program will operate in accordance with all applicable laws and rules in a manner that safeguards the welfare of the apprentices. The Council will make a recommendation to the Secretary, whose decision shall be final and binding.

14.0 Amendment to the Regulations in this Part

(Formerly 106.13)

14.1 The Secretary may, at any time upon his/her own motion or upon written request of any interested person setting forth reasonable grounds therefore, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of the regulations contained in this part.

3 DE Reg. 641 (11/1/99)

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

Statutory Authority: 7 Delaware Code,
Chapter 60 (70 Del.C. Ch. 60)

REGISTER NOTICE

1. Title of the Regulations:

1102 Permits

1144 Control of Stationary Generator Emissions

2. Brief Synopsis of the Subject, Substance and Issues:

The Department is proposing to adopt a new regulation, Regulation No. 1144, which will require the control of air emissions from both new and existing stationary generators. The Department is also proposing to amend Regulation No. 1102, in order to clarify permitting requirements applicable to stationary generators.

Delaware is not in compliance with federal standards for ground-level ozone and fine particulate matter (PM_{2.5}). Among other things, the purpose of Regulation No. 1144 is to help ensure that the air emissions from new and existing stationary electric generating units do not cause or contribute to these existing air quality problems. Regulation No. 1144 is intended to establish emissions standards, operating requirements, fuel sulfur content limits, and recordkeeping requirements applicable to covered generators.

Regulation No. 1102 Permits details what sources need, or do not need, a permit to begin construction and to operate. Regulation No. 1102 is being amended to clarify the permitting requirements applicable to stationary generators.

3. Possible Terms of the Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

7 Delaware Code, Chapter 60

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice of Public Comment:

The public comment period for this proposed regulation and proposed amendment will extend through at least August 31, 2005. Interested parties may submit comments in writing during this time frame to: Mark A. Prettyman, Air Quality Management Section, 156 S. State St., Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 25, 2005, beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. Prepared By:

Mark A. Prettyman (302) 739-9402 July 7, 2005

1102 Permits

06/01/97

Section 1 - General Provisions

1.1 This regulation establishes the procedures that satisfy the requirement of 7 Del.C. Chapter 60 to report and obtain approval of equipment which has the potential to discharge air contaminants into the atmosphere, and, for construction or modification activities not subject to Regulation No. 25, the procedures that satisfy the requirement of 40 CFR Part 51 Subpart I (July 7, 1994 edition) and Section 110(a)(2)(C) of the federal clean air act (CAA) as amended November 15, 1990.

1.2 This regulation establishes procedures that enable a person to, as an option, secure federally enforceable terms and conditions in a permit issued pursuant to this regulation.

1.3 This regulation establishes procedures that enable a person subject to both this regulation and to Regulation No. 30 to, as an option, transfer the terms and conditions of a construction permit issued pursuant to this regulation into a Regulation No. 30 operating permit via the administrative permit amendment process specified in Regulation No. 30.

1.4 Within sixty (60) calendar days of receipt of a written request by the Department, an owner or operator of an existing facility, equipment, or air contaminant control device which emits or causes to be emitted any air contaminant shall submit to the Department any relevant information that the Department may request. Relevant information includes information that, in the Departments opinion, is relevant to any permit application/registration or that is necessary to determine the applicability of or compliance with any State or Federal requirement, any permit term or condition, or any condition of registration. Such information also includes a permit application or a registration form, or a corrected or supplemented application/registration. This provision does not limit the applicability of, nor does it sanction noncompliance with the requirements of Section 2.1 of this regulation.

1.5 Any approval granted by the Department pursuant to this Regulation, and any exemption from the requirements of this Regulation provided for in Section 2.2 shall not relieve an owner or operator of the responsibility of complying with applicable local, State, and Federal laws and regulations.

06/01/97

Section 2 - Applicability

2.1 Except as exempted in Section 2.2, no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air

contaminant prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form.

a. For equipment that meets all applicable emission rate(s) and/or standard(s) specified in Section 11.8(a) and (b) without an air contaminant control device, and that meets the following conditions, the person shall submit to the Department a registration form pursuant to Section 9 of this regulation.

i. For equipment without an air contaminant control device, the equipment has actual emissions to the atmosphere of any air contaminant(s), in the aggregate, during any day that are equal to or greater than 0.2 pound per day and, during each and every day, that are less than ten (10) pounds per day; and

ii. For equipment with an air contaminant control device, the equipment has actual emissions to the inlet of the air contaminant control device of any air contaminant(s), in the aggregate, during any day that are equal to or greater than 0.2 pound per day and, during each and every day, that are less than ten (10) pounds per day; and

iii. Regulation No. 25 does not apply.

b. For equipment, a facility or an air contaminant control device that is not subject to Section 2.1(a) and that is subject to a source category permit, the person shall submit to the Department an application for a source category permit pursuant to Section 10 of this regulation. A list of established source category permits is available from the Department.

c. For equipment, a facility or an air contaminant control device that is not subject to Section 2.1(a) or 2.1(b), the person shall submit to the Department an application for a permit pursuant to Section 11 of this regulation.

d. Any person who operates equipment, a facility or an air contaminant control device in accordance with a valid permit issued pursuant to Section 2.1(c) of this regulation, and who later becomes subject to a source category permit:

i. May, at any time, submit to the Department an application for a source category permit pursuant to Section 10 of this regulation; and

ii. Shall, within sixty (60) calendar days of receipt of written request from the Department, submit to the Department an application for a source category permit pursuant to Section 10 of this regulation.

2.2 Provided that Regulation No. 25 does not apply, a permit for installation, alteration, or operation pursuant to this regulation shall not be required for the following equipment or air contaminant control device. Note however that other State and Federal requirements may apply.

a. Equipment without an air contaminant control device that has actual emissions to the atmosphere of any air contaminant(s), in the aggregate, during each and every day that are less than 0.2 pound per day, provided that:

i. The actual emissions are quantified and documented; and

ii. Records are maintained at the facility and are made available to the Department upon request which document that the equipment qualifies for this exemption.

b. Equipment with an air contaminant control device that has actual emissions to the inlet of the air contaminant control device of any air contaminant(s), in the aggregate, during each and every day that are less than 0.2 pound per day, provided that:

i. The actual emissions are quantified and documented; and

ii. Records are maintained at the facility and are made available to the Department upon request which document that the equipment qualifies for this exemption.

c. The equipment listed in Appendix "A" of this regulation.

d. For operation, any equipment or air contaminant control device that is specifically identified in an operation permit issued pursuant to Regulation No. 30.

e. Equipment that is registered pursuant to Section 9 of this regulation.

2.3 Any person who operates fuel burning equipment which uses only natural gas, LP gas, or other desulfurized fuel gas and has a rated heat input of less than 100 million BTUs per hour, or any other equipment, that was exempted from the requirement to have a permit by Regulation No. 2, Section 3.1 (as in effect immediately preceding the effective date of this regulation), or who operates a piece of equipment, a facility, or an air contaminant control device in accordance with a valid permit or letter of exemption that was issued by the Department prior to May 1, 1997, and who, with regard to that specific equipment, facility, or air contaminant control device, is now subject to Section 2.1 of this regulation:

a. May, at any time, submit to the Department a registration form or a permit application pursuant to Section 2.1; and

b. Shall, within sixty (60) calendar days of receipt of a written request from the Department, submit to the Department a registration form or a permit application pursuant to Section 2.1; and

c. Shall not initiate construction, installation, or alteration of the equipment, facility or air contaminant control device prior to complying with Section 2.1 of this regulation (i.e., prior to receiving approval of his application

from the Department or, if eligible, prior to submitting to the Department a completed registration form).

2.4 Any person may petition the Department to establish a source category permit. The petition and, if approved, the establishment of the source category permit shall be pursuant to the procedures in Regulation No. 30 of the State of Delaware *Regulations Governing the Control of Air Pollution*.

06/01/97

Section 3 - Application/Registration Prepared by Interested Party

3.1 Any application/registration form submitted to the Department, or any request for the removal of any permit or registration, shall be made by the owner or lessee of the equipment, facility, or air contaminant control device or by his agent. If the applicant/registrant is a partnership or group other than a corporation, the application/registration shall be made by one individual who is a member of the group. If the applicant/registrant is a corporation, the application/registration shall be made by an appropriate representative of the corporation. The application/registration form shall be filed with the Air Quality Management Section of the Division of Air and Waste Management.

3.2 Each application form shall be signed by the applicant and certified by a professional engineer as to the accuracy of the technical information concerning the equipment, apparatus or design features contained in the application, plus plans and other papers submitted. Any applicant who fails to submit any relevant facts or who submitted incorrect information to the Department shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or correct information. The signature of the applicant shall constitute an agreement that the applicant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this Regulation.

3.3 Each registration form shall be signed and certified by the registrant as to the accuracy of the technical information concerning the equipment, apparatus or design features contained in the registration. Any registrant who fails to submit any relevant facts or who submitted incorrect information to the Department shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or correct information. The signature of the registrant shall constitute an agreement that the registrant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this Regulation.

06/01/97

Section 4 - Cancellation of Construction Permits

4.1 The Department may cancel a construction permit if the installation or alteration is not begun or if the work involved in installation or alteration is not completed within the time limits specified in the permit.

06/01/97

Section 5 - Action on Applications

5.1 If an application is disapproved, the Department shall set forth its objections in the notice of disapproval.

5.2 Upon granting written approval for operation, the Department shall give notice of such approval to any person who has submitted a written request for such notice.

06/01/97

Section 6 - Denial, Suspension or Revocation of Operating Permits

6.1 In the event the Department denies a request for approval of a permit to operate any equipment, facility, or device for which an application was made, the applicant shall not commence operation until such time that approval has been obtained from the Department or a permit to operate has been issued by the Department.

6.2 The Department may suspend or revoke an operating permit for violation of any permit condition or violation of this or any other applicable rule or regulation of the Department or any law administered by the Department and may take such other actions as it deems necessary. Permit term(s) and condition(s) which were not identified under Section 11.2(i) and which were not subject to public participation under Section 12.3, and/or which do not otherwise conform to the requirements of this regulation, may be deemed not federally enforceable by the Administrator of the EPA.

6.3 Suspension or revocation of an operating permit shall become final immediately upon service of notice on the holder of the permit, unless otherwise stated in the notice of suspension or revocation.

06/01/97

Section 7 - Transfer of Permit/Registration Prohibited

7.1 No person shall transfer a permit from one location to another, or from one piece of equipment to another. No person shall transfer a permit from one person to another person unless thirty (30) days written notice is given to the Department, indicating the transfer is agreeable to both persons, and approval of such transfer is obtained in writing from the Department.

7.2 No person shall transfer a registration from one location to another, or from one piece of equipment to

another. No person shall transfer a registration from one person to another person unless prior written notice is given to the Department, indicating the transfer is agreeable to both persons.

06/01/97

Section 8 - Availability of Permit/Registration

8.1 Any permit and any registration form shall be available on the premises where the construction, alteration, installation, or operation activity takes place.

06/01/97

Section 9 - Registration Submittal

9.1 Any person identified in Section 2.1(a) shall register the piece of equipment with the Department on forms furnished by the Department.

9.2 A person shall register with the Department by submitting to the Department a completed registration form that is certified by the person identified in Section 3.1. Registration forms are available from the Department upon request. The registration shall consist of at least the following:

- a. A description of the equipment covered by the registration; and
- b. A description of the nature and quantification of the amount of the emission from the equipment; and
- c. A demonstration that the equipment meets the emission rate(s) and/or standard(s) specified in Section 11.8(a) and (b) of this regulation without an air contaminant control device.

9.3 Immediately after submitting to the Department the information specified in Section 9.2 of this regulation the registrant may initiate construction, install, alter or initiate operation of the equipment.

a. The registrant shall maintain records at the facility which document that the equipment meets the requirements of Section 2.1(a), and shall make such records available to the Department upon request.

b. If at any time the registered equipment does not meet the requirements of Section 2.1(a), operation of said equipment shall be immediately discontinued until all necessary permits have been secured.

c. If at any time the Department determines that the registered equipment does not meet the requirements of Section 2.1(a), a violation of this regulation may have occurred and enforcement action may ensue.

9.4 The submittal of a registration form does not relieve the registrant from the requirement to comply with all State and Federal requirements. Such requirements include, but are not limited to, monitoring, record keeping and reporting requirements, any requirement to consider actual emissions

and/or the potential to emit of all equipment when determining the applicability of and/or compliance with certain State and Federal requirements, and any requirement to revise a Regulation No. 30 permit if required to do so by that regulation.

9.5 A person may, in lieu of submitting to the Department a registration form, elect to:

a. Apply for a permit pursuant to Section 2.1(b) or 2.1(c) of this regulation, as applicable.

b. Submit to the Department all of the information required by Section 9.2(a) and (b). In such a case the registrant shall not commence construction/operation until written approval is obtained from the Department.

06/01/97

Section 10 - Source Category Permit Application

10.1 Any person identified in Section 2.1(b) shall submit to the Department an application requesting a source category permit on forms furnished by the Department.

10.2 The application requesting a source category permit shall include all of the following:

a. All of the information called for by the source category application form. Source category application forms are available from the Department upon request.

b. Certification by the person identified in Section 3.1 that the source will comply with all of the terms and conditions of the source category permit.

c. For facilities subject to Regulation No. 30, the person identified in Section 3.1 of this regulation shall be a responsible official as defined in Regulation No. 30, and the application shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

10.3 For facilities not subject to Regulation No. 30, the Department shall grant approval by issuing to the applicant a source category permit.

10.4 For facilities subject to Regulation No. 30, the Department shall grant approval by incorporating the source category permit into the Regulation No. 30 permit by reference, and such incorporation shall be via the administrative permit amendment process specified in Regulation No. 30.

10.5 A source category permit may be valid for an indefinite period, except as provided for in Regulation No. 30 for sources subject to that regulation.

06/01/97**Section 11 - Permit Application**

11.1 Any person identified in Section 2.1(c) shall submit to the Department an application for a permit on forms furnished by the Department. Permit application forms are available from the Department upon request.

11.2 The application shall consist of a description of at least the following:

a. The equipment or apparatus covered by the application; and

b. Any equipment connected or attached to, or servicing or served by the unit of equipment or apparatus covered by the application; and

c. The plot plan, including the distance and height of building within a reasonable distance from the place where the equipment is or will be installed, if necessarily required by the Department; and

d. The proposed means for the prevention or control of the emissions or contaminant;

e. The chemical composition and amount of any trade waste to be produced as a result of the construction, installation, or alteration of any equipment or apparatus covered by this application;

f. Any additional information, evidence or documentation required by the Department to show what the proposed equipment or apparatus will do.

g. Methods and expected frequency of occurrence of the start-up and shutdown of the equipment, including projected effects of emissions to the atmosphere and on ambient air quality.

h. The nature and amount of emission to be emitted by equipment, the facility, or an air contaminant control device or emitted by associated mobile sources.

i. If the applicant desires any of the term(s) or condition(s) of the permit to be federally enforceable, the applicant shall state that fact in the application. The ensuing permit shall clearly indicate the specific term(s) and condition(s) that are federally enforceable.

j. If the applicant desires any of the term(s) or condition(s) of a construction permit to transfer to a Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30 the following additional requirements apply:

i. The person identified in Section 3.1 of this regulation shall be a responsible official as defined in Regulation No. 30, and the application shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

ii. The application shall include the following additional information:

A. The citation and description of all applicable requirements that will apply to the equipment, facility, or air contaminant control device and that will become applicable to any covered source as a result of the construction, installation, alteration, or operation; and a description of, or reference to, any applicable test method for determining compliance with each applicable requirement. The terms "applicable requirement" and "covered source" retain the meanings accorded to them in Regulation No. 30.

B. Certification by the responsible official that the source will meet all applicable requirements on a timely basis, and, if a more detailed schedule is expressly required by any applicable requirement, that applicable requirement in accordance with that more detailed schedule.

C. If desired, information necessary to define alternative operating scenarios under Regulation No. 30, Section 6(a)(10), or to define permit terms and conditions to implement emission averaging or operational flexibility under Regulation No. 30, Section 6(a)(11) and 6(h).

D. If desired, a request that the Department, upon taking final action under Section 11.5(b) or 11.5(c) of this regulation, allow coverage under the permit shield as described in Regulation No. 30, Section 6(f).

iii. The applicant shall provide additional information necessary to address any requirements that become applicable to the equipment, facility, or air contaminant control device after the date it filed an application under this section but prior to the date advertisement is made pursuant to Section 12.4(b) of this regulation. This requirement is in addition to the requirement of Section 2.1 of this regulation in situations where construction, installation, or alteration is necessary to comply with the new applicable requirement.

iv. The ensuing construction permit shall clearly indicate the specific term(s) or condition(s) to transfer to the Regulation No. 30 permit, and each such term or condition shall specify the origin and the authority for that term or condition, and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

11.3 In situations in which construction, installation, or alteration is proposed, and operation of the equipment, facility, or air contaminant control device is to follow, such operation shall not commence until written approval is obtained by the applicant from the Department in accordance with Section 11.4 and 11.5, as applicable. The Department may condition approval to operate on a demonstration by the

applicant of satisfactory performance of the equipment, facility, or air contaminant control device. In the event the applicant fails to demonstrate satisfactory performance, the Department may require the applicant to cease emissions from the source.

11.4 Persons not requesting review under Section 11.2(j) shall, upon completion of the construction, installation or alteration, request that the Department grant approval to operate.

a. An application does not need to be submitted to the Department. Note however that an application may be required under Regulation No. 30 for persons subject to that regulation.

b. Upon satisfactory demonstration that the equipment, facility or air contaminant control device complies with all of the terms and conditions of the construction permit, the Department shall grant approval to operate by issuing an operation permit.

11.5 Persons requesting review under Section 11.2(j) shall, upon completion of the construction, installation or alteration, request that the Department transfer the terms and conditions of the construction permit into the Regulation No. 30 operating permit.

a. The request shall contain the following information, and shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

i. A description of the compliance status, a compliance schedule, and a certification of compliance for the equipment, facility, or air contaminant control device with respect to all applicable requirements, in accordance with Regulation No. 30, Section 5(d)(8) and (9); and

ii. A statement of the methods used to determine compliance, including a description of monitoring, record keeping, and reporting requirements and test methods.

b. Upon satisfactory demonstration that the equipment, facility or air contaminant control device complies with all applicable requirements and all of the terms and conditions of the construction permit, and not prior to the expiration of the EPA review period provided for in Section 12.5, the Department shall transfer the specified terms and conditions to the Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30.

c. If the Department determines that the equipment, facility, or air contaminant control device does not comply with any applicable requirement the Department

may take enforcement action, and shall do one of the following:

i. Provide an opportunity for the applicant to resolve the noncompliance; then, upon resolution, transfer the specified terms and conditions of the construction permit to the Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30; or

ii. Transfer the specified terms and conditions of the construction permit, and an enforceable compliance schedule which satisfies the requirements of Regulation No. 30, Section 5(d)(8)(iii), to the Regulation No. 30 permit by reopening the permit for cause pursuant to the procedures in Regulation No. 30; or

iii. Deny the request for approval to operate.

11.6 No permit shall be issued by the Department unless the applicant shows to the satisfaction of the Department that the equipment, facility, or air contaminant control device is designed to operate or is operating without causing a violation of the State Implementation Plan, or any rule or regulation of the Department, and without interfering with the attainment or maintenance of National and State ambient air quality standards, and without endangering the health, safety, and welfare of the people of the State of Delaware. The Department may, from time to time, issue or accept criteria for the guidance of applicants indicating the technical specifications which it deems will comply with the performance standards referenced herein.

11.7 Before a permit is issued, the Department may require the applicant to conduct such tests as are necessary in the opinion of the Department to determine the kind and/or amount of the contaminants emitted from the equipment or whether the equipment or fuel or the operation of the equipment will be in violation of any of the provisions of any rule or regulation of the Department. Such tests shall be made at the expense of the applicant and shall be conducted in a manner approved by the Department.

11.8 The following emission rates and/or standards for each air contaminant emitted from any equipment, facility or air contaminant control device shall be specified in each permit issued pursuant to this regulation:

a. The rate and/or standard established and/or relied upon in the State Implementation Plan (SIP) to include the State of Delaware *Regulations Governing the Control of Air Pollution* and regulations promulgated pursuant to Section 111 and Section 112 of the Clean Air Act (CAA); and

b. The rate that was shown under Section 11.6 as not interfering with the attainment and maintenance of any National and State ambient air quality standard, and not endangering the health, safety, and welfare of the people of the State of Delaware; or

c. The rate requested by the applicant. In no case shall this rate be greater than the potential to emit of the equipment, facility, or air contaminant control device; and in no case shall this rate be less stringent than the rate specified in Section 11.8(a) and (b) of this regulation.

11.9 Each emission rate and standard shall be enforceable as a practical matter. Enforceable as a practical matter means that each emission rate and standard:

a. Is stated in the permit as a technically specific and accurate limitation.

b. Is specifically associated with a particular piece(s) of equipment or air contaminant control device(s).

c. Has associated conditions which, in total, establish a method to determine compliance. Such associated conditions shall include appropriate testing, monitoring, record keeping, and reporting requirements.

d. Has a recurring, predictable time period under which compliance with the limitation will be demonstrated. Such time period shall be that specified in the underlying State regulation or federal rule or, in the absence of such specification and upon approval by the Department, shall be hourly, daily, monthly, or some other time period which provides for the demonstration of compliance with the limitation no less frequently than monthly.

11.10 A construction permit or any renewal thereof shall be valid for a period not to exceed three years from the date of issuance, unless sooner revoked by order of the Department, and may be renewed upon application to and approval by the Department.

11.11 An operating permit may be valid for an indefinite period, unless the equipment or operation for which a permit is written has controlled emissions of 100 tons or more per year of any air contaminant, in which case the permit shall be valid for not more than a 5-year period and shall be evaluated prior to re-issuance to determine if permitted emission limits are appropriate.

11.12 The provisions of Section 2.1 and 11.3 shall not apply to the operation of equipment or processes for the purpose of initially demonstrating satisfactory performance to the Department following construction, installation, modification or alteration of the equipment or processes. The applicant shall notify the Department sufficiently in advance of the demonstration and shall obtain the Department's prior concurrence of the operating factors, time period and other pertinent details relating to the demonstration.

11.13 Upon receipt of an application for the issuance of an operating permit the Department, in its discretion, may issue a temporary operating permit valid for a period not to exceed ninety (90) days. A temporary operating permit

issued pursuant to this Section shall not be extended more than once for an additional 90-day period.

06/01/97

Section 12 - Public Participation

12.1 Information obtained through the provisions of this Regulation shall be made available for public inspection at any Department office except where such information is of confidential nature as defined in 7 Del.C. Chapter 60, Section 6014. The Department shall provide for public participation and comment in accordance with Section 12.2 through 12.6, as applicable.

12.2 Upon receipt of a source category permit application or a permit application, in proper form, the Department shall provide for public participation and comment by:

a. Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment).

b. Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

c. Sending notice of the information detailed in Section 12.2(b) by mail to any person who has requested such notification from the Department by providing to the Department their name and mailing address.

d. Holding, if the Department receives a meritorious request for a hearing within fifteen (15) calendar days of the date of the advertisement described in Section 12.2(b), or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action.

i. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

ii. Not less than twenty (20) calendar days before the time of said hearing, notification that a public

hearing will be held and the time and place of that hearing shall be:

A. Served upon the applicant as summonses are served or by registered or certified mail; and

B. Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

e. Considering all comments submitted by the applicant and the public in reaching its final determination.

12.3 For each permit application requesting to make the terms and conditions of a permit federally enforceable, the Department shall provide for public participation and comment by:

a. Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment), a copy of the draft permit, and a copy or summary of other materials, if any, considered in making the preliminary determination.

b. Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

c. On or before the date of the advertisement described in Section 12.3(b):

i. Sending notice of the information detailed in Section 12.3(b) by mail to the Administrator of the EPA, through the Region III office, and to any person who has requested such notification from the Department by providing to the Department their name and mailing address.

ii. Providing the Administrator of the EPA, through the Region III office, a copy of the draft permit.

d. Holding, if the Department receives a meritorious request for a hearing within thirty (30) calendar days of the date of the advertisement described in Section 12.3(b), or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application or the draft permit for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action or on the specific terms and conditions of the draft permit.

i. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

ii. Not less than thirty (30) calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:

A. Served upon the applicant as summonses are served or by registered or certified mail; and

B. Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

e. Affording the applicant an opportunity to submit, within fifteen (15) days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.

f. Considering all comments submitted by the applicant, the public, and the Administrator of the EPA in reaching its final determination.

g. Providing to the Administrator of the EPA, through the Region III office, a copy of the permit.

12.4 For each permit application requesting to allow the terms and conditions of a construction permit to transfer to a Regulation No. 30 permit via the administrative permit amendment process specified in Regulation No. 30, the Department shall provide for public participation and comment by:

a. Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment), a copy of the draft permit, and a copy or summary of other materials, if any, considered in making the preliminary determination.

b. Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

c. On or before the date of the advertisement described in Section 12.4(b):

i. Sending notice of the information detailed in Section 12.4(b) by mail to any person who has requested

such notification from the Department by providing to the Department their name and mailing address, and to the representative of any affected states designated by those states to receive such notices. The term "affected states" retains the meaning accorded to it in Regulation No. 30.

ii. Providing the Administrator of the EPA, through the Region III office, affected states, any person who requests it, and the applicant a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions).

iii. Providing the Administrator of the EPA, through the Region III office, a copy of the permit application unless the Administrator waives the requirement.

d. Holding, if the Department receives a meritorious request for a hearing within thirty (30) calendar days of the date of the advertisement described in Section 12.4(b), or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application or the draft permit for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action or on the specific terms and conditions of the draft permit.

i. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

ii. Not less than thirty (30) calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:

A. Served upon the applicant as summonses are served or by registered or certified mail; and

B. Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.

e. Affording the applicant an opportunity to submit, within fifteen (15) days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.

f. Considering all comments submitted by the applicant, the public, and any affected state in reaching its final determination. The Department shall maintain a list of all commenters and a summary of the issues raised and shall make that information available in the public file and supply it to EPA upon request.

g. After meeting the requirements of 12.4(a) through 12.4(f), providing the Administrator of the EPA, through the Region III office, a copy of the proposed permit [i.e., the version of the permit that represents the Department's final determination under Section 12.4(f)], all

necessary supporting information, and providing a notice to the Administrator and to any affected state of any refusal by the Department to accept all recommendations for the proposed permit that the affected state submitted during the public review period. The notice shall include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements. The term "applicable requirement" retains the meaning accorded to it in Regulation No. 30.

h. On or before the date that the Department provides the proposed permit to EPA for review under Section 12.4(g), issuing a written response to all comments submitted by affected states and all significant comments submitted by the applicant and the public.

12.5 The Department shall not issue the permit if the Administrator objects to its issuance in writing within forty-five (45) days of receipt of all of the information provided to the Administrator pursuant to Section 12.4(g). Any EPA objection under this paragraph shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that must be revised to respond to the objection. The Administrator will provide the applicant a copy of the objection. The Department may thereafter issue only a revised permit that satisfies EPA's objection.

12.6 If the Administrator does not object in writing under Section 12.5, any person may petition the Administrator within sixty (60) days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period provided for in Section 12.4, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the Department shall not amend the Regulation No. 30 permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of the construction permit and/or the amended Regulation No. 30 permit or its requirements if the construction permit or the amended Regulation No. 30 permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Department has issued an amended the Regulation No. 30 permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the time limits established in 40 CFR 70.7(g)(4) or (5)(i) and (ii), except in emergencies, and the Department may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be

in violation of the requirement to have submitted a timely and complete application under Regulation No. 30.

06/01/97

Section 13 - Department Records

13.1 The Department will keep for five (5) years such records and submit to the Administrator of the EPA such information as the Administrator may reasonably require to ascertain whether the optional procedures to establish and transfer the terms and conditions of a construction permit issued pursuant to this regulation into a Regulation No. 30 operating permit via the administrative permit amendment process specified in Regulation No. 30 comply with the requirements of the Federal Clean Air Act and 40 CFR Part 70.

Appendix A

(For the applicability of Appendix A see Section 2.2 of the regulation)

- a. Air contaminant detector, air contaminant recorder, combustion controller or combustion shut-off.
- b. Except as provided for in Regulation No. 22, ***Restriction on Quality of Fuel in Fuel Burning Equipment, external combustion*** fuel burning equipment which:
 - i. Uses any fuel and has a rated heat input of less than 10 million British-Thermal Units (BTUs) per hour.
 - ii. Uses only natural gas, LP gas, or other desulfurized fuel gas and has a rated heat input of less than 15 million British-Thermal Units (BTUs) per hour.
- c. Air conditioning or comfort ventilating systems.
- d. Vacuum cleaning systems used exclusively for office applications or residential housekeeping.
- e. Ventilating or exhaust systems for print storage room cabinets.
- f. Exhaust systems for controlling steam and heat.
- g. Any equipment at a facility used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance, provided the operation of the equipment is not an integral part of the production process and the total actual emissions from all such equipment at the facility do not exceed 450 pounds in any calendar month.
- h. Internal combustion engines in vehicles used for transport of passengers or freight.
- i. Maintenance, repair, or replacement in kind of equipment for which a permit to operate has been issued.
- j. Equipment which emits only nitrogen, oxygen, carbon dioxide, and/or water vapor.

k. Ventilating or exhaust systems used in eating establishments where food is prepared for the purpose of consumption.

- l. Equipment used to liquefy or separate oxygen, nitrogen or the rare gases from the air.
- m. Fireworks display.
- n. Smudge pots for orchards or small outdoor heating devices to prevent freezing of plants.
- o. Outdoor painting and sand blasting equipment.
- p. Lawnmowers, tractors, farm equipment and construction equipment.
- q. Gasoline dispensing facilities that never exceed a monthly throughput of 10,000 gallons.
- s. Stationary gasoline storage tanks that:
 - 1. Have a capacity less than 550 gallons and that are used exclusively for the fueling of implements of husbandry; or
 - 2. Have a capacity less than 2000 gallons and that were constructed prior to January 1, 1979; or
 - 3. Have a capacity less than 250 gallons and that were constructed after December 31, 1978.
- t. Fire schools or fire fighting training.
- u. Residential wood burning stoves and wood burning fireplaces.
- v. Any stationary storage tank not subject to control by these regulations which contains any liquid having a true vapor pressure less than 0.5 psia at 70°F or is less than 5000 gallons capacity.
- w. Buildings, cabinets, and facilities used for storage of chemicals in closed containers.
- x. Sewage treatment facilities.
- y. Water treatment units.
- z. Quiescent wastewater treatment operations.
- aa. Non-contact water cooling towers (water that has not been in direct contact with process fluids).
- bb. Laundry dryers, extractors, or tumblers used for fabrics cleaned with a water solution of bleach or detergents.
- cc. Equipment used for hydraulic or hydrostatic testing.
- dd. Blueprint copiers and photographic processes.
- ee. Kilns used for firing ceramic ware that are heated exclusively by natural gas, electricity, and/or liquid petroleum gas, and the BTU input is less than 15 million BTUs per hour.
- ff. Inorganic acid storage tanks equipped with an emission control device.
- gg. Any internal combustion engine associated with a stationary electrical generator that: 1)has a standby power rating of 450 kilowatts or less that is used only during times of emergency; 2)is located at any residence; or 3)is located at

any commercial poultry producing premise, as these terms are defined in Regulation No. 1144.

hh. Any internal combustion fuel burning equipment, which is not associated with a stationary electrical generator, and has an engine power rating of 450 hp or less.

1144 Control of Stationary Generator Emissions

1.0 General

1.1 Purpose. The purpose of this regulation is to ensure that emissions of nitrogen oxides (NO_x), nonmethane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO₂), carbon monoxide (CO), and carbon dioxide (CO₂) from stationary generators in the State of Delaware do not adversely impact public health, safety, and welfare.

1.2 Applicability.

1.2.1 This regulation applies to new and existing, emergency and distributed, stationary generators, except for:

1.2.1.1 a generator covered by a permit which imposes a NO_x emission limitation established to meet Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER);

1.2.1.2 an emergency generator located on a residential property where no commercial or industrial activity is carried on, and operated solely to provide emergency electric power to the domestic residence and structures on that property housing no more than three (3) families;

1.2.1.3 a generator which is mobile; or

1.2.1.4 a generator with a standby power rating of 10 kW or less.

1.2.2 The requirements of this regulation are in addition to all other applicable State and Federal requirements.

1.3 Dates

1.3.1 The owner of a new stationary generator shall submit the information required in Initial Notification, of this regulation and comply with the requirements of this regulation by the date of installation.

1.3.2 The owner of an existing stationary generator shall submit the information required in Initial Notification, of this regulation no later than [insert date 3 months after the effective date].

1.3.2.1 If the generator is to be classified as an emergency generator, the owner shall comply with the requirements of this regulation by [insert date 3 months after the effective date].

1.3.2.2 If the generator is to be classified as a distributed generator, and is subject to 3.2.1.1 of this

regulation, the owner shall comply with the requirements of this regulation by April 1, 2007.

1.3.2.3 If the generator is to be classified as a distributed generator, and is subject to 3.2.1.2 of this regulation, the owner shall comply with the requirements of this regulation by [insert date 3 months after the effective date].

1.3.3 If a generator is to be reclassified from an emergency generator to a distributed generator, or vice versa, the owner of a stationary generator shall submit to the Department a letter stating that the generator is to be reclassified, and the owner shall comply with the requirements of this regulation before this reclassification.

1.4 Initial Notification.

1.4.1 The owner of a stationary generator shall submit to the Department the following information:

1.4.1.1 the generator owner's name and telephone number;

1.4.1.2 the physical address where the generator is installed, or will be installed;

1.4.1.3 a description of the generator including the make, model number, and serial number;

1.4.1.4 the year of manufacture for the generator;

1.4.1.5 the standby power rating or the prime power rating for the generator, or both power ratings if both are known; and

1.4.1.6 the date of installation for existing generators, or the expected date of installation for new generators.

1.4.2 The owner of a stationary generator shall submit to the Department a letter stating whether the generator is to be classified as an emergency generator or a distributed generator.

2.0 Definitions. The following words and terms, when used in this regulation, shall have the following meanings:

"Biodiesel" means a renewable fuel for diesel engines derived from natural oils like soybean oil, and which meets the specifications of ASTM D 6751-03a, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," ASTM International, hereby incorporated by reference.

"Biodiesel Blend" means a blend of biodiesel and diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend. Pure biodiesel is designated as B100.

"Combined heat and power" and "CHP" means a generator that sequentially produces both electric power and thermal energy from a single source, where the thermal

energy is wholly or partly used for either industrial processes or other heating or cooling purposes.

“Combustion turbine” means an internal combustion engine in which expanding gases from the combustion chamber drive the blades of a turbine to generate mechanical energy in the form of a rotating shaft.

“Commercial poultry producing premises” means any location in the State of Delaware where live, commercial poultry (*i.e.*, poultry wholly owned by a corporate enterprise that controls the entire growing cycle of the birds, from the breeder flock to the processing plant) is kept.

“Department” means Department of Natural Resources and Environmental Control as defined in 29 **Del.C.**, Chapter 80, as amended.

“Design system efficiency” means for CHP, the sum of the full load design thermal output and electric output divided by the heat input.

“Diesel fuel” means any fuel sold in any state or Territory of the United States and suitable for use in diesel motor vehicles, diesel motor vehicle engines, or diesel nonroad engines, and which is commonly or commercially known or sold as diesel fuel.

“Digester gas” means gas generated by the anaerobic digestion of organic wastes, which include, but are not limited to, livestock manure, industrial wastewater, or food processing waste.

“Distributed generator” means a stationary generator that may be used during an emergency, during testing, and for maintenance purposes, as well as for any other purpose at times other than during an emergency.

“Emergency” means:

- an electric power outage due to: a failure of the electrical grid; on-site disaster; local equipment failure; or public service emergencies such as flood, fire, natural disaster, or severe weather conditions (e.g., hurricane, tornado, blizzard, etc.); or
- when there is a deviation of voltage or frequency from the electrical provider to the premises of three percent (3%) or greater above, or five percent (5%) or greater below, standard voltage or frequency.

“Emergency generator” means a stationary generator used only during an emergency, during testing, and for maintenance purposes. An emergency generator may not be operated in conjunction with a voluntary demand-reduction program or any other interruptible power supply arrangement with a utility, other market participant, or system operator (e.g., Delmarva Power, Delaware Electric Cooperative, PJM, etc.).

“Existing” means a generator which is not new. An existing generator shall not be considered new if it is relocated and reinstalled on the same property, nor if it is reclassified from an emergency generator to a distributed generator or vice versa.

“Gaseous fuel” means a fuel which is neither solid nor liquid, and includes but is not limited to natural gas, propane, landfill gas, waste gas, and anaerobic digester gas.

“Generator” means an internal combustion engine, except for a combustion turbine, and associated equipment that converts primary fuel (including fossil fuels and renewable fuels) into electricity, or electricity and thermal energy. Use of the term “generator” in this regulation shall refer to any and all generators subject to the requirements of this regulation unless the type of generator being referred to is otherwise specified.

“Installation” and **“install”** mean:

- for generators which are not required to obtain a permit, the date upon which the emplacement of a generator is commenced; or
- for generators which are required to obtain a permit, the date upon which the owner has all necessary preconstruction approvals or permits and either has:
 - begun, or caused to begin, a continuous program of actual on-site emplacement of the generator, to be completed within a reasonable time; or
 - entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual emplacement of the generator to be completed within a reasonable time.

“Landfill gas” means gas generated by the decomposition of organic waste deposited in a landfill (including municipal solid waste landfills) or derived from the evolution of organic compounds in the waste.

“Maintenance” means the recurrent, periodic, or scheduled work necessary to repair, prevent damage, or sustain existing components of a generator or any ancillary equipment associated with its use.

“Mobile” means a generator powered by an internal combustion engine that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as converting primary fuel into electricity, or electricity and thermal energy); is intended to be propelled while performing its function; or that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from

one location to another (i.e., a generator which is not stationary).

“New” means a generator which is installed or repowered on or after [insert effective date].

“Owner” means the *owner* of, or person responsible for, a generator.

“Power to heat ratio” means for a *CHP* unit, the design electrical output divided by the design recovered thermal output in consistent units.

“Prime power rating” means the maximum amount of power a generator is capable of supplying during continuous duty, as specified by the manufacturer.

“Repower” means the replacement of the internal combustion engine of a generator with another internal combustion engine.

“Standby power rating” means the amount of power a generator is capable of supplying during a power outage for the duration of the interruption, as specified by the manufacturer.

“Stationary” means a generator powered by an internal combustion engine which is not propelled or intended to be propelled while performing its function, that is used either in a fixed application, or in a portable (or transportable) application in which the engine will stay at a single location on a property (which includes the land, the buildings, and all improvements thereon) for more than 12 consecutive months (i.e., a generator which is not mobile). Any stationary generator which is moved from one location to another in a deliberate attempt to circumvent the residence time requirement of 12 consecutive months shall be deemed stationary.

“Supplier” means a person or firm that manufactures, assembles, or otherwise supplies generators.

“Testing” means determining the capability of a generator to meet the specified requirements of this regulation or determining if the generator and any ancillary equipment associated with its use are functioning correctly.

“US EPA” means the United States Environmental Protection Agency.

“Waste gas” means manufacturing or mining byproduct gases that are not used and are otherwise flared or incinerated. A manufacturing or mining byproduct is a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation, and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.

3.0 Emissions.

A generator shall not exceed the following standards (in pounds per megawatt-hour (lbs/MWh) of electricity output) under full load design conditions or at the load conditions specified by the applicable testing methods.

3.1. Emergency generator.

3.1.1 Existing emergency generator. The owner or operator of an existing emergency generator shall operate the generator in conformance with the generator manufacturer’s instructions, such as following maintenance and operating requirements to help minimize emissions.

3.1.2 New emergency generator. A new emergency generator shall meet the applicable emissions standards set by the US EPA for non-road engines (40 CFR 89, 90, 91, 92, 94, 1039, or 1048 July 1, 2004 Edition).

3.2 Distributed generator. The following standards do not apply to distributed generators while operating to provide emergency electric power during an emergency.

3.2.1 Existing distributed generator.

3.2.1.1 Except as provided for in 3.2.1.2 of this regulation, an *existing distributed generator* shall meet the following emission standards:

<u>Pollutant</u>	<u>Emission Standard (lbs/MWh)</u>
<u>Nitrogen Oxides</u>	<u>4.0</u>
<u>Nonmethane Hydrocarbons</u>	<u>1.9</u>
<u>Particulate Matter (liquid-fueled reciprocating engines only)</u>	<u>0.7</u>
<u>Carbon Monoxide</u>	<u>10.0</u>
<u>Carbon Dioxide</u>	<u>1,900</u>

3.2.1.2 As an alternative to the owner of an existing distributed generator installed on commercial poultry producing premises, to generate electricity to those premises, the generator shall be exempt from the emission standards of 3.2.1.1 of this regulation if one of the following requirements are met:

3.2.1.2.1 the owner of such a generator is participating or is signed up to participate in a Department approved, emission control strategy cost-share program for generators offered by either the Kent Conservation District or the Sussex Conservation District; or

3.2.1.2.2 the generator is gaseous fueled.

3.2.2 New distributed generator.

3.2.2.1 Except as provided for in 3.2.2.2 of this regulation, a new distributed generator shall meet the following emission standards:

Pollutant	Emission Standards (lbs/MWh)		
	Installed On	Installed On	Installed On
	or After [Effective Date]	or After 1, 2008	or After January 1, 2012
Nitrogen Oxides	2.2	1.0	0.6
Nonmethane Hydrocarbons	0.5	0.5	0.3
Particulate Matter (liquid-fueled reciprocating engines only)	0.7	0.7	0.07
Carbon Monoxide	10.0	10.0	2.0
Carbon Dioxide	1,900	1,900	1,650

3.2.2.2 A new distributed generator that uses waste, landfill, or digester gases shall be exempt from the emission standards of 3.2.2.1 of this regulation and shall meet the following emission standards:

Pollutant	Emission Standards (lbs/MWh)
	Installed on or After [Effective Date]
Nitrogen Oxides	2.2
Nonmethane Hydrocarbons	0.7
Carbon Monoxide	10.0
Carbon Dioxide	1,900

3.3 By [insert date 4 years after the effective date] the Department shall complete a review of the state of, and expected changes in, technology and emissions rates; as well as a review of generators operating within the State of Delaware, and their emissions. This review shall be used by the Department in considering whether these standards in this regulation should be amended, or new standards adopted, to ensure the continued improvement of the ambient air quality of the State of Delaware. Any amendment to these standards shall be in accordance with the requirements of 7 Del.C., Chapter 60 and 29 Del.C., Chapter 101.

4.0 Operating Requirements

4.1 An emergency generator may operate for an unlimited number of hours during an emergency.

4.2 An emergency generator may operate for an unlimited number of hours during testing or for maintenance purposes, pursuant to the definition of an emergency generator, except as restricted by 4.4 of this regulation.

4.3 A distributed generator may operate at any time, except as restricted by 4.4 of this regulation.

4.4 No emergency or distributed generator shall be used during testing or for maintenance purposes before 5 p.m. on a day which has a Ground Level Ozone Pollution Forecast or Particle Pollution Forecast of “Code Red” or “Code Orange” as announced by the Department.

4.5 Despite of this regulation, an emergency generator may be tested on any day that such testing is required to meet National Fire Protection Association (NFPA) or Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards.

5.0 Fuel Requirements

5.1 Each shipment of diesel fuel or a biodiesel blend, received for use in a generator on or after [3 months after the effective date], shall have a sulfur content equal to or less than 0.05% by weight.

5.2 Gaseous fuels, except for waste, landfill, or digester gases, combusted in a generator on or after [3 months after the effective date] shall contain no more than ten grains total sulfur per 100 dry standard cubic feet (170 ppmv total sulfur) on a daily average.

5.3 Waste, landfill, or digester gases combusted in a generator on or after [3 months after the effective date] shall contain no more than ten grains total sulfur per 100 dry standard cubic feet (170 ppmv total sulfur) on a daily average. An alternative total sulfur limit for waste, landfill, or digester gases shall be allowed based upon a case-by-case determination.

6.0 Record Keeping and Reporting

6.1 Record-Keeping Requirements. The owner of a generator shall maintain the following records on the property where the generator is installed, or at such other readily accessible location that the Department approves in writing:

6.1.1 An owner shall monitor the monthly and yearly amounts of fuel, or fuels, consumed by their generators. Yearly fuel consumption shall be calculated and recorded each calendar month by recording (for each fuel) the current calendar month's fuel consumption and adding it to those of the previous eleven consecutive months.

6.1.2 A non-resettable hour metering device shall be used by an owner to continuously monitor the monthly and yearly operating hours for each of their generators. Yearly operating hours shall be calculated and recorded each calendar month by recording the current calendar month's operating hours and adding them to those of the previous eleven consecutive months.

6.1.3 Monthly and yearly operating hours for an emergency generator. Yearly operating hours during which testing or maintenance occurred shall be calculated and recorded each calendar month by recording the current calendar month's testing or maintenance hours and adding them to those of the previous eleven consecutive months. A brief description of each testing or maintenance performed shall also be recorded.

6.1.4 Except as provided for in 6.1.5 of this regulation, for each shipment of liquid fuel (other than liquefied petroleum gas), received for use in a generator, a shipping receipt and certification shall be obtained from the fuel distributor which identifies:

6.1.4.1 the type of fuel delivered; and

6.1.4.2 the percentage of sulfur in the fuel (by weight dry basis), and the method used to determine the sulfur content.

6.1.5 As an alternative to 6.1.4 of this regulation, the owner may have the fuel in the generator's fuel tank certified by a third party laboratory, after each shipment of liquid fuel. This certification shall identify:

6.1.5.1 the type of fuel delivered; and

6.1.5.2 the percentage of sulfur in the fuel (by weight dry basis), and the method used to determine the sulfur content.

6.2 Availability of Records. The owner shall maintain each record required by 6.1 of this regulation for a minimum of five years after the date the record is made. The owner may retain hard copies (e.g., paper) or electronic copies (e.g., compact discs, computer disks, magnetic tape, etc.) of the records. An owner shall promptly provide the original or a copy of a record or records to the Department upon request.

7.0 Emissions Certification, Compliance, and Enforcement

7.1 Emissions Certification of New Distributed Generators by a Supplier. A supplier may seek to certify that its generators, which are meant to be installed as new distributed generators, meet the provisions of this regulation.

7.1.1 Certification Process. Emissions of nitrogen oxides, nonmethane hydrocarbons, particulate matter, carbon monoxide, and carbon dioxide from the generator shall be certified in pounds of emissions per megawatt hour (lb/MWh) at International Organization for Standardization (ISO) conditions or at the load conditions specified by the applicable testing methods in Emissions. Compliance with this regulation shall be demonstrated through testing using the applicable EPA Reference Methods, California Air Resources Board methods, or equivalent test methods approved by the Department if: of this regulation. If the design of a certified generator is

modified, the generator will need to be re-certified. Certification means that a generator meets the required emissions standards of this regulation and can be installed, as supplied, for use as a distributed generator. With respect to nitrogen oxides, nonmethane hydrocarbons, carbon monoxide, and carbon dioxide, test results from EPA Reference Methods, California Air Resources Board methods, or equivalent testing may be used to verify this certification. When testing the output of particulate matter from liquid-fuel reciprocating engines, ISO Method 8178 shall be used. Test results shall be provided upon request to the Department. A statement attesting to certification shall be displayed on the nameplate of the unit or on a label attached to the unit with the following text:

This generator has met the standards defined by the State of Delaware's Regulation No. 1144 and is certified as meeting applicable emission levels when it is maintained and operated in accordance with the supplier's instructions.

7.1.2 Responsibility of Supplier. Certification will apply to a specific make and model of generator. For a make and model of a generator to be certified, the supplier shall certify that the generator is capable of meeting the requirements of this regulation for the lesser of 3,000 hours of operation or five years.

7.2 Emissions Certification of New Emergency Generators by a Supplier. An engine that has been certified to meet the currently applicable US EPA non-road emissions standards shall be deemed to be certified for use in new emergency generators.

7.3 Emissions Verification by an Owner. An owner shall verify, by each generator's respective compliance date as detailed in Dates, of this regulation, that a generator complies with its respective emission requirements of Emissions. A generator shall not exceed the following standards (in pounds per megawatt-hour (lbs/MWh) of electricity output) under full load design conditions or at the load conditions specified by the applicable testing methods, of this regulation by submitting any or all of the following types of data to the Department for review:

7.3.1 any maintenance or operating requirements/instructions provided by the generator manufacturer;

7.3.2 the type, or a description, of any emission control equipment used; or

7.3.3 emissions test data for the generator (such as a manufacturer's technical data sheet), any supporting documentation for any emission control equipment used, any supporting calculations, any quality control or assurance

information, and any other information needed to demonstrate compliance with the requirements.

7.4 Reverification. To ensure continuing compliance with the emissions limitations, the owner or operator shall verify a distributed generator's compliance with the emission standards every five years. This verification may be accomplished by following a maintenance schedule that the manufacturer certifies will ensure continued compliance with the required standards, by third party testing of the distributed generator using appropriate test methods to demonstrate that the distributed generator still meets the required emission standards, or by some other means as proven to the Department.

7.5 Testing

7.5.1 Emissions. Compliance with this regulation shall be demonstrated through testing using the applicable EPA Reference Methods, California Air Resources Board methods, or equivalent test methods approved by the Department if:

7.5.1.1 a supplier is seeking to certify that one of its generators meets the provisions of this regulation, pursuant to 7.1 of this regulation;

7.5.1.2 an owner owns a generator that is not certified or verified under the terms of 3.1.2, 7.1, 7.2, or 7.3 of this regulation; or

7.5.1.3 an owner of a generator is seeking to reverify the generator via third party testing pursuant to 7.4 of this regulation.

7.5.2 Sulfur Content.

7.5.2.1 Sulfur limits pursuant to 5.1 of this regulation shall be determined using the applicable sampling and testing methodologies set forth in 40 CFR 80.580 (July 1, 2004).

7.5.2.2 Sulfur limits pursuant to 5.2 of this regulation shall be determined using the applicable sampling and testing methodologies set forth in Appendix D of 40 CFR 75 (July 1, 2004) or in the South Coast Air Quality Management District's Rule 431.1 "Sulfur Content of Gaseous Fuels" (June 12, 1998).

7.6 Duty to Comply. An owner shall comply with the requirements of this regulation. Neither certification nor compliance with this regulation relieves owners from compliance with any other applicable state and federal regulations or permitting requirements.

7.7 This regulation is enforceable by the Department as provided by law.

8.0 Credit for Concurrent Emissions Reductions

8.1 Flared Fuels. If a generator uses fuel that would otherwise be flared (i.e., not used for generation or other energy related purpose), the emissions that were or would

have been produced through the flaring can be deducted from the actual emissions of the generator, for the purposes of calculating compliance with the requirements of this regulation. If the actual emissions from flaring can be documented, they may be used as the basis for calculating the credit, subject to the approval of the Department. If the actual emissions from flaring cannot be documented, then the following default values shall be used:

<u>Emissions</u>	<u>Waste, Landfill, Digester Gases</u>
<u>Nitrogen Oxides</u>	<u>0.1 lbs/MMBtu</u>
<u>Particulate Matter</u>	<u>N/A</u>
<u>Carbon Monoxide</u>	<u>0.7 lb/MMBtu</u>
<u>Carbon Dioxide</u>	<u>117 lb/MMBtu</u>

8.2 Combined Heat and Power.

8.2.1 CHP installations shall meet the following requirements to be eligible for emissions credits related to thermal output:

8.2.1.1 At least 20% of the fuel's total recovered energy shall be thermal and at least 13% shall be electric. This corresponds to an allowed power-to-heat ratio range of between 4.0 and 0.15.

8.2.1.2 The design system efficiency shall be at least 55%.

8.2.2 A CHP system that meets the requirements of CHP installations shall meet the following requirements to be eligible for emissions credits related to thermal output: of this regulation may receive a compliance credit against its actual emissions based on the emissions that would have been created by a conventional separate system used to generate the same thermal output. The credit shall be subtracted from the actual generator emissions for purposes of calculating compliance with the limits in 3.1 or 3.2 of this regulation. The credit will be calculated according to the following assumptions and procedures:

8.2.2.1 The emission rates for CHP facilities that replace existing thermal systems (e.g., boiler) for which historic emission rates can be documented shall be the historic emission rates in lbs/MMBtu, but not more than the emission rates for new facilities that displace a thermal system, which are:

<u>Emissions</u>	<u>Maximum Rate</u>
<u>Nitrogen Oxides</u>	<u>0.2 lbs/MMBtu</u>
<u>Particulate Matter</u>	<u>N/A</u>
<u>Carbon Monoxide</u>	<u>0.08 lbs/MMBtu</u>
<u>Carbon Dioxide</u>	<u>117 lbs/MMBtu</u>

8.2.2.2 The emissions rate of the thermal system in lbs/MMBtu will be converted to an output-based

rate by dividing by the thermal system efficiency. For new systems the efficiency of the avoided thermal system will be assumed to be 80% for boilers or the design efficiency of other process heat systems. If the design efficiency of the other process heat system cannot be documented, an efficiency of 80% will be assumed. For retrofit systems, the historic efficiency of the displaced thermal system can be used if that efficiency can be documented and if the displaced thermal system is either enforceably shut down and replaced by the *CHP* system, or if its operation is measurably and enforceably reduced by the operation of the *CHP* system.

8.2.2.3 The emissions per MMBtu of thermal energy output will be converted to emissions per MWh of thermal energy by multiplying by 3.413 MMBtu/MWh_{thermal}.

8.2.2.4 The emissions credits in lbs/MWh_{thermal}, as calculated in The emissions per MMBtu of thermal energy output will be converted to emissions per MWh of thermal energy by multiplying by 3.413 MMBtu/MWh_{thermal}. of this regulation, will be converted to emissions in lbs/MWh_{emissions} by dividing by the *CHP* system power-to-heat ratio.

8.2.2.5 The credit, as calculated in 8.2.2.4 of this regulation, will be subtracted from the actual emission rate of the *CHP* unit to produce the emission rate used for compliance purposes.

8.2.2.6 The mathematical calculations set out in 8.2.2.1 through 8.2.2.4 of this regulation are expressed in the following formula:

$$\text{Credit lbs/MWh emissions} = \frac{(\text{boiler limit lbs/MMBtu})}{(\text{boiler efficiency})} \times \frac{3.413}{(\text{power to heat ratio})}$$

8.3 Non-Emitting Resources. When electricity generation that does not produce any of the emissions regulated herein is installed and operated simultaneously at the facility where the generator is installed and operated, then the electricity savings supplied by the non-emitting electricity source shall be added to the electricity supplied by the generator for the purposes of calculating compliance with the requirements of this regulation, subject to the approval of the Department and in accordance with the following formula for determining such savings:

$$\text{Rate}_{\text{EF}} = (\text{Rate}_{\text{A}}) * [(\text{Size}_{\text{A}}) / (\text{Size}_{\text{A}} + \text{Size}_{\text{NER}})]$$

Rate_{EF} = effective emission rate of generator, accounting for non-emitting resource(s) (lb/MWh)

Rate_A = actual emission rate of generator alone (lb/MWh)

$$\text{Size}_{\text{A}} = \text{actual prime power rating of generator (MW)}$$

Size_{NER} = total generating capacity of non-emitting resource(s) (MW)

DIVISION OF WATER RESOURCES

7 DE Admin. Code 7410

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

REGISTER NOTICE

TMDLs for the Shellpot Creek and Naamans Creek Watersheds

1. Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily Loads (TMDLs) Regulations for nitrogen, phosphorous, and bacteria for the Shellpot Creek and Naamans Creek Watersheds. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

2. Possible Terms of the Agency Action

Following adoption of the proposed Total Maximum Daily Loads for the Shellpot Creek and Naamans Creek Watersheds, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with Shellpot Creek and Naamans Creek Tributary Action Teams, other stakeholders, and the public.

3. Statutory Basis or Legal Authority to Act

The authority to develop a TMDL is provided by Title 7 of the *Delaware Code*, Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 *et. seq.*, as amended.

4. Other Legislation That May be Impacted

None

5. Notice of Public Hearing and Comment

A public hearing will be held at 6:00 p.m., Wednesday, September 7, 2005, at the auditorium of Mt. Pleasant

Elementary School, 500 Duncan Road, Wilmington, Delaware, 19809. The hearing record will close at the conclusion of the hearing. Please send written comments to Robert P. Haynes, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739- 6242; email: Robert.Haynes@state.de.us.

Additional information and supporting technical documents may be obtained by contacting Hassan Mirsajadi, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-4590, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us)

6. Prepared By:

John Schneider, Watershed Assessment Section, 739-4590

7410 TMDLs for the Naamans Creek Watersheds

1.0 Introduction and Background

1.1 Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that Naamans Creek is impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported by water quality in the stream.

1.2 Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

1.3 DNREC listed the Naamans Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Enterococcus bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Naamans Creek, Delaware

Article 1. The nonpoint source nitrogen load shall be capped at the 2000-2004 baseline level. This shall result in a yearly-average total nitrogen load of 228 pounds per day.

Article 2. The nonpoint source phosphorous load shall be capped at the 2000-2004 baseline level. This shall result in a yearly-average total phosphorous load of 13 pounds per day.

Article 3. The nonpoint source bacteria load shall be reduced by 78%. This shall result in reducing a yearly-mean bacteria load from 5.8E+10 CFU per day to 1.6E+10 CFU per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Naamans Creek.

Article 5. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with a Naamans Creek Tributary Action Team, other stakeholders, and the public.

7411 TMDLs for Shellpot Creek, Delaware

1.0 Introduction and Background

1.1 Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Shellpot Creek is impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported by water quality in the stream.

1.2 Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Shellpot Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous and Enterococcus bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Shellpot Creek, Delaware

Article 1. The nonpoint source nitrogen load from the area south of Business Route 13 shall be reduced by 35% (from the 2000-2003 baseline). This shall result in reducing

the yearly-average total nitrogen load from 19.2 pounds per day to 12.5 pounds per day.

Article 2. The nonpoint source nitrogen load from the area north of Business Route 13 shall be capped at the 2000-2003 baseline level. This shall result in a yearly-average total nitrogen load of 89.4 pounds per day.

Article 3. The nonpoint source phosphorous load from the area south of Business Route 13 shall be reduced by 35% (from the 2000-2003 baseline). This shall result in reducing the yearly-average total phosphorous load from 2.0 pounds per day to 1.3 pound per day.

Article 4. The nonpoint source phosphorous load from the area north of Business Route 13 shall be capped at the 2000-2003 baseline level. This shall result in a yearly-average total phosphorous load of 5.7 pounds per day.

Article 5. The nonpoint source bacteria load shall be reduced by 74% from the 1998-2004 baseline level. This shall result in reducing a yearly-mean bacteria load from 3.7E+10 CFU per day to 9.0E+9 CFU per day.

Article 6. The bacteria load from Wilmington CSO 31 shall be reduced by 28% from the 1998-2004 baseline level. This shall result in reducing a yearly-mean bacteria load from 5.4E+10 CFU per day to 3.9E+10 CFU per day.

Article 7. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 6, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Shellpot Creek.

Article 8. Implementation of this TMDLs Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with a Shellpot Creek Tributary Action Team, other stakeholders, and the public.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1900 Board of Nursing

Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 Del.C. §1906(1))
24 DE Admin. Code 1900

PUBLIC NOTICE

The Delaware Board of Nursing in accordance with 24 Del.C. Subsection 1906(1) has proposed to promulgate a change to the Rules and Regulations related to the reporting of continuing education.

The proposed change provides that nurses will be able to attest to the completion of the required number of contact hours by approved providers, rather than documenting date, program name, provider and number of contact hours.

A public hearing will be held on Wednesday, September 14, 2005 at 9:00 a.m., in the second floor conference room , 861 Silver Lake Boulevard, Dover, Delaware..

Anyone desiring a copy of the proposed Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4515 or (302) 744-4516. Persons desiring to submit written comments concerning this proposed revision to the Board's Rules and Regulations may forward these comments to the above address. The final date to receive written comments will be at the hearing on September 14, 2005

9.0 Rules and Regulations Pertaining to Mandatory Continuing Education

9.1 Definitions

9.1.1 The following words and terms, when used in this regulation, should have the following meaning unless the context clearly indicates otherwise.

"**Approved Method**" means a planned educational experience, as described in 9.3.

"**Approved Provider**" means an entity that is one of the following:

A nationally accredited provider of nursing related continuing education; or

An organization or agency that is approved as a provider or has programs that are approved by a nationally accredited approver of nursing related continuing education; or

A Board of Nursing approved school of nursing; or

A staff development department within a licensed health care agency; or an accredited educational institution; or

An entity approved by the Delaware Board of Nursing, pursuant to 9.4 and 9.5, if not meeting any other criteria.

"**Audit**" means

The verification of completion of continuing education requirements for a minimum of 1% of the total number of licenses issued during a specified time period. (Refer to 9.6) or

The verification of adherence to continuing education approved provider requirements during a specified time period. Providers may be audited as the Board determines. (Refer to 9.7)

"Biennium" means the two year period of licensure beginning in an odd numbered year and ending in the next odd numbered year for the Registered Nurse and the two year period of licensure beginning in an even-numbered year and ending in the next even numbered year for the Licensed Practical Nurse.

"Contact Hour" means one contact hour equals a minimum of 50 minutes. One half contact hour equals a minimum of 25 minutes.

"Continuing Education" means those professional experiences designed to enrich the nurse's contribution to health care and for the purpose of protecting the public health, safety, and welfare.

"Orientation" means the means by which nurses are introduced to the philosophy, goals, policies, procedures, role expectations, physical facilities and special services in a specific work setting. Orientation programs do not meet the continuing education requirements of these rules.

9.2 Continuing Education Licensure Renewal Requirements

9.2.1 Board Authority

9.2.1.1 The Board derives its authority under 24 **Del.C.** §1906(19), to create continuing education requirements as a prerequisite to obtaining a current license and to establish an audit system to assure compliance. This requirement is in addition to the practice requirement as stated in 6.5.

9.2.1.1.1 During each biennium, each Registered Nurse must earn 30 contact hours and each Licensed Practical Nurse must earn 24 hours, to be credited to that biennium.

9.2.1.1.1.1 Units of measurement for continuing education shall be: no less than .5 contact hours and be as follows:

9.2.1.1.1.1 50 Minutes = 1 Contact Hour

9.2.1.1.1.2 25 Minutes = .5 Contact Hour

9.2.1.1.1.3 1 Academic Semester Hour (Credit) = 5 Contact Hours

9.2.1.1.1.4 1 C.M.E. = 1.2 Contact Hours

9.2.1.1.1.5 Certification/recertification (excluding preacquired skills and knowledge) = 20 Contact Hours (Only During the Biennium Awarded)

9.2.2 Requirements

9.2.2.1 Renewal

9.2.2.1.1 To obtain a Registered Nurse or Licensed Practical Nurse license for the next biennium period, the licensee shall submit, along with the renewal

application and fee, a completed report on a form furnished by the Board office, ~~documenting~~ attesting to the completion of all continuing education requirements for that biennium.

9.2.2.2 Reinstatement

9.2.2.2.2 To obtain a Registered Nurse or Licensed Practical Nurse license through reinstatement, the applicant shall submit, along with the reinstatement application and fee, a completed report on a form provided by the Board office, ~~documenting~~ attesting to the completion of all continuing education requirements for the past two years.

9.2.2.3 Reinstatement/Endorsement

9.2.2.3.1 A Registered Nurse who has endorsed into Delaware during a biennium or whose license was reactivated or reinstated during a biennium must earn 15 contact hours if more than a full calendar year remains in the biennium to obtain a Registered Nurse license for the next biennium period. A Licensed Practical Nurse must earn 12 contact hours if more than a full calendar year remains in the biennium to obtain a Licensed Practical Nurse license for the next biennium period.

9.2.3 The required hours shall be completed in the period for which the license was issued. Contact hours from a previous licensure period will not count nor may credits be accumulated for use in a future licensing period.

9.2.4 To be approved for continuing education credit, offerings shall meet the qualifications of appropriate subject matter as specified in these Rules and Regulations.

9.2.5 The licensee shall retain all original certificates or transcripts to verify completion of each continuing education offering and award of contact hours.

9.2.6 Exceptions

9.2.6.1 Those persons licensed by examination within a biennial renewal period are exempt from continuing education requirements for that biennium.

9.2.6.2 A licensee who has had a physical or mental illness during the license period can apply to the Board of Nursing for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one renewal period. Should the illness extend beyond one renewal period, a new request must be submitted.

9.2.6.3 A request for a waiver will be reviewed and acted upon within 90 days of receipt.

9.3 Approved Methods to Earn Contact Hours

9.3.1 Academic Studies

9.3.1.1 A course offered by an accredited school, university or college for which college credit has been awarded and/or for which class attendance is necessary. May include successful completion of challenge examinations.

9.3.2 Authoring an Article, Book Chapter, or Independent Study

9.3.2.1 The article, book chapter, or independent study (See 9.3.6) must be related to nursing. Proof of acceptance from the editor or the published work will document achievement of this type of continuing education. A maximum of five contact hours of continuing education may be earned per biennium by this method. Letters to the editor or opinion statements will not be recognized.

9.3.3 Certification/Recertification

9.3.3.1 A process by which a nongovernmental agency or association certifies that an individual licensed to practice as an Advanced Practice Nurse, a Registered Nurse, or a Licensed Practical Nurse has met certain predetermined standards specified for specialty practice. National certification or recertification equals 20 contact hours awarded during the biennium. A certification/recertification document indicating the date of recognition must be available. When recertification requirements include more than 20 contact hours, the additional contact hours can be applied toward the total of 30 contact hours for R.N. or 24 contact hours for L.P.N. licensure.

9.3.4 Conference

9.3.4.1 A meeting that brings together participants for one or more days to discuss the latest developments and activities from individuals with special expertise in the subject matter of the conference.

9.3.5 Extension Studies

9.3.5.1 A course given through an accredited school, college or university for which academic credit may or may not be awarded and for which class attendance is not necessary.

9.3.6 Independent Study

9.3.6.1 An educational activity designed for completion by learners, independently, at the learner's own pace and at a time of the learner's choice.

9.3.6.1.1 Examples: Articles in journals, videocassette programs, computer programs for which there is a test of knowledge and a certificate awarded upon completion.

9.3.7 Inservice Education

9.3.7.1 Activities intended to help nurses acquire, maintain, and/or increase the level of competence in fulfilling his or her assigned responsibilities, specific to the expectations of the employer. Planned inservices must be a minimum of 25 minutes. Mandatory education, such as CPR, infection control, fire, safety, and facility specific policies and practices, is not recognized as continuing education.

9.3.8 Presentation

9.3.8.1 Educational presentations, excluding preparation time, made to other health professionals that are not required by an individual's job description. The presenter must submit program brochures, course syllabi or letter from the provider identifying the participation of the presenter. Contact hours shall be equal to the actual presentation time. A maximum of five contact hours of continuing education may be earned per biennium by this method.

9.3.9 Research Project

9.3.9.1 The research project must have been done during the biennium. The licensee must submit an abstract as evidence of being one of the recognized researchers. A maximum of five contact hours of continuing education may be earned per biennium by this method.

9.3.10 Symposium or Seminar

9.3.10.1 A meeting of groups of participants to explore, in depth, a pre-selected, thoroughly researched topic. The emphasis is on discussion and a free exchange of ideas and experiences.

9.3.11 Workshop

9.3.11.1 A meeting that offers opportunities for persons with common interest or problems to meet with specialists to consider new knowledge and practices and to experience working on specific relevant tasks.

9.3.12 Any method not on this approved list will require that a written petition justifying the request be submitted to the Board of Nursing.

9.3.12.1 The Board may consider the request at its next regularly scheduled Board meeting if received at least two weeks before the meeting. If less than two weeks, the request will be processed at the following meeting.

9.4 Continuing Education - Provider

9.4.1 Board Authority

9.4.1.1 The Board derives its authority under 24 Del.C. Ch. 19, to create requirements for becoming an approved provider and maintaining that status. The Board also has the authority to develop an auditing mechanism to verify compliance with criteria for approved providers.

9.4.2 Criteria for approved providers

9.4.2.1 The approved providers shall produce evidence of their capability to adhere to criteria indicative of quality continuing education for nurses. Each provider approved under 9.1, will be assigned a provider number by the Board and shall provide an annual statement of compliance with these criteria.

9.4.3 Subject matter criteria. The provider will ensure that:

9.4.3.1 The subject matter is specifically designed to meet the objectives, the stated level and learning needs of the participants.

9.4.3.2 The content is planned, logically sequenced and reflects input from experts in the subject matter.

9.4.3.3 The subject matter reflects the professional educational needs of the learner in order to meet the health care needs of the consumer.

9.4.4 Criteria related to the operation of an approved continuing education providership. The provider shall:

9.4.4.1 Have a consistent, identifiable authority who has overall responsibility for the operation of the providership and execution of its offerings.

9.4.4.2 Have an organizational structure and training objectives.

9.4.4.3 Develop course descriptions, objectives, and learning outcomes.

9.4.4.4 Assign contact hours according to a uniform measure of credit and not award contact hours for less than 25 minutes.

9.4.4.5 Establish dates and times for programs.

9.4.4.6 Plan and structure programs with teaching and learning methodologies that include a statement of purpose and measurable educational objectives.

9.4.4.7 Use faculty who have academic preparation and/or experience in the subject matter.

9.4.4.8 Use evaluation processes or tools that provide participants an opportunity to evaluate in writing the learning experience, the instructional methods, facilities, and resources.

9.4.4.9 Award the contact hours and be responsible for assurance that all criteria in this chapter are met, when co-providing.

9.4.4.10 Notify the Board within 30 days of changes in the administrative authority, the address of the provider, and its ability to meet the criteria.

9.4.5 Criteria related to record maintenance and continuing education programs. The provider shall:

9.4.5.1 Maintain records on persons awarded contact hours for a minimum of six years from their date of program completion. The records shall include the name of licensee, contact hours awarded, social security number, title, and dates of offerings.

9.4.5.2 Provide for secure storage and retrieval of individual attendance and information regarding each offering.

9.4.5.3 Furnish each participant with an individual record of completion that displays the following on the front of the certificate: participant's name, provider name and number, contact hours awarded, starting and ending dates of the offering, subject matter and a reminder to

the participant to retain the certificate for the period of licensure.

9.5 Board Approval Process for Providers from 9.1.

9.5.1 An application will be sent to a potential provider upon request. Upon submission of a non-refundable fee, the required materials and a determination of the Delaware Board of Nursing that the materials fulfill the criteria for providers as specified in these Rules and Regulations, initial approval will be granted for up to three years.

9.5.2 The following materials and information must accompany an application:

9.5.2.1 A description of the administrative authority of the potential provider;

9.5.2.2 The job description of the person who is administratively responsible for provider activities;

9.5.2.3 The continuing education philosophy purpose and goals;

9.5.2.4 Organizational charts defining lines of authority and communication in relation to continuing education;

9.5.2.5 Plan for faculty selection;

9.5.2.6 Evidence of nursing participation in program planning and/or administration;

9.5.2.7 A record system and a procedure to ensure confidentiality and safe storage;

9.5.2.8 The criteria used to plan and implement continuing education activities;

9.5.2.9 The criteria used to verify attendance;

9.5.2.10 A procedure that ensures the participant who successfully completes an educational activity will receive a document displaying an attendance record, number of contact hours awarded, provider name and number, title of presentation, and the date and location for each offering;

9.5.2.11 Registration procedure(s);

9.5.2.12 A plan for evaluation, including:

9.5.2.12.1 A procedure for participant evaluation that includes assessment of the instruction, resources and facilities, and

9.5.2.12.2 A system for the follow up of suggestions for improvement;

9.5.2.13 Documents from two typical sample course offerings including:

9.5.2.13.1 A narrative of the planning of the offerings including evidence of nursing participation;

9.5.2.13.2 A sample brochure or other form of advertising;

9.5.2.13.3 Course content, i.e., topical course outline, objectives;

9.5.2.13.4 Teaching-learning methodologies and supportive materials;
 9.5.2.13.5 Bibliography; and
 9.5.2.13.6 A sample participant evaluation form.

9.5.3 The Executive Director will review the completed application upon receipt.

9.5.3.1 The review is based on the criteria as specified in these Rules and Regulations.

9.5.3.2 If the Executive Director finds the application incomplete, the applicant will be notified and have two opportunities to submit revised applications.

9.5.3.3 If the application does not meet established criteria within three reviews, the Executive Director may recommend that the Board deny it.

9.5.3.4 When the application meets all requirements as set forth for providers in these Rules and Regulations, the Executive Director shall recommend approval to the Board.

9.5.3.5 The Board may approve for up to three years, or elect not to approve.

9.5.3.6 The provider will be notified of the Board of Nursing's decision in writing within two weeks.

9.5.3.7 A provider number will be assigned at the time of approval and issued within three weeks. This number must be used in all correspondence with the Board. This number will be published on a list of approved providers.

9.5.3.8 An application that has been denied provider status by the Board may be re-submitted one year after the denial date.

9.5.4 Complaints against providers.

9.5.4.1 Provider approval may be rescinded at any time during the approved period for noncompliance with approved provider requirements or for complaints that the Board determines indicate the program does not meet criteria.

9.5.4.2 Providers may appeal a decision by requesting a hearing before the Board.

9.6 Audit of Licensees

9.6.1 The Board will randomly and on an individual basis select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that their records are to be audited for compliance with the continuing education requirements.

9.6.1.1 Upon receipt of such notice, the licensee must submit verification of compliance for the period of licensure being audited. Verification materials which may be requested include proof of attendance, academic transcripts, certificates showing number of contact

hours awarded, and documentation of compliance with exceptions.

9.6.1.2 The licensee must submit documentation within three weeks of receipt of notice.

9.6.1.3 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

9.6.1.4 An unsatisfactory audit shall result in Board action.

9.6.1.5 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

9.6.1.6 Fulfillment of the audit requirements must be completed prior to license renewal.

9.7 Audit of Providers

9.7.1 The Board may select approved providers for audit. Upon selection, the Board shall:

9.7.1.1 Notify the approved providers that their records are to be audited for compliance with continuing education requirements;

9.7.1.2 Be provided with records that document compliance with the Rules and Regulations for providers; and

9.7.1.3 Conduct a site visit as necessary.

9.8 Disciplinary Proceedings; Appeal

9.8.1 Failure to comply with continuing education requirements will result in action under Section 1922 of the Nurse Practice Act and the license will be considered lapsed.

9.8.2 Application for reinstatement of a lapsed license must be filed with a completed continuing education document form and the fee paid before practice can continue.

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

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

**DIVISION OF PROFESSIONAL REGULATION
3000 BOARD 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

PUBLIC NOTICE

The Delaware Board of Mental Health and Chemical Dependency Professionals in accordance with 24 **Del.C.** §3006(a)(1) has proposed changes to Regulation 5.0 in order to make the regulation consistent with the mandate of Senate 229 enacted by the 142nd General Assembly. The proposal strikes regulation 5.2.4 as currently written with references to felony convictions and replaces it with language that requires an applicant to submit an affidavit stating that the applicant has not been convicted of and has no pending criminal charge(s) relating to any crime that is substantially related to the provision of mental health counseling and chemical dependency counseling. The proposal also amends the rule where applicable to include references to chemical dependency professionals. The proposed regulation also changes the name of the Board in applicable sections to conform to the Board's new title resulting from House Bill 215 as amended by House Amendment No. 1 and Senate Amendment No.1 enacted by the 143rd General Assembly adding licensed marriage and family therapists to those professionals regulated by the Board.

A public hearing will be held on September 27, 2005 at 2:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Mental Health and Chemical Dependency Professionals, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**3000 Board Mental Health and Chemical Dependency
Professionals****5.0 Application and Fee, Affidavit and Time Limit**

When applying for licensure, the applicant shall complete the following:

5.1 Application and Fee - The applicant shall submit a completed "Application for Licensure," accompanied by a non-refundable application fee.

5.2 Affidavit - The applicant shall submit a signed, notarized "Affidavit," affirming the following:

5.2.1 that he/she has not violated any rule or regulation set forth by the Delaware Board of ~~Professional Counselors of Mental Health;~~ Mental Health and Chemical Dependency Professionals;

5.2.2 that he/she has not been the recipient of any administrative penalties from any jurisdiction in connection with licensure, registration or certification as a mental health or chemical dependency provider,

5.2.3 that he/she does not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to safely act as a ~~LPCMH or LACMH,~~ mental health or chemical dependency professional;

5.2.4 ~~that he/she has not been convicted of any felony and that he/she does not have any criminal conviction or pending criminal charge, whether felony or misdemeanor, which is substantially related to fitness to practice as a mental health provider; and that he/she has not been convicted of and has no pending criminal charge(s) relating to any crime that is substantially related to the provision of mental health counseling or chemical dependency counseling; and~~

5.2.5 that the applicant has not been penalized for any willful violation of any code of ethics or professional mental health or chemical dependency counseling standard.

5.3 Time Limit for Completion of Application - Any application not completed within one (1) year shall be considered null and void.

Statutory authority: 24 **Del.C.** §§3008, 3009, 3010.

***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 Mental Health and Chemical Dependency Professionals is available at:

<http://www.professionallicensing.state.de.us/boards/profcounselors/index.shtml>

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 1584

Statutory Authority: 14 Delaware Code,
Section 122(D) (14 Del.C. §122(D))

REGULATORY IMPLEMENTING ORDER

1584 Permits Paraeducators

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1584 Permits Paraeducators. It is necessary to amend this regulation to comply with action taken by the United States Department of Education, as set forth in a letter dated June 15, 2005 from Raymond Simon, Deputy Secretary, to align the paraprofessional timeline in section 1119(d) with the teacher timeline. Section 10113 (5) of the Administrative Procedures Act exempts amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations. The change in the date in sections 3.3.1 and 4.1 from January 8, 2006 to June 30, 2006 does not otherwise alter the substance of the regulation.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1584 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2ND DAY OF JUNE, 2005

Harold Roberts, Chair	Sharon Brittingham
Norman Brown	Heath Chasanov
Edward Czerwinski	Angela Dunmore
Karen Gordon	Barbara Grogg
Bruce Harter	Valerie Hoffmann
Leslie Holden	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21st DAY OF JULY, 2005**STATE BOARD OF EDUCATION**

Jean W. Allen, President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Barbara Rutt
Dennis J. Savage
Dr. Claibourne D. Smith

1584 Permits Paraeducators**1.0 Content:**

Pursuant to 14 Del.C. §1205(b) this regulation shall apply to the qualifications required of Title I Paraeducators, Instructional Paraeducators, and Service Paraeducators employed, either full-time or part-time, in support positions in public schools.

2.0 Definitions:

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

“Associate’s or Higher Degree” means that the degree is conferred by a regionally accredited institution of higher education or by a distance education institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education.

“Completed at Least 2 Years of Study at an Institution of Higher Education” means the satisfactory

completion of a minimum of 60 semester hours of instruction at a regionally accredited institution of higher education or by a distance education institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education, in general or educational studies, including reading, writing, and mathematics content and pedagogy, unless the institution of higher education defines two years of full-time study as the successful completion of a minimum of 48 semester hours, and provides documentation of such definition.

“Department” means the Delaware Department of Education.

“Instructional Paraeducator” means a public school employee who provides one-on-one or small group instruction; assists with classroom management or individual student behavior; provides assistance in a computer laboratory; provides support in a library or media center; assists in training and support with functional skill activities, such as personal care or assistive technology; or provides instructional services to students under the direct supervision of a teacher. Instructional paraeducators are those working with regular education students and students with disabilities in schools other than Title I schoolwide schools or with students not receiving Title I services in Title I targeted assistance schools.

“Paraeducator”, as used herein, means a paraprofessional, as it is used in 14 Del.C. §1205. Paraeducators are not “educators” within the meaning of 14 Del.C. §1202 (6).

“Permit” means a document issued by the Department that verifies an individual’s qualifications and training to serve as a Title I, instructional or service paraeducator.

“Secretary” means the Secretary of the Delaware Department of Education.

“Service Paraeducator” means a public school employee who provides support services other than instructional assistance to students, but does not include bus aides (See 14 DE Admin. Code 1105).

“Standards Board” means the Professional Standards Board of the State of Delaware as established in response to 14 Del.C. §1205.

“State Board” means the State Board of Education of the State of Delaware established in response to 14 Del.C. §104.

“Title I Paraeducator” means a public school employee who provides one-on-one or small group instruction; assists with classroom management; provides assistance in a computer laboratory; provides support in a library or media center; or provides instructional services to students under the direct supervision of a teacher. Additionally, Title I paraeducators are all instructional

paraeducators who work with regular students and children with disabilities in Title I schoolwide schools and all Title I paraeducators who work with children receiving Title I services in Title I targeted assistance schools, except those whose duties are limited to acting as a translator or as a home-school liaison.

3.0 Title I Paraeducators.

A Title I paraeducator must hold a Title I paraeducator permit.

3.1 The Department shall issue a permit to a Title I paraeducator applicant who submits evidence to his/her district, charter school, or other employing authority of:

3.1.1 completion of at least two years of study in general or educational studies at an institution of higher education; or

3.1.2 receipt of an associate's or higher degree; or

3.1.3 evidence of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.

3.1.3.1 Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:

3.1.3.1.1 Para Pro assessment with a qualifying score of 459 or higher.

3.1.3.1.2 Accuplacer Test, if taken before April 1, 2003, with the following qualifying scores:

3.1.3.1.2.1 Mathematics: greater than or equal to a total right score of 94 on arithmetic.

3.1.3.1.2.2 English: greater than or equal to a total right score of 87.

3.1.3.1.2.3 Reading: greater than or equal to a total right score of 78.

3.1.3.1.3 Such alternative as may be established by the Standards Board, with the approval of the State Board.

3.2 Pursuant to the provisions of the *No Child Left Behind Act*, Title I paraeducators hired after January 8, 2002 must meet the requirements set forth in 3.1 immediately.

3.3 Notwithstanding the above, and pursuant to the provisions of the *No Child Left Behind Act*, Title I paraeducators hired before January 8, 2002 must hold a high school diploma or its recognized equivalent and shall have until ~~January 8, 2006~~ June 30, 2006 to meet the requirements of 3.1.

3.3.1 Accordingly, Title I paraeducators hired before January 8, 2002 who do not meet the requirements set forth in 3.1 above, with the exception of the high school diploma or its recognized equivalent, shall be issued a Title I paraeducator permit which shall expire on ~~January 8, 2006~~ June 30, 2006 unless evidence of meeting the requirements set forth in 3.1 above is provided prior thereto. If such evidence is provided to the Department prior to ~~January 8, 2006~~ June 30, 2006 the permit shall expire five years from the date of issuance and may be renewed pursuant to 5.0.

3.4 Application Procedures.

3.4.1 The district, charter school, or other employing authority shall submit the approved application form, official transcripts or official scores on an assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics, to the Department on behalf of the applicant. The district, charter school or other employing authority shall certify as part of the application form that the applicant, in their opinion, meets the requirements of 3.0.

3.4.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope to the district, charter school or other employing authority.

3.4.1.2 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the district, charter school or other employing authority. Unopened, unaltered envelopes containing test scores sent to an individual may be accepted as official. The Department shall determine whether the scores, as presented, are acceptable.

4.0 All instructional paraeducators and service paraeducators must hold the appropriate permit.

The Department shall issue a permit to an instructional paraeducator applicant or a service paraeducator applicant for whom the district, charter school, or other employing authority has submitted a Department approved application form and who provides evidence of a high school diploma or its recognized equivalent.

4.1 Notwithstanding the above, instructional paraeducators and service paraeducators hired before February 11, 2004 and who do not have a high school diploma may be issued the applicable permit which shall expire ~~January 8, 2006~~ June 30, 2006 unless evidence of a high school diploma or its recognized equivalent is provided prior thereto. If such evidence is provided prior to ~~January 8, 2006~~ June 30, 2006 the permit shall expire five years from the date of issuance and may be renewed pursuant to section 5.0.

5.0 Unless stated otherwise herein, a Title I, instructional, or service paraeducator permit shall be valid for five years from the date of issuance.

The Department shall renew a paraeducator permit, valid for an additional five years, to a paraeducator whose school district, charter school, or other employing authority provides evidence to the Department of successful completion of a minimum of 15 clock hours of professional development.

5.1 Fifteen clock hours of professional development is required to be completed during the term of validity of the paraeducator permit.

5.2 Options for Renewal: The following professional development activities are approved options for the renewal of a paraeducator permit. Unless otherwise stated, there is no limit to the number of hours that may be taken in any of the options listed below:

5.2.1 College credit completed at a regionally accredited college or university with a grade of "C" or better or a "P" in a pass/fail course (1 semester hour equals 15 clock hours).

5.2.2 Planned school professional development day (maximum 6 clock hours per day).

5.2.3 Professional conference, workshop, institute, or academy that contributes to the participant's knowledge, competence, performance, or effectiveness as a paraeducator (verified clock hours actively involved in workshop or conference sessions).

5.2.4 Participation on school, district, or state-sponsored committee which has as its focus curriculum, instruction, or school or district improvement (verified clock hours of service or experience).

6.0 An applicant shall disclose his or her criminal conviction history upon application for any paraeducator permit.

Failure to disclose a criminal conviction history is grounds for denial or revocation of a paraeducator permit as specified in 14 **Del.C.** §1219.

7.0 A Paraeducator Permit may be denied an applicant upon a finding that an applicant has failed to meet the requirements set forth herein or is unfit to be issued a permit in the State. A Paraeducator Permit may be revoked upon the dismissal of the permit holder for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty, and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her permit application. A Paraeducator whose Permit has been denied or revoked may file a request for a hearing with the

Secretary within ten (10) days of receipt of the notice of denial or revocation. The Secretary's decision shall be final.

5 DE Reg. 856 (10/1/01)

7 DE Reg. 1006 (2/1/04)

8 DE Reg. 1141 (2/1/05)

9 DE Reg. 139 (7/1/05)

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

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

ORDER

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM). The proposed changes amends the policy of the Food Stamp Program as it relates to Electronic Benefit Transfer (EBT). 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 June 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Regulations

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

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

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

Summary of Comments Received with Agency Response

No comments were received during the public comment period.

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Stamp Program regarding Electronic Benefit Transfer (EBT) is adopted and shall be final effective August 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 7/13/05

DSS FINAL REGULATION #05-39

NEW:

9093 Electronic Benefit Transfer (EBT)

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

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

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

9093.1 Definitions/Acronyms

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

Authorized Representative: This is an individual outside the household designated to have access to the

household's benefit account. This can also be a household member, for example, a spouse, who is a secondary card holder.

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

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

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

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

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

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

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

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

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

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

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

PIN (Personal Identification Number): A PIN is a four number secret code that must be used when the EBT

card is used. No one can use the card but the participant as long as the participant does not give the PIN out to anyone.

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

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

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

9093.2 Using EBT for Food Stamp Benefits

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

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

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

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

Households receive printed receipts at the time of transactions.

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

9093.3 Food Stamp EBT Adjustments

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

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

Client-Initiated Adjustments

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

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

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

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

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

Retailer-Initiated Adjustments

A retailer-initiated adjustment occurs when the retailer does not receive a credit for an EBT purchase amount when the household made the purchase. The store needs the adjustment to get credit for the purchase made by the household.

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

DSS must act upon all adjustments to debit a household's account no later than 10 business days from the date the error occurred, by placing a hold on the adjusted

amount in the household's account. If there are insufficient benefits to cover the entire adjustment, DSS shall place a hold on any remaining balance that exists and the whole amount will be debited from the household's account when the next month's benefits become available.

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

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

9093.4 Account Balances

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

9093.5 Manual Transactions

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

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

9093.6 Manual Vouchers

Retailers use a manual voucher process when the eFunds system or the terminals are not working and cannot accept the EBT card for a food stamp purchase. Retailers do not have to use the manual process, but most will not turn away a sale.

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

The manual voucher is a paper form on which the retailer writes the card number, the cardholder's name, the store FNS number, and the dollar amount of the sale. The client must sign the voucher. The retailer must call in manual

vouchers to eFunds to get an authorization for the amount of the transaction. The retailer calls in to make sure that the money is in the client's account. If the client has enough funds in the account to cover the transaction, the retailer subtracts the whole amount of the transaction from the client's account.

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

9093.7 EBT & Timely Application Processing

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

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

9093.8 EBT Benefits and Claim Issues

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

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

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

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

9093.9 Aging Periods and Expungement Process

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

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

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

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

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

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

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

9093.10 Replacement of EBT Benefits

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

DIVISION OF SOCIAL SERVICES

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

ORDER

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. This proposal gives direction for the eligibility process on German Reparation payments received by institutionalized individuals. 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 May 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Provisions

Citations

- The Medicaid Act 1902 (r) (1) (A): Reparation Payments, Federal Republic of Germany
- Social Security Transmittal 91 ADM -23: Treatment of German Reparation Payments Received by Institutionalized Individuals
- POMS SI 01130.610: Payments to Victims of Nazi Persecution
- POMS SI 00830.710: Payments to Victims of Nazi Persecution

Rules are expanded in DSSM 20310.10 and DSSM 20200.2 that exclude German Reparation payments as income and resources for eligibility and post eligibility calculations.

Summary of Comments Received with Agency Response

The State Council for Persons with Disabilities (SCPD) offered the following summarized comment:

SCPD endorses the proposed regulations. In a nutshell, the payments will not count as income or resources. Interest earned on the resources may be considered income.

Agency Response: DSS thanks you for your endorsement.

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the policies for the Long Term Care Program related to German Reparation payments is adopted and shall be final effective August 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 7/13/05

DSS FINAL ORDER REGULATION #05-31 REVISIONS:

DSSM 20200.2 Excluded income

Excluded income is ~~an amount~~ money which is income by definition but does not count in determining eligibility. Some income is excluded when determining eligibility, but ~~must~~ may be included when calculating patient pay amount. The following items are excluded income:

- (a) Victims compensation payments from a State established fund.
- (b) German reparations payments. These payments are not counted in the eligibility nor post eligibility process.
- (c) Effective 9/1/91 Austrian social insurance payments specifically based on wage credits granted under Paragraphs 500-506 of the Austrian General Social Insurance Act.
- (d) Japanese-American, Japanese-Canadian and Aleutian restitution payments.
- (e) Agent orange settlement payments.
- (f) Impairment-related work expenses.
- (g) Radiation Exposure Compensation Trust Fund payments.
- (h) Cash or other assistance received under a Federal statute because the President has declared a major disaster.
- (i) Payments made under the Netherlands' Act on Benefits for Victims of Persecution 1940-1945 (acronym WUV).
- (j) Income of Native Americans ~~income~~ derived from tribal trust lands; and effective 1/1/94, up to \$2,000 per year in payments derived from individual interests in Indian trust or restricted land.

(Break in Continuity of Sections)

DSSM 20310.10 Reparations

~~Unspent German or Austrian reparations payments may be excluded only if including them in resources would affect eligibility.~~

German Reparation payments must not be considered available in the eligibility or post eligibility treatment of income and resources. They can no longer be applied toward the personal needs allowance, community spouse income allowance, family member allowance nor cost of care. If German reparations payments are retained beyond the month of receipt, they must be considered exempt resources whether received while the person was in the community or after becoming institutionalized. These funds should be kept separate from other income and resources. Interest earned on these resources must be considered available income.

DEPARTMENT OF INSURANCE

18 DE Admin. Code 1310

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

ORDER

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

Public hearings were held on March 3, 2005 and June 28, 2005 to receive comments on proposed amendments to Regulation 1310 relating to the prompt payment of health claims. Public notices of the hearings and publication of proposed Regulation 1310 in the *Register of Regulations* and two newspapers of general circulation for both hearings was in conformity with Delaware law. At both public hearings, the record was held open for more than the required thirty days to receive additional written comments. Forty persons attended the public hearing on March 3rd and nine persons attended the public hearing on June 28th. Thirty-three written comments were received by the Department in addition to the oral comments presented at the public hearings.

Summary of the Evidence and Information Submitted

By and large, the written and oral comments were favorable. The medical providers and consumer representatives were supportive of the changes. The insurers were primarily concerned about the limitations on their

ability to obtain corrective information from providers, the impact of the three strike rule in section 7.0 and the definition of a clean claim in section 4.0. There were also a number of comments that suggested technical changes to the proposed regulation for purposes of clarity or internal conformity. The written and oral comments were varied and, in some instances, went beyond the scope of the published changes or recommended changes that would not fall within the jurisdictional authority of the Department of Insurance. While all of the comments are a part of the record in this proceeding, this summary will address the comments most pertinent to the proposed changes.

Section 6.1.4 refers to “subsections (a) through (c) of this Section” and it was correctly observed that the wording should be changed to “sections 6.1.1 through 6.1.3.”

Peter Shanley, Esquire, recommended clarifications to distinguish between individual providers and institutional providers as well as a clarification to assure that both network and non-network providers were treated equally. He also recommended additional provisions to assure that claims under an assignment of benefits would be treated the same as any provider claim and that there be a presumption of receipt within five business days for claims submitted by mail and within one day if submitted electronically. Professional Associates, a medical billing and management company, recommended that all carriers be required to accept electronic filings.

The Delaware Healthcare Association, the Delaware Developmental Disabilities Council, the Delaware State Council for Persons with Disabilities and the Delaware Governor’s Advisory Council for Exceptional Citizens recommended that providers offering benefits or services under Medicaid health plans not be exempt from the scope of the regulation. They were all concerned that section 2.0 excludes such coverage. However, it must be noted that Medicaid is, by definition, a government benefit program and not insurance as defined by Title 18.

The Medical Society of Delaware expressed its support for the proposed changes. Provider attendees included private medical offices, physical therapists and mental health professionals. The individual providers who testified supported the changes and discussed the problems they have had with delayed payments and the delays in payment caused by multiple requests for additional information by the insurers. Some providers were critical of insurers whose employees don’t provide accurate information internally when referring claims from one department of the insurer to another. A common request was to expand the regulation to cover the prompt payment of tort injury and workers compensation claims. The mental health providers were

especially concerned that third party administrators be specifically covered.

The insurers expressed their support for the current regulation and stated that there is, for most insurers, only a small percentage or fractional percentage of claims that are not paid within thirty days. Sixteen of the thirty-three written comments were detailed submissions from various insurers or insurance trade groups. While the insurers were supportive of prompt payment, there were some concerns expressed about key provisions of the proposed changes. Those concerns are:

1. The limitation in section 6.1.4 of one request for supplemental information that can be made by an insurer to a provider. BCBSD, Inc. suggested three limited exceptions to this section: coordination of benefits, pre-existing conditions limitations and fraud and abuse.

2. The change to the “three strike rule” and the presumption that three violations of the regulation establish a rebuttable presumption of bad faith claims practices.

3. The change to the definition of a clean claim in section 5.2 is more restrictive than the Medicare definition yet the proposed regulation proposes to use the Medicare form for claims submissions.

4. The need to make allowances for situations that require discounts, co-insurance or a deductible that would affect the “total” claim.

5. Changing the date for the computation of interest in section 8.0 to the date the insurer first became obligated to pay the claim as opposed to the date the claim or bill for services first came due. If a claim is not clean or additional information were needed by the insurer, the obligation to pay would not arise until that information was provided and would affect the amount of interest to be applied to the claim.

6. Specifying that the interest to be assessed be at a set rate as defined by a statute or merely a defined factor over the prime rate of interest.

MetLife and AmeriHealth opposed the inclusion of dental coverage in the regulation noting that there were no complaints from dental providers that any problem exists and the fact that dental coverage is written much differently than general medical coverage. Dental plans are limited coverage and benefit plans have small benefit maximums. As a result virtually all dental policies are auto-adjudicated and are paid within a week.

Findings of Fact

I find that there is ample support for the proposed changes to this regulation. The following changes are technical in nature, do not substantively change the purpose

or application of the regulation and do not require re-publication and re-hearing of the regulation:

1. The word “days” was not defined in the published version of the regulation. A new definition stating that “days” means calendar days is added to section 3 of the regulation.

2. The term “provider” has been changed to clarify that the term includes institutional as well as individual providers and that it applies to any provider irrespective of whether there is a written agreement between the provider and the carrier.

3. Section 4.3 has been amended to more accurately identify the forms that may be used by providers when submitting claims to carriers.

4. In section 6, the term “claim” is modified by the word “allowable” to assure that the carrier’s obligation is limited to the amount that would be allowable under the contract between the carrier and the provider as opposed to the charge the provider submitted for the claim.

5. Section 8 is modified to clarify that interest shall only run from the date the carrier was first obligated to make payment on the claim, not the date upon which the claim was submitted to the carrier by the provider.

6. The term “carrier” has been substituted for the term “insurer” for internal consistency in the regulation.

7. The effective date has been changed to November 1, 2005 to allow carriers sufficient time to make any necessary changes to their computer programs and internal operating procedures in order to carry out the provisions of the regulation.

The reasons given by the carriers to allow additional opportunities to request additional information from providers, to exclude dental coverage, to change the interest rate computation, to modify the three strike provision and the need to make allowances for discounts, co-insurance or deductibles are not sufficient to outweigh the public benefit and purpose of the regulation, namely to assure prompt payment of medical claims to the providers. Most of the carriers’ concerns relate to how they internally process claims. The purpose of this regulation is to benefit patients and providers, not to establish or to continue practices that tend to delay claims or cause providers to make repetitive requests for payment. While the carriers sought to include a provision that required that all filings be accurately completed as a condition of invoking the one request provision, I find that such a requirement would impose an unacceptable level of ambiguity in the regulation. The form, by its nature, requires certain information which is either correct or isn’t correct. The burden is on the carrier to inform the provider specifically of any corrections that are required

under section 6.1.4 and issues of accuracy can be addressed at that stage.

While the carriers have expressed concerns that three violations of the regulation in a three year period is a rebuttable presumption that the carrier has engaged in a bad faith practice, the fact is that three violations is a rebuttable presumption. A rebuttable presumption does not constitute a finding and the regulation provides for no private right of action for a violation of the regulation. Given the carriers’ control over the claims payment process, public policy militates in favor of a strong incentive for regulatory compliance by the carriers on this issue.

Decision and Effective Date

A copy of the amended regulation and a clean copy of the final regulation are appended hereto. I hereby adopt Regulation 1310 as modified by the changes noted above to be effective on November 1, 2005.

Text and Citation

The text of the proposed amendments to Regulation 1310 last appeared in the *Register of Regulations* Vol. 8, Issue 8, pages 1077-80, February 1, 2003 and Vol. 8, Issue 12, pages 1657-60.

IT IS SO ORDERED this 7th day of July, 2005
Matthew Denn, Insurance Commissioner

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

1.0 Authority

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

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

2.0 Definitions

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

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

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

~~“Health Care Provider” shall mean any entity or individual licensed, certified or otherwise permitted by law~~

pursuant to Titles 16 or 24 of the Delaware Code to provide health care services.

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

3.0 Scope

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

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

4.0 Purpose

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

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

5.0 Prompt Payment of Claims

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

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

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

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

5.2.3 For claims properly disputed or litigated and subsequently paid.

5.3 In those cases covered by section 5.2.1, a health insurer shall pay all portions of a claim meeting the

definition of clean claim in accordance with section 5.1. Additionally, a health insurer shall notify the policyholder in writing within 30 days of the receipt of the claim:

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

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

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

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

6.0 General Business Practice

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

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

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

7.0 Penalties

In addition to the imposition of penalties in accordance with 18 ~~Del.C.~~ 2312(b), the Commissioner may order the health insurer to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under 6 ~~Del.C.~~ 2301(a). Such interest shall be computed from the date the claim or bill for services first became due.

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

8.0 Causes of Action

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative

based upon a violation of **18 Del. C. 2304 (16)**.

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

9.0 Separability

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

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

10.0 Effective Date

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

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

2.0 Scope

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

3.0 Definitions

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

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

“Days” means calendar days.

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

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

“Provider” means any entity or individual licensed,

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

4.0 Clean Claim Defined

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

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

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

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

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

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

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

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

5.0 Means of Submission of Clean Claim

5.1 A provider or policyholder may, as appropriate,

make delivery of a claim to a carrier as follows:

- 5.1.1 mail a claim by United States mail, first class;
- 5.1.2 submit a claim by delivery service;
- 5.1.3 submit a claim electronically;
- 5.1.4 fax a claim; or
- 5.1.5 hand delivery of a claim.

6.0 Processing of Clean Claim

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

- 6.1.1 if the entire claim is deemed payable, pay the total allowed amount of the claim;
- 6.1.2 if a portion of the claim is deemed payable, pay the allowable portion of the claim that is deemed payable and specifically notify the provider or policyholder in writing why the remaining portion of the claim will not be paid;
- 6.1.3 if the entire claim is deemed not payable, specifically notify the provider or policyholder in writing why the claim will not be paid;
- 6.1.4 if the carrier needs additional information from a provider or policyholder who is submitting the claim to determine the propriety of payment of a claim, the carrier shall request in writing that the provider or policyholder provide documentation that is relevant and necessary for clarification of the claim.

6.2 The request pursuant to section 6.1.4 must describe with specificity the clinical information requested and relate only to information the carrier can demonstrate is specific to the claim or the claim's related episode of care. A provider is not required to provide information that is not contained in, or is not in the process of being incorporated into, the patient's medical or billing record maintained by the provider whose services are the subject of inquiry. A carrier may make only one request under this subsection in connection with a claim. A carrier who requests information under this subsection shall take action under sections 6.1.1 through 6.1.3 within 15 days of receiving properly requested information.

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

- 6.3.1 administer a coordination of benefits provision; or
- 6.3.2 determine whether a claim is a duplicate.

7.0 Unfair Practice

Within a 36 month period, three instances of a carrier's failure to comply with Section 6 of this Regulation shall give

rise to a rebuttable presumption that the carrier has engaged in an unfair practice in violation of 18 Del.C. §2304.

8.0 Interest

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

9.0 Waiver

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

10.0 Causes of Action

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

11.0 Separability

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

12.0 Effective Date

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

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

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

ORDER No.: 2005-A-0035

I. Background

On Thursday, May 26, 2005, a public hearing was held in the DNREC Auditorium in Dover to receive comment on proposed amendments to Regulation 25 of Delaware's *Regulations Governing the Control of Air Pollution*. This proposed amendment would create a new rule requiring new sources with emissions of certain pollutants which impact non-attainment for ground-level ozone and PM_{2.5} and of hazardous air pollutants (HAP's) with uncontrolled emissions below major new source review (NSR) thresholds and equal to or above 5 tons per year be evaluated for the addition of air pollution controls at least the equal of best available technology (BAT). It should be noted that this new rule would only apply to new constructed units. Once revisions to the major NSR Regulation (No. 25) in response to the EPA NSR reforms are complete in early 2006, this regulation will be revised to regulate modifications to existing sources.

Jim Newton from the Kent County Department of Public Works attended the hearing (as did an employee of the Department's Air Quality Management Division). Written comments were received by the Department from both Conectiv and the Delaware State Chamber of Commerce, AQM responded to these comments in a formal response memorandum to the Hearing Officer, dated June 13, 2005

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 July 11, 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 July 11, 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 amendment to Regulation No. 25, Section 4: Requirements for Preconstruction Review (MNSR) will be beneficial to the State of Delaware, in that this amendment, once promulgated, will enable the Department to improve and/or enhance the overall performance of its Air Quality Management Section. Furthermore, Regulation No. 25, Section 4, in its amended form, will continue the ongoing efforts by the State of Delaware to strive for compliance under the 8-hour ground-level ozone National Ambient Air Quality Standards (NAAQS).

John A. Hughes, Secretary

~~[Proposed Amendment to]~~ Regulation No. 1125
[Amendment] "Requirements for Preconstruction
Review"

[5/11/99]

[4/12/05-8/11/05]

1.0 General Provisions

1.1 Requirements of this regulation are in addition to any other requirements of the State of Delaware Regulations Governing the Control of Air Pollution.

1.2 Any stationary source which will impact an attainment area or an unclassifiable area as designated by the U.S. Environmental Protection Agency (EPA) pursuant to Section 107 of the Clean Air Act Amendments of 1990 (CAA), is subject to the regulations of Section 3, Prevention of Significant Deterioration (PSD).

1.3 Any stationary source which will impact a non-attainment area as designated by the EPA pursuant to Section 107 of the CAA is subject to the regulations of Section 2, Emission Offset Provisions (EOP).

1.4 A source may be subject to PSD for one pollutant and to EOP for another pollutant, or may affect both

attainment or unclassifiable areas and a non-attainment area for the same pollutant.

1.5 Any emission limitation represented by Lowest Achievable Emission Rate (LAER) may be imposed by the Department pursuant to regulations adopted under Section 2 herein notwithstanding any emission limit specified elsewhere in the State of Delaware Regulations Governing the Control of Air Pollution.

1.6 Any emission limitation represented by Best Available Control Technology (BACT) may be imposed by the Department pursuant to regulations adopted under Section 3 herein notwithstanding any emission limit specified elsewhere in the State of Delaware Regulations Governing the Control of Air Pollution.

1.7 No stationary source shall be constructed unless the applicant can substantiate to the Department that the source will comply with any applicable emission limit or New Source Performance Standard or Emission Standard for a Hazardous Air Pollutant as set forth in the State of Delaware Regulations Governing the Control of Air Pollution.

1.8 Any stationary source that implements, for the purpose of gaining relief from Regulation 1125, Section 3, by any physical or operational limitation on the capacity of the source to emit a pollutant, including (but not limited to) air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design and the limitation or the effect it would have on emissions is enforceable, not withstanding any emission limit specified elsewhere in the State of Delaware Regulations Governing the Control of Air Pollution. If a source petitions the Department for relief from any resulting limitation described above, the source is subject to review under Regulation 1125, Sections 2 and 3 as though construction had not yet commenced on the source or modification.

1.9 Definitions - For the purposes of this regulation

"Actual Emissions"

- Actual emissions means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with subparagraphs (2) through (4) below.
- In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

- The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
- For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Allowable Emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- The applicable standards as set forth in Regulations 20 and 21;
- Other applicable Delaware State Implementation Plan emissions limitations, including those with a future compliance date; or
- The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

"Baseline Area"

- Baseline area means any intrastate area (and every part thereof) designated as attainment or unclassifiable in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the baseline date is established.
- Area redesignations cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:
 - Establishes a baseline date, or
 - Is subject to this section.

"Baseline Concentration"

- Baseline concentration means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall

include:

- The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph 1.9M(2);
- The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.
- The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):
 - Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and
 - Actual emissions increases and decreases at any stationary source occurring after the baseline date.

“Baseline Date”

- Baseline date means the earliest date after August 7, 1977, on which the first complete application is submitted by a major stationary source or major modification subject to the requirements of Regulation 1125, Section 3.
- Baseline date means the earliest date after August 7, 1977, but before the effective date of this regulation, on which the first complete application by a major stationary source or major modification which would have been subject to the requirements of Regulation 25, Section 3 if application were submitted after the effective date of this regulation.
- The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:
 - The area in which the proposed source or modification would construct is designated as attainment or unclassifiable for the pollutant on the date of its complete application under this section; and
 - In the case of a major stationary

source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

"Begin Actual Construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction or permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best Available Control Technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under CAA which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, takes into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under Regulation 1120 and 1121. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, Structure, Facility, or Installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual,

1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively). For purposes of Section 2, this definition shall apply only to the "Building, Structure or Facility".

"Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

- Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition or modification of an emissions unit) which would result in a change in actual emissions.

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the CAA.

"Enforceable" means any standard, requirement, limitation or condition established by an applicable federal or state regulation or specified in a permit issued or order entered thereunder, or contained in a SIP approved by the Administrator of the U.S. Environmental Protection Agency (EPA), and which can be enforced by the Department and the Administrator of the EPA.

"Fugitive Emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Innovative Control Technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy economics, or non-air quality environmental impacts.

"Lowest Achievable Emission Rate" (LAER) means the same as defined in Regulation No. 1, "Definitions and Administrative Principles".

"Major Stationary Source" - See Sections 2.2 and 3.0

"Major Modification"

- Major modification means any physical change or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the CAA.
- Any net emissions increase that is significant for either volatile organic compounds or nitrogen oxides shall be considered significant for ozone.
- A physical change or change in the method of operation shall not include:
 - Routine maintenance, repair and replacement;
 - Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
 - Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA;
 - Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
 - Use of an alternative fuel or raw material by a stationary source which:
 - The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any previously issued permit condition which was established after January 6, 1975.
 - The source is approved to use under any previously issued PSD permit or under

Regulation 1125, Section 3.

- An increase in the hours of operation or in the production rate, unless such change would be prohibited under any previously issued permit condition which was established after January 6, 1975;
- Any change in ownership at a stationary source.

"Necessary Preconstruction Approvals or Permits" means those permits or approvals required under Delaware air quality control laws and regulations.

"Net Emissions Increase"

- Net emissions increase means the amount by which the sum of the following exceeds zero:
 - Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and
 - Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.
- An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
 - The date five years before construction on the particular change commences; and
 - The date that the increase from the particular change occurs.
- An increase or decrease in actual emissions is creditable only if the Department has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs.
- An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

- An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- A decrease in actual emissions is creditable only to the extent that:
 - The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
 - It is enforceable at and after the time that actual construction on the particular change begins; and
 - It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
 - It has not been adopted by the Department as a required reduction to be made part of the SIP or it is not required by the Department pursuant to an existing requirement of the SIP.
- An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"Ozone Transport Region" means the region designated by section 184 of the federal *Clean Air Act* and comprised of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia and northern Virginia.

"Permanent" (Reductions) means that the actual emission reductions submitted to the Department for certification have been incorporated in a permit or a permit condition or, in the case of a shutdown, the permit to operate for the emission unit(s) has been voided.

"Potential to Emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on

hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

“Quantifiable” (Reductions) means that the amount, rate and characteristics of emission reductions can be determined by methods that are considered reliable by the Department and the Administrator of the EPA.

“Real” (Reductions) means reductions in actual emissions released into the atmosphere.

“Reconstruction” will be presumed to have taken place where the fixed capital cost of the new components exceed 50 percent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of 40 CFR 60.15(f)(1)-(3). A reconstructed stationary source will be treated as a new stationary source for purposes of this regulation. In determining lowest achievable emission rate (LAER) for a reconstructed stationary source, the provisions of 40 CFR 60.15(f)(4) shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

“Secondary Emissions” means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

- Emissions from ships, trains, or other vehicles coming to or from the new or modified stationary source; and
- Emissions from any offsite support facility(s) which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

“Significant”

- Significant means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:
 - Pollutant and Emissions Rate
 - Carbon monoxide: 100 tons per year (TPY)

- Sulfur dioxide: 40 TPY
- Particulate matter: 25 TPY
- Ozone:
 - New Castle and Kent Counties - 25 TPY of either volatile organic compounds or nitrogen oxides *
 - Sussex County - 40 TPY of either volatile organic compounds or nitrogen oxides *
- Lead: 0.6 TPY
- Asbestos: 0.007 TPY
- Beryllium: 0.0004 TPY
- Mercury: 0.1 TPY
- Vinyl chloride: 1 TPY
- Fluorides: 3 TPY
- Sulfuric acid mist: 7 TPY
- Hydrogen sulfide (H₂S): 10 TPY
- Total reduced sulfur (including H₂S): 10 TPY
- Reduced sulfur compounds (including H₂S): 10 TPY
- PM₁₀ particulate: 15 TPY

*Note: Increases in net emissions shall not exceed 25 tons per year in New Castle and Kent Counties, or 40 tons per year in Sussex, when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years which includes the calendar year in which such increases occur. No part of the five consecutive years shall extend before January 1, 1991.

“Significant” means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the CAA that paragraph 1.9 V.(1) does not list, any emissions rate.

Notwithstanding paragraph 1.9 V.(1), “significant” means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m³, (24-hour average).

“Stationary Source” means any building, structure, facility or installation which emits or may emit any air pollutant subject to regulation under the CAA.

“Surplus” (Reductions) means actual emission reductions below the baseline (see Section 2.5(B)) not required by regulations or proposed regulations, and not used by the source to meet any state or federal regulatory requirements.

2.0 Emission Offset Provisions (EOP)

2.1 Applicability - The provisions of this Section shall apply to any person responsible for any proposed new major stationary source or any proposed major modification.

2.2 For purposes of Section 2, "major stationary source" means

2.2.1 Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act, except for either volatile organic compound or nitrogen oxides, or

2.2.2 Any stationary source of air pollutants which emits, or has the potential to emit either volatile organic compounds or nitrogen oxides in the following amounts:

2.2.2.1 For areas in ozone attainment, ozone marginal, or ozone moderate nonattainment areas and located in the ozone transport region - 50 tons per year volatile organic compounds or 100 tons per year of oxides of nitrogen, or

2.2.2.2 For serious ozone nonattainment areas - 50 tons per year of either volatile organic compounds or oxides of nitrogen, or

2.2.2.3 For severe ozone nonattainment areas - 25 tons per year of either volatile organic compounds or oxides of nitrogen, or

2.2.2.4 For extreme ozone nonattainment areas - 10 tons per year of either volatile organic compounds or oxides of nitrogen.

2.2.3 Any physical change that would occur at a stationary source not qualifying under paragraph 2.2.1 or 2.2.2 as a major stationary source, if the change would constitute a major stationary source by itself, or

2.2.4 A major stationary source that is major for either volatile organic compounds or nitrogen oxides shall be considered major for ozone, and "installation" means an identifiable piece of process, combustion or incineration equipment.

2.3 For the purposes of Sections 2.4 and 2.5 of this regulation, emission units located in areas designated as attainment or marginal nonattainment areas that are located within the ozone transport region shall be considered located in a moderate ozone nonattainment area.

2.4 Conditions for Approval - No person subject to the provisions of subsection 2.1 shall install a major stationary source of volatile organic compounds or of nitrogen oxides, or make a major modification to a source which will cause or contribute to any violation of the national ambient air quality standards for ozone within an area of non-attainment for that pollutant unless the following conditions are met:

2.4.1 The new major source or the major modification is controlled by the application of lowest achievable emission rate (LAER) control technology.

2.4.2 All existing sources in the State owned or controlled by the owner of the proposed new or modified source are in compliance with the applicable local, State and federal regulations or are in compliance with a consent order specifying a schedule and timetable for compliance.

2.4.3 For the purposes of satisfying offset requirements, the ratio of total actual emissions reductions of volatile organic compounds or nitrogen oxides to total allowable increased emissions of volatile organic compounds or nitrogen oxides shall be:

2.4.3.1 For New Castle & Kent Counties, 1.3 to 1, or

The new or modified source must satisfy the following offset requirements:

2.4.3.1.1 The ratio of total actual emissions reductions of volatile organic compounds or nitrogen oxides to total allowable increased emissions of volatile organic compounds or nitrogen oxides shall be:

2.4.3.1.1.1 For moderate ozone nonattainment areas, 1.15 to 1, or

2.4.3.1.1.2 For serious ozone nonattainment areas, 1.2 to 1, or

2.4.3.1.1.3 For severe ozone nonattainment areas, 1.3 to 1, or

2.4.3.1.1.4 For extreme ozone nonattainment areas, 1.5 to 1.

2.4.3.2 All offsets shall be federally enforceable at the time of application to construct and shall be in effect by the time the new or modified source commences operation.

2.4.4

2.4.4.1 The application for construction permit pursuant to Regulation No. 2 shall include an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

2.4.4.2 Public participation for the construction permit shall be pursuant to Regulation No. 2, Section 12.3 or 12.4 and 12.5.

2.5 Criteria for Emission Reductions Used as Offsets

2.5.1 All emission reductions claimed as offset credits shall be real, surplus, quantifiable, and federally enforceable;

2.5.2 The baseline for determining credit for emissions reductions shall be the lower of actual or

allowable emissions. The offset credit shall only be allowed for emission reductions made below the baseline;

2.5.3 Emission reductions claimed as offsets shall have occurred on or after January 1, 1991;

2.5.4 Credit for an emission reduction may be claimed for use as an offset to the extent that the Department has not relied on it in issuing any permit under this regulation and has not relied on it for demonstration of attainment or reasonable further progress;

2.5.5 Emission reductions shall not be used as offsets in an area with a higher nonattainment classification than the one in which they were generated.

2.5.6 Emission reductions claimed as offsets by a source must be generated from within the same nonattainment area or from any other area that contributes to a violation of the ozone National Ambient Air Quality Standard in the nonattainment area which the source is located.

2.6 Emission reductions generated in a state other than Delaware and which are placed in the emissions bank established pursuant to Regulation No. 34 of the State of Delaware "Regulations Governing the Control of Air Pollution" may be used as offsets provided they are federally enforceable and meet, at a minimum, all the provisions of Regulation No. 1134 and Sections 2.5.5, and 2.5.6 of this regulation.

03/29/88

3.0 Prevention of Significant Deterioration of Air Quality

3.1 Definitions - For purposes of this Section 3

"Major Stationary Source"

- Major stationary source means:
 - Any of the following stationary sources of air pollutants which emits or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the CAA: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants,

phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

- Notwithstanding the stationary source size specified in paragraph 3.0 A.(1)(i) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the CAA; or
- Any physical change that would occur at a stationary source not otherwise qualifying under paragraph 3.0 as a major stationary source, if the change would constitute a major stationary source by itself.
- A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

3.2 Ambient Air Increments. In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Maximum allowable increase
(Micrograms per cubic meter)

Class I

Pollutant

Total suspended particulates:
Annual geometric mean 5
24-hour maximum 10

Sulfur dioxide:

Annual arithmetic mean 2
24-hour maximum 5
3-hour maximum 25

Class II

Pollutant

Total suspended particulates:

Annual geometric mean	19
24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

Class III

Total suspended particulates:	
Annual geometric mean	37
24-hour maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

3.3 Ambient Air Ceilings. No concentration of a pollutant shall exceed:

3.3.1 The concentration permitted under the national secondary ambient air quality standard, or

3.3.2 The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

3.4 Restrictions on Area Classification.

3.4.1 All Areas in the State of Delaware are designated Class II, but may be redesignated as provided in 40 CFR 52.51(g).

3.4.2 The following areas may be redesignated only as Class I:

3.4.2.1 Bombay Hook National Wildlife Refuge; and

3.4.2.2 A national park or national wilderness area established after August 7, 1977 which exceeds 10,000 acres in size.

3.5 Exclusions from Increment Consumption

3.5.1 Upon written request of the governor, made after notice and opportunity for at least one public hearing to be held in accordance with procedures established by the State of Delaware, the Department shall exclude the following concentrations in determining compliance with a maximum allowable increase:

3.5.1.1 Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2.1 and 2.2 of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the

emissions from such sources before the effective date of such an order;

3.5.1.2 Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

3.5.1.3 Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

3.5.2 No exclusion of such concentrations shall apply more than five years after the effective date of the order to which section 3.5.1.1 refers or the plan to which section 3.5.1.2 refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

3.6 Stack Heights

The provisions of Regulation 27 - STACK HEIGHTS, are applicable to this section.

3.7 Review of Major Stationary Sources and Major Modifications - Source Applicability and Exemptions.

3.7.1 No stationary source or modification to which the requirements of sections 3.8 through 3.15 apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The Department has authority to issue any such permit.

3.7.2 The requirements of sections 3.8 through 3.15 shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the CAA that it would emit, except as this section otherwise provides.

3.7.3 The requirements of sections 3.8 through 3.15 apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable.

3.7.4 The requirements of sections 3.8 through 3.15 shall not apply to a particular major stationary source or major modification, if:

3.7.4.1 The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor requests that it be exempt from those requirements; or

3.7.4.2 The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or

modification and the source does not belong to any of the following categories:

- 3.7.4.2.1 Coal cleaning plants (with thermal dryers);
- 3.7.4.2.2 Kraft pulp mills;
- 3.7.4.2.3 Portland cement plants;
- 3.7.4.2.4 Primary zinc smelters;
- 3.7.4.2.5 Iron and steel mills;
- 3.7.4.2.6 Primary aluminum ore reduction plants;
- 3.7.4.2.7 Primary copper smelters;
- 3.7.4.2.8 Municipal incinerators capable of charging more than 250 tons of refuse per day;
- 3.7.4.2.9 Hydrofluoric, sulfuric, or nitric acid plants;
- 3.7.4.2.10 Petroleum refineries;
- 3.7.4.2.11 Lime plants;
- 3.7.4.2.12 Phosphate rock processing plants;
- 3.7.4.2.13 Coke oven batteries;
- 3.7.4.2.14 Sulfur recovery plants;
- 3.7.4.2.15 Carbon black plants (furnace process);
- 3.7.4.2.16 Primary lead smelters;
- 3.7.4.2.17 Fuel conversion plants;
- 3.7.4.2.18 Sintering plants;
- 3.7.4.2.19 Secondary metal production plants;
- 3.7.4.2.20 Chemical process plants;
- 3.7.4.2.21 Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- 3.7.4.2.22 Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- 3.7.4.2.23 Taconite ore processing plants;
- 3.7.4.2.24 Glass fiber processing plants;
- 3.7.4.2.25 Charcoal production plants;
- 3.7.4.2.26 Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- 3.7.4.2.27 Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the CAA; or

3.7.4.3 The source is a portable stationary source which has previously received a permit under this section, and

3.7.4.3.1 The owner or operator proposal to relocate the source and emissions of the source at the new location would be temporary; and

3.7.4.3.2 The emissions from the source would not exceed its allowable emissions; and

3.7.4.3.3 The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

3.7.4.3.4 Reasonable notice is given to the Department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Department not less than ten days in advance of the proposed relocation unless a different time duration is previously approved by the Department.

3.7.5 The requirements of sections 3.8 through 3.15 shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as non-attainment.

3.7.6 The requirements of sections 3.9, 3.11, and 3.13 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

3.7.6.1 Would impact no Class I area and no area where an applicable increment is known to be violated, and

3.7.6.2 Would be temporary.

3.7.7 The Department may exempt a stationary source or modification from the requirements of section 3.11 with respect to monitoring for a particular pollutant if:

3.7.7.1 The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide: 575 ug/m³, 8-hour average;

Nitrogen dioxide: 14 ug/m³, annual average;

Total suspended particulate: 10 ug/m³, 24-hour average;

Sulfur dioxide: 13 ug/m³, 24-hour average;

Ozone (Note 1)

Lead: 0.1 ug/m³, 24-hour average;

Mercury: 0.25 ug/m³, 24-hour average;

Beryllium: 0.0005 ug/m³, 24-hour average;

Fluorides: 0.25 ug/m³, 24-hour average;

Vinyl chloride: 15 ug/m³, 24-hour average;

Total reduced sulfur: 10 ug/m³, 1-hour average;

Hydrogen sulfide: 0.04 ug/m³, 1-hour average;

Reduced sulfur compounds: 10 ug/m³, 1-hour average;

PM₁₀ particulate: 10 ug/m³, 24-hour average

3.7.7.2 The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in section 3.7.7.1, or the pollutant is not listed in paragraph 3.7.7.1.

3.8 Control Technology Review

3.8.1 A major stationary source or major modification shall meet each applicable emissions limitation of the State of Delaware's Air Pollution Control Regulations.

3.8.2 A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the CAA that it would have the potential to emit in significant amounts.

3.8.3 A major modification shall apply best available control technology for each pollutant subject to regulation under the CAA for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

3.8.4 For phase construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

Note 1: No de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

3.9 Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that

allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

3.9.1 Any national ambient air quality standard in any air quality control region; or

3.9.2 Any applicable maximum allowable increase over the baseline concentration in any area.

3.10 Air Quality Models.

3.10.1 All estimates of ambient concentrations required under this section shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models" (OA-QPS 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April, 1978 or its subsequent revisions). This document is incorporated by reference.

3.10.2 When an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to the notice and opportunity for public comment under section 3.15. Written approval of the Department must be obtained for any modification or substitution. Methods like those outlined in the "Workbook for the Comparison of Air Quality Models" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 17711, May, 1978 or its subsequent revisions) should be used to determine the comparability of air quality models.

3.11 Air Quality Analysis

3.11.1 Preapplication Analysis.

3.11.1.1 Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

3.11.1.1.1 For the source, each pollutant that it would have the potential to emit in a significant amount;

3.11.1.1.2 For the modification, each pollutant for which it would result in a significant net emissions increase.

3.11.1.2 With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

3.11.1.3 With respect to any such pollutant (other than non-methane hydrocarbons) for which such a

standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

3.11.1.4 In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceeding receipt of the application, except that, if the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

3.11.1.5 The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all of the following conditions may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph 3.9.1.

Condition 1: The new source is required to meet an emission limitation which specifies the lowest achievable emission rate for such source.

Condition 2: The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in Delaware are in compliance with all applicable emission limitations and standards under the CAA (or are in compliance with an expeditious schedule approved by the Department).

Condition 3: Emission reductions ("offsets") from existing sources in the area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS. Only intrapollutant emission offsets will be acceptable (e.g., hydrocarbon increases may not be offset against SO_x reductions).

Condition 4: The emission offsets will provide a positive net air quality benefit in the affected area (see 40 CFR Part 51 App. S). Atmospheric simulation modeling is not necessary for volatile organic compounds and NO_x. Fulfillment of Condition 3 will be considered adequate to meet this condition for volatile organic compounds and NO_x.

3.11.2 Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification conduct such ambient monitoring as the Department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

3.11.3 Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the Quality Assurance Requirements for PSD Air Monitoring as preapproved by the Department during the operation of monitoring stations for purposes of satisfying section 3.11.

3.12 Source Information. The owner or operator of proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

3.12.1 With respect to a source or modification to which sections 3.9, 3.11, and 3.13 apply, such information shall include but not be limited to:

3.12.1.1 A description of the nature, location, design capacity and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

3.12.1.2 A detailed schedule for construction of the source or modification;

3.12.1.3 A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied

3.12.2 Upon request of the Department, the owner or operator shall also provide information on:

3.12.2.1 The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

3.12.2.2 The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977 or the applicable baseline date(s), in the area the source or modification would affect.

3.13 Additional Impact Analyses.

3.13.1 The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

3.13.2 The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

3.14 Public Participation

3.14.1 Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency

in the application or in the information submitted. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this section, the date on which the Department received all required information.

3.14.2 Within one year after receipt of a complete application, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

3.14.2.1 Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

3.14.2.2 Make available a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

3.14.2.3 Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at public hearing as well as written public comment.

3.14.2.4 Send a copy of the notice of public comment to the applicant and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: the chief executives of the city and county where the source or modification would be located and any comprehensive regional land use planning agency whose lands may be affected by emissions from the source or modification. Additionally, if the proposed source would have significant interstate impact, the Governor of that impacted state would be notified.

3.14.2.5 Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

3.14.2.6 Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than ten days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed source or modification.

3.14.2.7 Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

3.14.2.8 Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source or modification.

3.15 Source Obligation.

3.15.1 Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

3.15.2 Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

3.15.3 Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of any other requirements under local or Federal law.

3.15.4 At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements or sections 3.7 through 3.14 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

3.16 Innovative Control Technology.

3.16.1 An owner or operator of a proposed major stationary source or major modification may request the Department in writing no later than 30 days after the close of the public comment hearing to approve a system of innovative control technology.

3.16.2 The Department shall, with the consent of the Governor of Delaware, determine that the source or

modification may employ a system of innovative control technology, if:

3.16.2.1 The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

3.16.2.2 The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph 3.8.2 by a date specified by the Department. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

3.16.2.3 The source or modification would meet the requirements of sections 3.8 and 3.9 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Department;

3.16.2.4 The source or modification would not be before the date specified by the Department:

3.16.2.4.1 Cause or contribute to a violation of an applicable national ambient air quality standard; or

3.16.2.4.2 Impact any Class I area; or

3.16.2.4.3 Impact any area where an applicable increment is known to be violated; and

3.16.2.5 All other applicable requirements including those for public participation have been met.

3.16.3 The Department shall withdraw any approval to employ a system of innovative control technology made under this section, if:

3.16.3.1 The proposed system fails before the specified date to achieve the required continuous emissions reduction rate; or

3.16.3.2 The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

3.16.3.3 The Department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

3.16.4 If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with section 3.16.3, the Department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

4.0 Minor New Source Review (MNSR)

4.1 Applicability. The requirements of Section 4.3 of this Regulation shall apply to any person responsible for any proposed new stationary source, the construction of which:

4.1.1 was applied for, pursuant to Regulation 2, Section 11, after ~~insert effective date of this Section 4 August 11, 2005~~, and

4.1.2 is subject to the construction, installation, or alteration requirements of Regulation No. 2, Section 2.1(c), and

4.1.3 is not subject to the requirements of Section 2 or Section 3 of this regulation, and

4.1.4 has a potential to emit of equal to or greater than five (5) tons per year of volatile organic compounds (VOC's) or, nitrogen oxides (NO_x), or sulfur dioxide (SO₂) and/or sulfur trioxide (SO₃) [also termed sulfur oxides (SO_x)] or, fine particulate matter (PM_{2.5}), or, [the potential to emit of equal to or greater than five (5) tons per year,] in the aggregate, [of] any of the hazardous air pollutants (HAP's) listed in Section 112(b) of the federal Clean Air Act.

4.1.5 Reserved.

4.2 Record keeping. Any person exempted from the requirements of Section 4.3 of this Regulation because the proposed source has emissions below the thresholds provided for in Section 4.1.4 shall include with the application submitted pursuant to Regulation No. 2, Section 11.1, documentation that shows the proposed source is exempted.

4.3 Conditions for Approval. Any person subject to the provisions of this Section 4.3 shall meet the appropriate requirements of 4.3.1 and 4.3.2:

4.3.1 The new stationary source shall, relative to each pollutant identified in Section 4.1.4, be controlled by installing and operating emission control technology that limits emissions to the atmosphere [as follows by utilizing any one of the following options listed below.] The Department will assist in the development of appropriate emission control technology determinations if requested by the applicant.

4.3.1.1 emission control technology that meets the LAER requirements of Section 2 of this Regulation, or

4.3.1.2 emission control technology that meets the BACT requirements of Section 3 of this Regulation, or

4.3.1.3 emission control technology approved in advance by the Department for the source type being constructed (a listing and description of the approved technologies is available from the Department), or

4.3.1.4 emission control technology approved by the Department, on a case-by-case basis, pursuant to the following process:

4.3.1.4.1 Identify and evaluate air pollution control technologies that may be applied to the

source. The control alternatives need not be limited to existing controls for the source category. Consider controls applied to similar type of sources, innovative control technologies, modification of the process or process equipment, other pollution prevention measures, and combinations of these measures.

4.3.1.4.2 List the control technologies identified in 4.3.1.4.1 in descending order of air pollution control effectiveness.

4.3.1.4.3 Either propose the most effective technology on the list generated under 4.3.1.4.2 for approval by the Department, or demonstrate, based on the criteria in a. through d. below, that the most effective technology is infeasible or unreasonable. This process for evaluation shall be repeated relative to each emission control technology on the list generated under 4.3.1.4.2 until an emission control technology is reached that is not eliminated.

4.3.1.4.3.1 Technological Feasibility Assessment: A demonstration that the control technology is technically infeasible, based on physical, chemical, or engineering principles, that it is unproven technology, and/or that technical difficulties would prevent its successful application, or

4.3.1.4.3.2 Environmental Impacts Assessment: A demonstration that the control technology should be eliminated from consideration based on its environmental impacts. The demonstration must show that the adverse environmental effects of the control technology (for example, effects on water or land, HAP emissions, or increased environmental hazards), when compared with its air contaminant emission reduction benefits, would make use of the technology unreasonable, or

4.3.1.4.3.3 Economic Impacts Assessment: A demonstration that the technology should be eliminated from consideration based on its calculated economic impacts using the techniques in the latest edition of EPA's Control Cost Manual. The justification must show that the total and incremental costs of the control technology are greater than the total and incremental costs of the next less effective technology on the list generated under 4.2(A)(4)(ii); and that the extra costs, when compared with the air contaminant emission reduction benefits resulting from the control technology, would make that measure unreasonable, or

4.3.1.4.3.4 Energy Impacts Assessment: A demonstration that the control technology should be eliminated from consideration based on its energy impacts. The demonstration must show that this technology uses fuels that are not reliably available; or that the energy consumed by this technology is greater than the proposed

technology(s), and that the extra energy used, when compared with the air contaminant emission reduction benefits resulting from this technology, would make use of this technology unreasonable;

4.3.2 All of the following information shall be submitted to the Department as part of the application submitted to the Department pursuant to Regulation No. 2, Section 11.1:

4.3.2.1 control technology proposed to be installed and operated to meet the requirements of Section 4.3.1 of this Regulation, and

4.3.2.2 the list, if this method was chosen, generated pursuant to Section 4.3.1.4.2 of this Regulation and

4.3.2.3 any demonstration(s) performed pursuant to Section 4.3.1.4.3 of this Regulation.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

1400 Board of Electrical Examiners
24 **DE. Admin. Code** 1400

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

ORDER

A public hearing was held to receive comments on July 6, 2004 at the regularly scheduled meeting of the Board of Electrical Examiners. The Board considered changes to its rules and regulations that were published in the *Register of Regulations*, Vol. 8, Issue 12, June 1, 2005.

Summary of the Evidence and Information Submitted

No written were received. The verbal comment follows: Rob Smith of the First State Inspection Agency had comments related to proposed Rules 14.1 and 14.4. He questioned who would be responsible for policing the work performed by homeowners to insure that the homeowner performed the work as required under proposed Rule 14.1. He also thought that proposed Rule 14.4 was ambiguous and he offered language that would clarify the work that a mobile homeowner could perform under a homeowner's permit.

Findings of Fact with Respect to the Evidence and Information

The Board recognized that there was no policing mechanism for homeowners who obtained permits to do their own electrical work. The change makes it clear to the homeowner that he or she is required to do the work with a homeowner's permit. There is a statement on the application that the homeowner signs verifying that he or she is performing the work.

The Board agrees that Rule 14.4 relating to electrical work by owners of mobile homes that occupy leased lots should be clarified as suggested. Proposed Rule 14.4 is amended to read as follows:

"14.4 A homeowner's permit issued for a mobile home on a leased lot authorizes feeder installation for the mobile home itself and it does not include the installation or repair of service equipment."

The Board finds that the proposed amendment is not substantive but rather a clarification of the proposed rule.

Decision and Effective Date

The Board of Electrical Examiners hereby adopts the Rules and Regulations as amended to be effective 10 days following final publication in the *Register of Regulations*.

Text and Citation

The text of the Rules and Regulations appears in the *Register of Regulations* at 8 DE Reg 1652 (06-01-05) with the substitution of the amended Rule 14.4 noted above.

BOARD OF ELECTRICAL EXAMINERS

Jacob Good, President

Shirley Good

Donald King

Steven Dignan

C. Leroy James

James Anderson

Donald Collins

1400 Board of Electrical Examiners**1.0 License Required**

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

1.2 To perform "electrical services" or "electrical work" means to plan, estimate, layout, perform, or supervise the installation, erection, or repair of any electrical

conductor, molding, duct, raceway, conduit, machinery, apparatus, device, or fixture for the purpose of lighting, heating, or power in or on any structure or for elevators, swimming pools, hot tubs, electric signs, air conditioning, heating, refrigeration, oil burners, and overhead and underground primary distribution systems.

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

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

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

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

7.0 Expiration and Renewal

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

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

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

7.4 A licensee with a valid license may request in writing to be placed on inactive status. An inactive status can

be effective for up to two years and renewed biennially by application to the Division upon proof of 10 hours of continuing education. Said license may be reactivated by the Board upon written request, proof of insurance, and payment of a prorated fee to be computed by the Division of Professional Regulation.

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

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

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

14.0 Homeowners Permits

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

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

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

14.4 A homeowner's permit issued for a mobile home on a leased lot authorizes [feeder installation for the mobile home itself and it does not include the installation or repair of service equipment. electrical services for the mobile home itself and does include hook-up to the pole.]

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

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

14.6.1 deed to the property;

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

14.6.3 the title to a mobile home;

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

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

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

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Electrical Examiners is available at: <http://dpr.delaware.gov/boards/electrician/index.shtml>.**

DIVISION OF PROFESSIONAL REGULATION

3100 Board of Funeral Services
Statutory Authority: 24 Delaware Code,
Section 3105(a)(10) (24 Del.C. §3105(a)(10))
24 DE Admin. Code 3100

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on May 25, 2005 at a scheduled meeting of the Delaware Board Funeral Services to receive comments regarding proposed rule.

The proposed change to Rule 9.4.2 provides for automatic approval of continuing education offered by the Academy of Funeral Service Practitioners or a state licensing board for funeral directors. The proposed change was published in the *Register of Regulations*, Vol. 8, Issue 9, March 1, 2005. The notice for a rescheduling hearing was published in the Vol. 8, Issue 10, April 1, 2005.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact with Respect to the Evidence and Information Submitted

The approval process for continuing education would be more efficient and predictable if automatic approval were available under the rules where appropriate. However, the wording should be clarified. The AFSP 'approves' continuing education proposals; it does not 'offer' continuing education courses itself.

Rule 9.4.7 should be changed to reflect the practice of approving continuing education for the licensure period rather than two years from the date of approval.

Rule 9.6.6 can be eliminated as redundant.

The Board finds that the changes made are not substantial and do not require further publication.

Decision and Effective Date

The Board hereby adopts the changes to Regulation 9.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the revised rule is as follows:

9.0 Continuing Education Regulations.

9.4.2 Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms. Programs ~~offered~~ approved by the Academy of Funeral Service Practitioners (AFSP) or state boards that license funeral directors are automatically approved.

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

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

SO ORDERED this 24th day of May, 2005

BOARD OF FUNERAL SERVICES

William J. Doherty II, President

Lyle Dabson

Bennie Smith

Robert C. Hutchison, Jr.

3100 Board of Funeral Services

9.0 Continuing Education Regulations

9.1 Board Authority

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

9.2 Requirements

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

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

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

9.3 Waiver of the CE Requirement

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

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

9.4 Continuing Education Program Approval

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

9.4.2 Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms. Programs [approved offered] by the Academy of Funeral Service Practitioners (AFSP) or state boards that license funeral directors are automatically approved. Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms.

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

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

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

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

9.4.5 Application for CE program approval shall include the following:

- 9.4.5.1 Date and location.
- 9.4.5.2 Description of program subject, material and content.
- 9.4.5.3 Program schedule to time segments in subject content areas for which approval of, and determination of credit is required.
- 9.4.5.4 Name of instructor(s), background, expertise.
- 9.4.5.5 Name and position of person making request for program approval.

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

9.4.7 **[The CE credits shall be valid for the biennial renewal cycle in which they are approved. Approval of CE credits and program formats by the Committee shall be valid for a period of two years from the date of approval.]** Changes in any aspect of the approved program shall render the approval invalid and the presenter will be responsible for making reapplication to the Committee.

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

9.5 Continuing Education Committee

9.5.1 The Board of Funeral Services shall appoint a committee known as the Continuing Education

Committee. The Committee shall consist of the following who shall elect a chairperson:

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

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

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

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

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

9.6 Certification of Continuing Education - Verification and Reporting

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

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

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

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

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

~~9.6.6 Programs approved for continuing education credit by another state funeral board other than Delaware shall be automatically approved for all~~

~~Delaware licensees upon written application and verification of CE credits by the applicable state board.]~~
5 DE Reg. 606 (9/1/01)

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

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

DIVISION OF PROFESSIONAL REGULATION

3900 Board of Clinical Social Work Examiners
24 DE Admin. Code 3900

Statutory Authority: 24 Delaware Code,
Section 3906(1) (24 Del.C. §3906(1))

ORDER

After due notice in the Register of Regulations and two Delaware newspapers, a public hearing was held on June 20, 2005 at a scheduled meeting of the Delaware Board of Clinical Social Work Examiners ("the Board") to receive comments on its proposal to amend regulation 7.2.1.1 regarding the Definition and Scope of Continuing Education to add that the Board will accept for continuing education credit all courses designated for clinical social workers which are offered by the Clinical Social Work Federation (CSWF). The proposed regulation was published in the Register of Regulations, Vol. 8, Issue 11, May 1, 2005.

Summary of the Evidence and Information Submitted

No written comments were received.

The Board received public comment at the hearing from Candita Weber. Specifically Ms. Weber questioned whether the inclusion Clinical Social Work Federation (CSWF) as an approved provider would exclude a licensee from submitting for approval continuing education credit for courses offered by other providers.

Findings of Fact with Respect to the Evidence and Information Submitted

Based upon the evidence received, the Board finds the following facts to be supported by the evidence:

1. There were no written comments submitted in regard to hearing concerning the proposed amendments to the Regulations.

2. The Board heard public comment from Candita Weber. The addition of the Clinical Social Work Federation (CSWF) as an authorized provider does not make CSWF the exclusive provider for continuing education. Rule 7.2.1 provides that the Board will accept for continuing education those courses designated for social workers offered by the Association of Social Work Boards (ASWB) and the National Association of Social Work (NASW) and the American Psychological Association (APA). In addition, a licensee may have any other course evaluated for acceptability at the time the course is submitted for license renewal. The Board finds that no change is required to the proposed regulation as a result of the public comment.

3. The Board proposed to amend regulation 7.2.1.1 in response to the written request of the CSWF to be designated as an authorized provider in order to have its courses for clinical social workers accepted by the Board for continuing education credit. The CSWF submitted that it is the only national organization that represents clinical social workers exclusively and should be approved as an authorized provider.

4. The Board reviewed the materials submitted by Abigail P. Grant, MSW, President, CSWF, in support of its request. The Board proposed to amend regulation 7.2.1.1 to include CSWF as an approved provider based on its review of the materials.

5. The Board is persuaded that CSWF is an acceptable continuing education provider and therefore approves CSWF as an authorized provider. Courses provided by CSWF will be accepted for continuing education credit provided they are designated for clinical social workers and comply with the remainder of the requirements set forth in Rule 7.2 and its applicable subparts.

Decision and Effective Date

The Board hereby adopts the proposed amendments to its rules and regulations 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 11, May 1, 2005, without any changes and as attached hereto as Exhibit A.

SO ORDERED this 20th day of June, 2005.

BOARD OF CLINICAL SOCIAL WORK EXAMINERS

Dr. Maria Carroll, Professional Member, President

Gloria Ho-Ruggiero, Professional Member, Vice President

Robb H. Carter, Public Member

Ralph F. Robinson, Jr., Professional Member

7.0 Continuing Education

7.1 Required Continuing Education Hours:

7.1.1 Hours Required. All licensees must complete forty-five (45) hours of continuing education during each biennial license period. For license periods beginning January 1, 2005 and thereafter, documentation, as required by Rule 7.4, of all continuing education hours must be submitted to the Board for approval by October 31 of each biennial license period.

7.1.2 Proration. At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be prorated as follows:

License Granted During First Year Of Licensing Period	Credit Hours Required
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January 1 - June 30	35 hours
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July 1 - December 31	25 hours
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License Granted During Second Year Of Licensing Period	Credit Hours Required
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January 1 - June 30	15 hours
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July 1 - December 31	5 hours
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7.1.3 Hardship. A candidate for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good Cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception.

2 DE Reg 775 (11/1/98)

7.2 Definition and Scope of Continuing Education:

7.2.1 Continuing Education is defined to mean acceptable courses offered by colleges and universities, televised and internet courses, independent study courses which have a final exam or paper, workshops, seminars, conferences and lectures oriented toward the enhancement of

clinical social work practice, values, skills and knowledge, including self-directed activities as described herein. The following types of courses are NOT acceptable for credit: business, computer, financial, administrative or practice development courses or portions of courses.

7.2.1.1 The Board will accept for continuing education credit all courses designated for clinical social workers which are offered by the Association of Social Work Boards (ASWB), the National Association of Social Work (NASW), the Clinical Social Work Federation (CSWF) and the American Psychological Association (APA) approved providers. Other courses will be evaluated for acceptability at the time they are submitted for license renewal. The Board will no longer "pre-approve" continuing education courses.

7.2.1.2 Acceptable Courses, other than those approved pursuant to Rule 7.2.1.1, shall be courses which: increase the licensed clinical social worker's knowledge about skill in diagnosing and assessing, skill in treating, and/or skill in preventing mental and emotional disorders, developmental disabilities and substance abuse; AND are instructed or presented by persons who have received specialized graduate-level training in the subject, or who have no less than two (2) years of practical application or research experience pertaining to the subject.

7.2.1.2.1 Mental and Emotional Disorders, Developmental Disabilities and Substance Abuse are those disorders enumerated and described in the most current Diagnostic and Statistical Manual including, but not limited to, the V Codes and the Criteria Sets and Axes provided for further study.

7.2.2 The Board may, upon request, review and approve credit for self-directed activities, to a maximum of 10 hours per 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 (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

7.2.2.1 Self-Directed Activity shall include teaching, research, preparation and/or presentation of professional papers and articles, and other activities specifically approved by the Board, which may include one or more of the following. The Board shall require documentation of each activity as noted below:

7.2.2.1.1 Publication of a professional clinical social work-related book, or initial preparation/

presentation of a clinical social work-related college or university course (maximum of 10 hours);

7.2.2.1.1.1 Required documentation shall be proof of publication, or syllabus of course and verification that the course was presented.

7.2.2.1.2 Publication of a professional clinical social work-related article or chapter of a book (maximum of 5 hours);

7.2.2.1.2.1 Required documentation shall be reprint of publication(s).

7.2.2.1.3 Initial preparation/presentation of a professional clinical social work-related continuing education course/program (maximum of 2 hours, in addition to number of hours actually attended at the course/program) (Will only be accepted one time for any specific program);

7.2.2.1.3.1 Required documentation shall be outline, syllabus agenda and objectives for course and verification that the course was presented.

7.2.2.1.4 One year of Field instruction of graduate students in a Council on Social Work Education-accredited school program, in a clinical setting (maximum of 2 hours);

7.2.2.1.4.1 Required documentation shall be a letter of verification from school of social work.

7.2.2.1.5 Participation in formal clinical staffings at federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals (maximum of 5 hours);

7.2.2.1.5.1 Required documentation shall be a signed statement from the agency, school system, facility or hospital, from a supervisor other than the licensee, including date and length of staffing.

7.2.3 Any program submitted for continuing education hours must have been attended during the biennial licensing period for which it is submitted. Excess credits may not be carried over to the next licensing period.

7.2.4 An "hour" for purposes of continuing education credit shall mean 50 (fifty) minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

7.3 Continuing Education Hourly Requirements:

During each biennial licensing period, licensees shall complete a minimum of forty-five (45) hours of continuing education. At least three (3) of the 45 hours shall consist of courses acceptable to the Board in the area of ethics for mental health professionals.

7.4 Continuing Education Reporting and Documentation

7.4.1 Continuing Education Reporting Periods.

Licenses are valid for 2 year periods, renewing on January 31 of odd numbered years (e.g. January 31, 2005, 2007). Continuing education (CE) reporting periods run from November 1 to October 31 of the preceding two even-numbered years. Beginning with the January 2005 license renewal, all required continuing education shall be completed within the previous two year November to October period (e.g. between November 1, 2002 and October 31, 2004 for January 2005 renewal). The Board shall continue to have the discretion, however, to grant extensions of time in which to complete continuing education in cases of hardship, pursuant to 24 Del.C. §3912 and Rule 7.1.3.

7.4.2 In order to assure receipt of continuing education credits, a licensee must complete and submit the appropriate continuing education form provided by the Division of Professional Regulation no later than October 31st preceding the start of the next biennial licensing period.

7.4.3 In addition to the form, each licensee must submit the following documentation as to each course attended: a certificate of attendance or completion signed by the presenter and attesting to the number of hours the licensee attended and identifying the date and location of the course.

7.4.4 Prior to the end of each renewal period, the Board shall conduct a random audit of licensees to verify compliance with continuing education for that renewal period. Upon request from the Board, an audited licensee will be required to submit, in addition to the documents noted above, copies of agenda, outline and brochure, for each course submitted for credit. Originals or photocopies will be accepted and retained by the Board. The Board reserves its right to request additional documentation to verify CE compliance.

7.4.5 In addition to licensees selected for random audit, the Board also may request additional supporting documentation from any licensee whose renewal materials, as required by Rules 7.4.2 and 7.4.3, raise questions as to the completion or acceptable content of the course(s).

2 DE Reg 1680 (6/1/00)

4 DE Reg 1815 (5/1/01)

7 DE Reg 1667 (6/1/04)

8 DE Reg 880 (12/1/04)

***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 Board of Clinical Social Work Examiners is available at:**

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

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Parole	Mr. Joe F. Garcia	6/28/2009
City of Rehoboth Beach, Alderman	The Honorable Michael J. DeFiore	6/24/2005
City of Rehoboth Beach, Assistant Alderman	The Honorable Richard S. Contee	6/24/2005
Council on Shell Fisheries, Chair	Mr. Leonard Voss, Jr.	Pleasure of the Governor
Council on Shell Fisheries, member	Mr. Paul A. Satterfield	3/31/2008
Delaware Code Revisors	Mr. Bruce A. Rogers Mr. Daniel F. Wolcott, Jr.	6/28/2009 6/28/2009
Delaware Institute of Medical Education & Research, Board of Directors	Vincent Lobo, Jr., D.O.	6/7/2008
Delaware Interscholastic Athletic Association	Ms. Deborah B. Corrado Mr. John E. Oliver, Jr. R. Dianne Sole, Ed.D. Mr. Michael T. Wagner Ms. Kathleen H. Wilbur	5/13/2007 3/27/2006 6/28/2008 6/28/2008 6/28/2008
Delaware Natural Areas Advisory Council	Mr. David J. Athey Mr. Terrance L. Higgins	6/28/2009 6/30/2009
Delaware Nutrient Management Commission	Mr. Andrew H. Manchester Mr. Francis J. O'Neill, III	3/15/2008 3/15/2008
Delaware Solid Waste Authority	Ms. Suzanne C. Moore	6/22/2008
Enhanced 911 Emergency Reporting System Service Board	The Honorable Finley B. Jones, Jr.	6/28/2008
Environmental Appeals Board	Mr. Harry E. Hunsicker, III Mr. Sebastian A. LaRocca	6/29/2008 6/30/2006
Greater Wilmington Convention and Visitors Bureau	The Honorable Joseph G. DiPinto Mr. Ronald Kosh	6/30/2008 6/30/2008

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Merit Employee Relations Board	Mr. Paul R. Houck	6/28/2008
	Mr. John F. Schmutz	6/28/2008
Merit Employee Relations Board, Chair	Ms. Brenda C. Phillips	6/28/2008
New Castle County Board of Elections	Mr. William A. Baker	6/28/2009
	Mr. Orval L. Foraker, Jr.	6/28/2009
	Mr. Noel H. Kuhrt, Jr.	6/28/2009
	Ms. Marilynn A. Parks	6/28/2009
Newark Housing Authority	Mr. W. David Weddington, Jr.	10/23/2008
Office of Management and Budget, Director	The Honorable Jennifer W. Davis	Pleasure of the Governor
Public Integrity Commission	Mr. William W. Dailey, Jr.	7/8/2005
State Board of Education, President	Ms. Jean W. Allen	Pleasure of the Governor
Sussex County Board of Elections	Mr. Paul L. Norton	6/28/2009
	Mr. Charles E. Short	6/28/2009
Tax Appeals Board	Mr. Steven R. Director	6/28/2008
	Ms. Cynthia L. Hughes	6/28/2008
Tax Appeals Board, Chairperson	Mr. Todd C. Schiltz	6/28/2008
Town of Bethany Beach, Alderman	The Honorable Sally J. Byrne	Term to commence 6/24/2005, and continue for one year
Town of Bethany Beach, Deputy Alderman	The Honorable Robert G. Dolan	Term to commence 6/24/2005, and continue for one year

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Town of Dewey Beach, Alderman	The Honorable Marvin Guberman	Term to commence 6/24/2005, and to expire 6/28/2007
Town of Dewey Beach, Assistant Alderman	The Honorable Barry R. Hickman	Term to commence 6/24/2005, and to expire 6/28/2007
Town of Laurel, Alderman	The Honorable Paul H. Sheridan	Term to commence 6/24/2005, and continuing pursuant to the Town of Laurel charter
Town of Newport, Alderman	The Honorable Timothy J. Kucharski	Term to commence 6/24/2005, and continuing pursuant to the Town of Newport charter
	The Honorable Joe Patrick Yeager	Term to commence 6/24/2005, and continuing pursuant to the Town of Newport charter
Transportation Development and Funding Options Committee	Ms. Lindsay Davis Burnham	Pleasure of the Governor
	Mr. John J. McMahan, Jr.	Pleasure of the Governor
	Mr. Gerard M. McNesby	Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Transportation Development and Funding Options Committee	Mr. Scott Rathfon	Pleasure of the Governor
Violent Crimes Compensation Board	Mr. Stephen L. Manista	6/28/2008
Wastewater Facilities Advisory Council	Mr. Lee J. Beetschen Mr. Manubhai C. Karia	6/28/2008 6/28/2008

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
Site Investigation and Restoration Branch**

**Arsenic Risk Management Proposal Draft Background
Document**

June 22, 2005

Summary

This document reflects a proposal for public comment by Department of Natural Resources and Environmental Control (DNREC) staff, working with other state agency staff, to establish a cleanup goal for arsenic in soil at residential settings to background levels—using 11 parts per million (ppm) as a default background concentration, and to undertake a significant public participation process to solicit and use public input before finalizing this cleanup goal. It has been prepared in response to Governor Ruth Ann Minner's June 9, 2005 directive to DNREC Secretary John A. Hughes to "review...and propose appropriate standards and policies" for arsenic in soil, focusing on ensuring the health and safety of Delawareans, and to solicit public input on the draft arsenic standard prior to adoption. The DNREC Division of Air and Waste Management staff has prepared this background document, in collaboration with the Division of Water Resources (DWR), the Division of Public Health (DPH), the Department of Agriculture (DDA) and the Department of Justice (DOJ) as part of DNREC's response to Governor Minner's directive.

This document is intended to support the public participation process by providing the supporting information and rationale for DNREC's proposal. To help facilitate this public involvement process, it has been drafted for a general, not a specialized technical audience. As such it contains background information on scientific issues (e.g., chemistry, geology and toxicology of arsenic) and describes the basis for setting cleanup standards and goals. After this background information, the document considers several policy options for alternative standards, and summarizes the implications for each option. The document is intended to be used in combination with discussions between DNREC staff and interested public to allow for a constructive interaction, rather than presuming to be a stand-alone document. Section 5 provides more discussion of the intended public participation process.

The basis for DNREC's proposal (See Option C, Section 3.3) to establish a cleanup goal of background concentration, with a default background of 11 ppm, is the need to reduce public exposure to Arsenic as low as possible. This proposal will be effective in draft immediately upon release and in final form upon adoption by the Secretary of DNREC. For carcinogens like Arsenic, Delaware law mandates that standards be set at levels associated with an incremental lifetime cancer risk increase of one in one hundred thousand ($1/100,000$ or 1×10^{-5}) or at background. Using standard assumptions about exposure and dose, a background cleanup goal (11 ppm) could result in a slightly elevated lifetime cancer risk. DNREC staff and other participating state agencies do not believe this elevated risk is realistic because of the number of conservative assumptions on which this risk-to-dose relationship is based. These assumption include: all individuals eat the same amount of soil during for their entire life, that all of the Arsenic to which a person is exposed is in the most toxic form, and that all the Arsenic is bioavailable (See Section 1.4 and Section 1.5). Although these assumptions, adopted from U.S. EPA guidance, may appear extremely conservative, DNREC believes it is prudent to consider these assumptions to ensure protection of human health.

The background default concentration of 11 ppm should be possible to achieve during cleanups in most situations because it appears to reflect a midrange of the background concentrations of Arsenic found in Delaware soils. A cleanup goal lower than 11 ppm would not be technically feasible because the background concentrations in Delaware soils are higher in many situations. The cost implication of an 11 ppm default background concentration is not yet clear. It is possible it could result in fewer cleanups being completed because of the cost to complete each cleanup to this standard. DNREC staff will continue to collect information on this issue, but will be implementing cleanups at residential sites to the goals established, regardless of the cost.

This proposal also includes a schedule to review this standard annually to determine whether there is new information about the toxicity of Arsenic to ensure the standard remains adequately protective and compliant with the legal requirements in Delaware. This review will include public participation.

1.0 Background Information

In recent months concerns have arisen from staff in the Department of Natural Resources and Environmental Control (DNREC), and the general public, about the recent Arsenic standard adopted in June 2004. As a result,

Governor Minner on June 9, 2005, (See Attachment A) directed DNREC Secretary John Hughes as follows:

Arsenic is among a number of toxic substances known to cause cancer and to which our citizens may be exposed to in their communities and workplaces. Whether it is derived from industrial or natural sources, we have a duty to protect our citizens from harmful exposure to toxic substances, such as arsenic.... Accordingly, I am directing you to lead an immediate and expedited review of standards and policies related to arsenic cleanup. This review should include:

- Evaluation of the best scientific information available;
- Public involvement;
- Involvement of other agencies, including the Department of Public Health and Social Services; and
- Consideration of standards and policies used by EPA and other states.

Immediately after the Governor's tasking, DNREC Division of Air and Waste Management (DAWM) Director, James D. Werner convened a meeting of technical and management staff from DNREC DAWM and the Division of Water Resources (DWR), the Division of Public Health (DPH), the Delaware Department of Agriculture (DDA) and the Department of Justice (DOJ) (see Attachment B for list of attendees) to scope out the task and develop a cooperative approach to respond. The group agreed to work together to review the current standard and policies, per the Governor's request. The staff work group also committed to obtaining and using the best technical and legal input in developing a proposal, and to subject that proposal to public comment.

In assessing the June 2004 Interim Standard, the Delaware state agency staff who met agreed that the DNREC was remiss in not including public involvement in the development and adoption of the current standard. From a technical perspective, the group agreed that, because the assumptions used by EPA and scientific bodies in the development of the risk assessment calculations are sufficiently conservative¹ that the interim standard did not pose an imminent risk or substantial lack of protectiveness. Nonetheless, the staff work group agreed that rigorous technical and legal analysis, with public input was appropriate to ensure developing a cleanup standard that is adequately protective of human health and has earned public confidence. Finally, the staff work group agreed that whatever standards and policies were developed, it should be

reviewed on a regular basis and include public input. The June 2004 DNREC Air and Waste Management Division memorandum articulating an interim policy on Arsenic included among other things, a timetable for reviewing the interim policy every six months. Until now, DNREC had not conducted such a follow-up review.

In addition, the staff level working group quickly reached consensus on three fundamental principles regarding the establishment of a new cleanup goal for Arsenic in soil. The principles must be:

1. Based on adequate public comment and involvement because of the fundamental policy nature of the risk choices to be made and, accordingly, the need for public involvement in decisions that affect them;
2. Informed by the best available scientific information and the best available risk assessment advice from DPH and other scientific sources; and
3. In addition to the Governor's directive to base a new standard on the evaluation of the best scientific information available, public involvement, and consideration of standards and policies used by EPA and other States, the agency staff agreed that a new standard must also be consistent with DNREC's legal mandate for risk management.

The staff working group developed a draft outline of the topics to be covered in the proposed risk management revision and divided up task assignments. The group did not address in detail or resolve the question of what is the scope of the applicability of whatever standard is proposed and established (i.e., conversions of industrial sites to residential, agricultural site conversion, golf courses, etc.). The group

1. "Conservative" is used here to characterize erring, if anything, on the side of protectiveness. This tendency is indicated by the use of the so-called "precautionary principle." Examples of conservative assumption include the exposure assumptions that all arsenic is the most toxic inorganic form in the physical and chemical form that is most bioavailable (i.e. absorbed by the body and metabolized), and that all individuals consume through ingestion (eating) the same amount of soil contaminated with equal amounts of arsenic. Although some have argued these assumptions are overly conservative, there are other assumptions that may be used in the exposure and risk assessment that are not conservative, such as additive effective of unidentified contaminants that may be present but not found, the lack of synergistic effect (greater than the sum of effects from exposure to two or more contaminants, like tobacco smoke and asbestos), and genetic variation in sensitivity of different individuals.

agreed to seek advice from legal counsel and public input on the legal framework governing the question of scope and applicability of the standards and policies.

The general scope of this draft background document is focused on the issue of establishing a protective and legally mandated goal for surface soil (approximately 0-6 inches deep) concentration for Arsenic in residential or unrestricted land use situations. The proposed action level can be found in Section 3.6. Other land use situations (e.g., industrial or commercial) are addressed using risk-based corrective action guidance, which may include considerations and assumption about current and future land use. To ensure a manageable scope for this background document, it does not consider other potential exposures to Arsenic in food, drinking water or occupational settings such as deep mining, metal smelting, etc. The Department sought to write this draft background document in plain English to maximize its accessibility to a wide and general audience and help facilitate an informed public discussion of the topic.

1.1 Arsenic

The study of toxicology is dominated by the ancient adage,

“All Substances are poisons; there is none which is not a poison. The right dose differentiates a poison and a remedy.”²

Arsenic is perhaps the best example of this adage in practice. A recent *National Geographic* article referred to Arsenic as “...the poison of kings and king of poisons.”³ Arsenic is colorless, tasteless and odorless.

Only a small amount of Arsenic can be harmful. Approximately 70-200 milligrams of Arsenic trioxide can be fatal. Based on this assumption, an amount of Arsenic weighing the same as one U.S. nickel (five grams) would contain 16 to 71 fatal doses. In the United States, the average daily dietary intake of Arsenic is approximately 30 micrograms, or 0.03 milligrams – approximately 0.04 percent of a fatal dose. Arsenic may enter the food chain

through a variety of natural or unnatural mechanisms, such as eating shell fish, which have eaten algae in which naturally-occurring arsenic has accumulated. Hence, at least 2,000 times the average daily dietary dose in the U.S. would be required to receive a fatal dose.⁴

In the 5th Century B.C., Hippocrates used Arsenic to treat ulcers. In the 18th Century, Arsenic was an ingredient in Fowler’s solution, created in 1786, for treatment of psoriasis.

In the early 20th Century, Paul Ehrlich considered the father of modern chemotherapy, promoted a form of Arsenic (“Salvarsan”) as the first treatment for syphilis. These therapies continued in use until the 1940s when they were

replaced by modern antibiotics.⁵ The FDA recently approved Trisenox (Arsenic trioxide) for the treatment of patients with acute promyelocytic leukemia.⁶

Traces of Arsenic found in the French Emperor Napoleon’s hair have led to speculation that he died of Arsenic poisoning, either intentionally or accidentally. Arsenic was found in the wall paper at his Longwood estate, which was painted with Scheele’s Green, which contains

copper arsenide.⁷

The recent history of Arsenic in Delaware is one of clear public concern and need for effective public health protection. Delawareans have expressed concerns about the incidence of cancer and the potential link to environmental

causes.⁸ The potential link between Arsenic and cancer has been raised in the news media and public meetings.⁹

4. Physicians Desk Reference, see http://www.pdrhealth.com/drug_info/nmdrugprofiles/nutsupdrugs/ars_0026.shtml, Accessed on June 13, 2005.

5. Agency for Toxic Substances and Disease Registry, *Case Studies in Environmental Medicine: Arsenic Toxicity*, http://www.atsdr.cdc.gov/HEC/CSEM/Arsenic/exposure_pathways.html, Accessed June 13, 2005.

6. See <http://www.fda.gov/bbs/topics/ANSWERS/ANS01040.html>. Accessed June 13, 2005.

7. Smith, Roger, Dartmouth Medical School. See <http://www.dartmouth.edu/~toxmetal/TXSHas.htm>. Accessed June 13, 2005.

2. Attributed to Paracelsus, 16th Century German-Swiss physician and alchemist. See generally, Klaassen, C.D., Casarett and Doull, *Toxicology, The Basic Science of Poisons*, 5th ed., McGraw-Hill, NY, 1996.

3. Newman, Cathy, “The Poison Paradox: Too Much can Kill, A Little Can Cure,” *National Geographic*, May 2005 page 8.

Arsenic has not been produced in the United States since 1985, although the U.S. continues to be the world's largest consumer (21,000 tons in 2003) with most Arsenic being imported from China.¹⁰ Arsenic has been used and distributed in the environment in a variety of ways. Here are some examples of Arsenic sources:

- Chromium Copper Arsenate (CCA) was used to treat wood to prevent decay and allow wood decks and fences to last longer, thereby reducing the number of trees harvested and the labor to replace the wooden structures. Arsenic was used in CCA wood treatment for nearly 50 years until a voluntary phase-out began for residential applications at the end of 2003.¹¹
- Arsenic was used in tanneries to preserve skins based on the observation that Arsenic killed bacteria that cause flesh to rot.
- Arsenic was used as embalming fluid during the Civil War based on this same principle and has recently been found in Civil War cemeteries.¹²
- Arsenic is used in chicken feed to prevent disease, thereby increasing productivity of growing chickens and reducing costs of food to consumers, and resulting in the land application of chicken litter to fertilize farm fields and distribution of residual Arsenic on land. No widespread soil or groundwater contamination has yet been identified from this distribution, however, the University of Delaware is currently engaged in research to better understand the fate and transport of Arsenic in the

poultry industry.¹³

- Arsenic continues to be an ingredient in many pesticides and lawn fertilizers (see Table 1).
- Until recently, Arsenic was used in “maintenance-free” auto batteries.
- Arsenic is used as an antifriction agent in ball bearings.
- Gallium Arsenic and indium Arsenic are used in semiconductors.

Although the selection of a standard for Arsenic is ultimately a policy issue decided with public involvement (See Sections 2 and 3), there are a variety of scientific disciplines that can help form this decision, including:

- chemistry (what are the different forms of Arsenic and how is it measured?);
- geology (where does Arsenic come from in rocks and soil?); and
- toxicology (what are the health impacts of Arsenic exposures and at what dose).

Table 1: Arsenic Content of Some Commercially Available Fertilizer Products and Potting Soils¹⁴

Product Name	Arsenic Concentration
	(parts per million)
Schultz Professional Potting Soil Plus/African Violets & Blooming Plants 0.08-0.14-0.09	128
Scotts All-Purpose Plant Food 18-13-13	50.9
Schultz Professional Potting Soil Plus 0.08-0.12-0.08	34.55

8. Delaware Division of Public Health/Delaware Health and Social Services, *Delaware Cancer Incidence and Mortality Rates*, April 2005.

9. Montgomery, Jeff, “State considers change in Arsenic exposure rules,” *News Journal*, June 8, 2005.

10. Brooks, William E., “Arsenic”, From USGS Minerals Yearbook, 2002.

11. See <http://www.epa.gov/oppad001/reregistration/cca/> and <http://www.cpsc.gov/phth/ccafact.html>, June 13, 2005.

12. Konefes, J.L., and McGee, M.K., 1999, Old Cemeteries Arsenic, and Health”, Cultural Resources Management Online,

13. Christen, Kris “Chickens, manure, and Arsenic” *Environmental Science and Technology*, March 21, 2001.

14. Source: Washington State Dept. of Agriculture: <http://agr.wa.gov/PestFert/Fertilizers/ProductDatabase.htm> Washington State's Law and Rules Governing Metals in Fertilizers, Minerals, and Lime: <http://agr.wa.gov/PestFert/Fertilizers/LawsRules.htm> Association of American Plant Food Control Officials (AAPFCO) Policy Regarding Metals in Fertilizers:<http://www.aapfco.org/metals.htm>

Schultz Multicote Time Release Outdoor Plant Food 17-17-17	28.2
Schultz Enriched Garden Soil for Flowers & Vegetables 0.5-.10-.05	25.57
Ace Premium Starter Fertilizer 18-29-6	14.6
Lesco Polyvex Professional Turf Fertilizer 18-24-12	11.68
Ortho Rosepride Flower & Rose Enhanced 12 Week Fertilizer 15-5-10	13.1
Schultz Bulb Plus Potting & Planting Mix Time Release 0.08-0.16-0.08	11.5
Ace Green Turf Starter Fertilizer 20-27-5	10.8
Bayer Advanced Lawn Season-Long Grub Control w/ Fertilizer 12-18-6	10.5
Ace Acid Loving Plant Food 30-10-30	10

1.2 Arsenic Chemistry

Arsenic, a naturally occurring element, is found throughout the environment. Arsenic is found in two forms: organic and inorganic.

Generally, Arsenic combined with elements such as oxygen, chlorine and sulfur forms inorganic Arsenic compounds. Examples of inorganic Arsenic compounds include, but are not limited to, Arsenic pentoxide and trioxide. The pentoxide form of inorganic Arsenic is referred to as arsenate [As (V)] and is relatively immobile in soil. The trioxide form of inorganic Arsenic is referred to as arsenite [As (III)] and is relatively mobile in soil. A United States Geological Survey (USGS) and New Jersey Department of Environmental Protection (NJDEP) study found arsenite concentrations of more than 100 ppm in soil at depths of 100 cm (approximately 3 feet). Generally, Arsenic combined with carbon and hydrogen forms organic Arsenic compounds. Examples of organic Arsenic include, but are not limited to, arsanilic acid, arsenobetaine and dimethylarsinic acid.

Environmental Arsenic testing is conducted in the field or in a fixed laboratory as a measurement of total Arsenic. There are many test procedures used to calculate the concentration of total Arsenic in the environment. The most common test procedures utilized to test for Arsenic are: Atomic Absorption (AA), Inductive Coupled Plasma (ICP) and X-ray Fluorescence (XRF). XRF and AA/ICP are US EPA approved methods and the results received are equally accurate and precise. Only a qualified professional can

interpret and compare the variations and similarities between the two methods. Arsenic risk values (see Table 2) are based on receiving AA/ICP results. Therefore, the AA/ICP results are generally used in performing risk assessments. The cost for performing AA/ICP analysis is much higher than XRF. Therefore, XRF data is used as a screening analysis for conducting site evaluations because of cost considerations.

The Standard Operating Procedure for Chemical Analytical Programs (SOPCAP) under the Hazardous Substance Cleanup Act provides detailed policy for the analysis of environmental samples and the use of XRF as a screening tool.

Table 2: Variations in Arsenic Risk Management State Reference Residential Use Non-Residential Use

West Virginia	Voluntary Cleanup Program Based on Default Background (See Table 3)	13 mg/Kg (ppm)	Not Applicable
New Jersey	Cleanup Standard May 1999	20 mg/Kg or Site Specific Background and Risk Assessment	20mg/Kg or Site Specific Background and Risk Assessment
Maryland	Soil Cleanup Standard August 2001	2 mg/Kg or Site Specific/Default background and Risk Assessment (See Table 3)	3.8 mg/Kg or Site Specific/Default Background and Risk Assessment (See Table 3)
New York	Soil Cleanup Objective	7.5 mg/Kg or Site Specific or Default Background (See Table 3)	Not Applicable
US EPA	Soil Screening Values April 2005	0.43 mg/Kg or Site Specific Background and Risk Assessment (See Table 3)	1.9 mg/Kg or Site Specific Background and Risk Assessment (See Table 3)
Delaware	Delaware Uniform Risk Based Standard (Soil Screening Value)	See USEPA above	See USEPA above
Virginia	Lowest Soil Screening Value	5.8 mg/Kg or Site Specific/default background and Risk Assessment	5.8 mg/Kg or Site Specific/default Background and Risk Assessment
Pennsylvania	Direct Contact Medium Specific Concentration In Soil	12 mg/Kg or site specific background and Risk Assessment	53 mg/Kg or Site specific background and Risk Assessment

1.3 Geology of Arsenic

Two regional geologic provinces are present in Delaware. The northern part of the state, north of a line extending between Newark and Wilmington, is underlain by the igneous and metamorphic bedrock of the Appalachian Piedmont Province. South of the Newark-Wilmington line, the remainder of the surface deposits of the state lie within the Atlantic Coastal Plain Province. The two provinces are very different in age, in the way they formed, and in the types of rocks they contain.¹⁵

The Piedmont Province consists of very old (480 million years of age) "hard rock" or crystalline metamorphic bedrock which is generally of two distinct types; (1) the Wilmington Complex and (2) the Glenarm Series. These rocks formed from shallow coastal sediments behind a volcanic island chain that was subjected to plate deformation causing high-grade heat and pressure.^{16,17}

The Coastal Plain Province consists of a seaward-thickening wedge of sedimentary rocks and unconsolidated sediments from 120 million years of age to recently formed marsh deposits. This wedge of gravel, sand, silt, and clay thickens from 0 feet thick to nearly 8,000 feet thick at the southern border of Delaware. These sediments came from two sources; (1) non-marine sediments eroded from the Piedmont and the Appalachian Mountains and carried by streams to the coast, and (2) marine sediments that were deposited from the ocean at times when global sea level were high.¹⁸

There has been no comprehensive study of the relationship between the rocks of the Delaware Piedmont and the naturally-occurring Arsenic in the soil. There are a number of methods used to help determine "background" (natural and other) concentrations of arsenic, which are described in Attachment D and summarized here. One method for determining natural background is to analyze arsenic concentrations in soil deep below the ground surface,

15. Delaware Geological Survey, 1966, Generalized Geologic Map of Delaware.

16. Delaware Geological Survey, 1966, Generalized Geologic Map of Delaware.

17. Delaware Geological Survey, 2000, Bedrock Geology of the Piedmont of Delaware and Adjacent Pennsylvania. Report Of Investigation No. 59 with accompanying Geologic Map No. 10.

18. Delaware Geological Survey, 1966, Generalized Geologic Map of Delaware.

which can be obtained from "borrow pits" where clean soil is excavated for use as clean fill elsewhere. The minerals that predominate in the Piedmont rocks are not generally considered Arsenic bearing but the composition of in-place piedmont soils indicate that they do contain trace amounts of Arsenic. The borrow pit samples were obtained from an area where there was no evidence of prior excavation or disposal. The use of deep soil for determining natural background concentrations of arsenic is a valid method if there is no mechanism for arsenic to have migrated to the deep soil. Also, the arsenic is not likely to have migrated down into deep soils because the science indicates that arsenic does not migrate through soil except for very short distances and usually at only high source soil concentrations.

Soil samples collected from borrow pits in New Castle County near Concord Pike (Rt. 202 and I-95) approximately 30-50 feet below ground surface have been found to have Arsenic concentrations ranging from 3 to 18 parts per million (ppm) and a median of approximately 10 ppm (See Table 3). The source of Arsenic is probably from a Glauconite green sand layer formed millions of years ago. Arsenic was part of the combination of the original elements contained on Earth when the planet was formed approximately 4.5 billion years ago. Over the billions of years, arsenic has subsequently been redistributed by a variety of normal geologic events including volcanic eruptions.

Table 3: Borrow Pit Soil New Castle County¹⁹

Sample ID	Sample Date	Arsenic Result mg/Kg (ppm)
G1	5/6/04	14.0
G2	5/6/04	11.0
G3	5/6/04	9.5
G4	5/6/04	6.7
G5	5/6/04	18.0
G6	5/6/04	10.0
G7	5/6/04	5.8
G8	5/6/04	7.6
G9	5/6/04	3.3
G10	5/6/04	4.9
G11	5/6/04	5.6
G12	5/6/04	13.0

19. Riverfront Headquarters Site (unused borrow source), May 2004.

G13	5/6/04	14.0
G14	5/6/04	13.0
G15	5/6/04	13.0

There is evidence for a relationship between the type of geologic unit and the Arsenic soil concentration in the soil found in the Coastal Plain. The geologic creation of arsenic-bearing glauconite is the result of depositions of algae that take up, metabolize, and retain Arsenic in surface waters. When the algae dies and settles to the bottom, the Arsenic in the dead algae becomes part of the deposit. When this process happens over thousands of years, the Arsenic will accumulate in estuaries, which are now geologically mapped as Glauconite or greensands. Glauconite is dull green iron-silicate mica mineral found in shallow marine sediments. Bands of Glauconite are found in some of the Coastal Plain of New Jersey and southern New Castle County, Delaware, and in the deeper units in southern Delaware. The soils that form over these glauconite-containing units, called "greensands", are highly productive agriculturally and have²⁰ been determined to contain naturally-occurring Arsenic.

A study by Dooley analyzed the composition of naturally occurring New Jersey greensands at seven sites, reporting a range of 7 to 31 mg/Kg (ppm) of Arsenic. Therefore, it has been shown that greensand soils contain Arsenic as "natural background". Greensands soils have been used as a soil amendment to improve productivity in other less productive areas (areas not mapped as having Glauconite deposits). As a result, it is likely that Arsenic containing Glauconite Greensands are now more widespread²¹ than the geologic mapping would indicate.

The USGS reported Arsenic levels of 4.8 to 23 mg/Kg (ppm) in samples of stream sediments from the Lower Susquehanna River. Similar amounts of Arsenic were found in another USGS study in which the average arsenic soil concentrations were reported as 8.3 mg/Kg for New Castle County, 4.6 mg/Kg for Kent County, and 4.9 mg/Kg (ppm)²² for Sussex County.

20. Department of Ecology, Evolution and Natural Resources, Rutgers University, 2002, Greensand and Greensand Soils of New Jersey, A Review

21. Dooley, J.H., 2001, Baseline Concentrations of Arsenic, Beryllium, and Associated Elements in Glauconite and Glauconite Soils in the New Jersey Coastal Plain, New Jersey Geological Survey, Trenton. 238 pgs.

A 1993 DNREC study found a similar distribution with average background concentrations of 10.6 mg/Kg in New Castle County, 7.8 mg/Kg in Kent County, and 8.7 mg/Kg in Sussex County. The maximum background reported was²³ 48mg/Kg (ppm).

1.4 Toxicology of Arsenic

The toxicology of Arsenic mainly depends on its chemical and physical form, exposure route and dose. The most toxic form of Arsenic is the inorganic form not its organic form. Among the forms of inorganic Arsenic the trioxide [As (III)] form, with a valence state (electronic charge) of 3, is more toxic than the pentaoxide form [As (V)], which has a valence state of 5. Some research has demonstrated circumstances in which the organic form of²⁴

Arsenic is converted to the inorganic form. The type Arsenic, As (III) and/or As (V) in soil depends on the exposed environmental conditions (whether in an oxygen rich or depleted environment, the amount total organic carbon, and the ph of soil) that effect the Arsenic form. Generally, the Arsenate [As (V)] is the most common oxidized form of Arsenic in soil. Arsenic strongly sorbs to iron and hydroxides on soil particles. In addition, sandy particles have a lower capacity to sorb Arsenic than clay and silt and therefore usually have less Arsenic content.

The Food and Drug Administration established standards for the concentrations of Arsenic in chickens, turkeys and swine, which are often fed pharmaceutical feed containing roxarsone, of 2 ppm in uncooked edible byproducts and 0.5 ppm in uncooked muscle tissue and eggs.²⁵

The International Agency for Research on Cancer (IARC) review has identified Arsenic as a carcinogen with

22. U.S. Geological Survey, 1984, Element Concentrations in Soils and Other Surficial Materials of the Conterminous United States, Professional Paper No. 1270.

23. State of Delaware, Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Underground Storage Tank Branch, 1993, Meet Groot, Inorganic Background Concentrations for Delaware Soils.

24. B. P. Jackson, P. M. Bertsch, M. L. Cabrera, J. J. Camberato, J. C. Seaman, and C. W. Wood, "Trace Element Speciation in Poultry Litter", *J. Environ. Qual.* 2003 32: 535-540.

“Human Sufficient Evidence.”²⁶ A common toxicology reference refers to Arsenic as a “Confirmed human carcinogen producing liver tumors.”²⁷ Arsenic in drinking water is associated with bladder cancer.²⁸

Symptoms from Arsenic exposure include hyperkeratosis, blackfoot disease, myocardial ischemia, liver dysfunction, epithelioma, and several cancers. The major risk from exposure to Arsenic is not from inhalation, but rather by ingestion.²⁹

1.5 Human Health Risk Assessment for Arsenic in Soil

Human Health Risk Assessment is a process to estimate the chance that a person will be harmed now or in the future if that person comes in contact with chemicals (for example Arsenic) present in a property (site). This process produces numbers that show how great (or small) the risks may be. For example, a conservative risk assessment would indicate that an individual living on a residential property for 30 years with 4 ppm (mg/Kg) of Arsenic in soil and ingesting (eating) 200 mg of soil as a child and 100 mg of soil as an adult each day for 350 days per year for 30 years will have a chance of developing cancer somewhere between zero and one in 100,000. For non-cancer health risk the acceptable standard is expressed as Hazard Index (HI) of one (1). The hazard quotient of 1 is the ratio of a representative site concentration in soil to that of a reference dose concentration determined to have non-cancer health effects. The HI of 1 for arsenic is 23 ppm, which is based on the assumption that a child age 1-6 years in a residential setting will ingest 200 mg/day of soil.

There is significant conservatism built into the risk assessment process. One of the assumptions is that 100% of

the Arsenic in the soil ingested by an individual will be absorbed by the human body (bioavailability). The USEPA Risk Assessment Guidance for Superfund (RAGS) Volume 1 Human Health Evaluation Manual (1989) includes a discussion of determining the relative bioavailability of a

chemical in the media of interest such as soil.³⁰ The bioavailability of a chemical in a soil matrix is influenced by many factors including the physical and chemical interaction with the matrix, in addition to the solubility and biological factors. For arsenic the oral toxicity factor that predicts the potential for causing cancer is based on humans ingesting arsenic in drinking water over long periods of time in Taiwan. These people experienced an increase in non-fatal skin cancers as compared to a group of people that did not ingest arsenic in drinking water. In this study, the arsenic is assumed to be 100% bioavailable for uptake into the gastrointestinal tract and the bloodstream. Arsenic in drinking water is present in a soluble form and therefore the bioavailability is high.

The arsenic present in soil is non water-soluble and binds to the soil matrix so less arsenic is available to be absorbed in human body. A recent study by Roberts et. al.³¹ showed that only about 10% to 25% of the Arsenic in soil was absorbed by monkeys when they were fed arsenic contaminated soil. The State of Florida Department of Environmental Protection (FDEP) has also published a study³² with extensive research by the University of Florida to determine the relative bioavailability for arsenic in soil as compared to the high bioavailability of arsenic in drinking water. FDEP used this information to recently make a protective science-based policy decision to adopt the default

25. 21 CFR 556.60

26. <http://www-cie.iarc.fr/monoeval/crthgr01.html>

27. Lewis, Richard J. (Ed.) “Carcinogenetically Active chemicals”, VanNostrand Reinhold, New York, 1991. (Arsenic, ARA750, CAS7440-38-2)

28. 65 Fed. Reg. 24488 (April 26, 2000).

29. Bhama, Rupinder K., and Max Costa, “Trace Elements, Al, As, Cd, Hg and Ni”, in *Environmental Toxicants: Human Exposure and Their Health Effects*, (Morton Lippman, Ed.) VanNostrand Reinhold, New York, 1992. at page 583.

30. USEPA (United States Environmental Protection Agency) (1989) Risk Assessment Guidance for Superfund. Volume 1, Human Health Evaluation Manual (Part A), Office of Emergency and Remedial Response, Washington, DC

31. Roberts, S.M., Weimer, W.R., Vinson, J.R.T., Munson, J.W., and Bergeron, R.J. 2002. Measurement of Arsenic Bioavailability on Soil Using a Primate Model. *Tox. Sci.*, 67:303-310.

32. Methodology Focus Group, Contaminated Soils Forum, (2003) Arsenic Bioavailability from Florida Soils: Uncertainty Evaluation of the University of Florida/Florida Department of Environmental Protection Study, January 8, 2003.

relative oral bioavailability factor of 33%, as a worst case risk assessment where there is potential for individuals to ingest arsenic in soil. This was implemented in February 2005.³³

If DNREC were to utilize 33% as the factor to reflect the worst case bioavailability for arsenic in Delaware soil, the result would be a three-fold increase in the soil standard for arsenic to 12 ppm for 1 in 100,000 cancer risk level (1×10^{-5}).

Other conservative assumptions:

Exposure Assumptions used by DNREC for Arsenic in soil is the worst case scenario which assumes that a child resident will ingest 200 mg of soil and an adult resident will ingest 100 mg of soil 350 days/year for a total of thirty years. This does not include a pica child.

Toxicity Assessment looks at how much of a substance causes what kind of harm to humans. Toxicity to humans is not usually measured directly by intentionally exposing people, for obvious ethical reasons. Rather it is determined indirectly, usually by extrapolation of animal studies to humans. Many conservative assumptions are made which include:

- The effects of size and biological differences between animals and humans.
- The effects of high doses fed the test animals versus the low dose humans usually encounter in their environment.

It is apparent from the discussion that uncertainties are inherent in the toxicity assumptions.

2.0 Basis for Setting Cleanup Goals and Standards

2.1 Arsenic Standard Setting Process

The process for selecting a soil concentration action level is ultimately a policy choice – a decision to be made with public involvement. The public has a fundamental right to be involved in decisions that could affect them. The decisions can and should be informed by good science and engineering, and much of this background document seeks to provide that information in a clearly accessible manner. Nonetheless, despite this sea of scientific information, however deep and carefully plumbed, the decision remains a

33. University of Florida, Center for Environmental and Human Toxicology, (2005) Technical Report: Development of Cleanup Target Levels (CTLs) for Chapter 62-777, F.A.C., February 2005.

policy choice. Hence, the process used by DNREC's Air and Waste Management Division will be focused on a constructive public involvement process, using the following steps:

1. Develop a background document and proposed revision for internal and interagency review.
2. Develop a public involvement plan, ensuring adequate opportunities for meaningful input from a variety of stakeholders, including various Department Advisory Committees and representatives of all interested parties.
3. Conduct public workshops to present and accept comments on the draft revision to the Arsenic action level and the supporting documentation.
4. Based on the workshop comments and the advisory committee inputs, develop a policy for signature by the Division Director, after review by other cooperating DNREC divisions and state agencies (DHHS/DPH, DDA, DELDOT).
5. Implement the policy with adequate opportunities for public oversight and involvement to ensure it is being implemented fairly.
6. Review and revise as necessary the action level to ensure it is keeping pace with new scientific research developments and to determine whether there are any implementation issues arising.

2.2 What Dose of Arsenic Causes Health Impacts?

The dose of arsenic³⁴ causing a health impact depends on a variety of factors, including:

- The chemical form of the Arsenic (e.g., organic versus inorganic);
- The person being exposed (children are more sensitive than adults);
- The route of exposure; and
- The type of health impacts being examined.

34. The "dose" is the technical term used to describe the amount of a substance ingested (i.e., a person eats or drinks) or inhales, measured by weight such as milligrams, in contrast to the concentration, which is a ratio of weights, such as ppm). A cleanup goal or standard is typically expressed in terms of a concentration, based on information about the dose known to cause a health impact, using simple mathematical relationships and assumptions about the amount of water a person drinks with contaminant, the amount of air a person breathes or the amount of soil a person eats, which are based on scientific studies about human physiology and behavior.

The prudent and most conservative (i.e., most protective) basis for evaluating health impacts from exposure to toxic substances are to focus on the health impacts that occur at the lowest dose. In the case of Arsenic, no lower threshold is recognized by EPA's Science Advisory Board³⁵ – i.e., some risk of cancer exists for virtually any Arsenic exposure. Hence, exposure standards for carcinogens like Arsenic are expressed in terms of the lifetime probability of dying of cancer, such as one chance in a million or one in ten thousand.

The underlying statute governing the Department mandate to protect human health and the environment regarding hazardous substances such as Arsenic is the Hazardous Substance Cleanup Act (HSCA), 7 Del.C. Chapter 91 law.³⁶ The HSCA regulations require that the Department perform cleanup activities to achieve standards that are protective of cancer risks using a lifetime cancer risk probability of 1/100,000 or, in loose scientific notation, 1×10^{-5} . In the case of Arsenic, however, the background concentrations of Arsenic averages approximately 11 ppm (with a range of up to 25-30 ppm), which is more than double the soil concentration (4 ppm) associated with a risk level of 10^{-5} for residential properties. The law and regulations directs that, in cases where the background concentration is higher than the concentrations associated with a risk level of 10^{-5} , then the background concentration shall be the cleanup goal for residential properties.

In addition to cancer, Arsenic is known to cause a variety of non-cancer effects, including neurological dysfunction. For non-cancer health risk, the acceptable standard is expressed as Hazard Index (HI) of 1. The hazard index of 1 is the ratio of a representative site concentration in soil to that of a reference dose concentration determined to

35. This so-called "Linear No-threshold Dose-Response" assumption is sometimes criticized as too conservative, and unrealistic. An alternative argument is that the conservatism in this assumption is not contradicted by any clear evidence, and that Arsenic is but one of a variety of carcinogens a person may be exposed to that may have an additive effect and consequently result in a higher probability of cancer, and in some cases these multiple exposures may have a synergistic effect where the cancer risk is higher than what would be expected by the simple additive effect of being exposed to two carcinogens simultaneously (e.g., asbestos exposure and tobacco smoke)

36. 7 Del.C. Chapter 91

have non-cancer health effects. The HI of 1 for arsenic is 23 ppm, which is based on the assumption that a child age 1-6 years in a residential setting will ingest 200 mg/day of soil.

2.3 Legal Mandate for Protecting Public Health

DNREC's legal mandate and authority for establishing action levels for soil cleanup (including Arsenic) to protect public health is based on the HSCA,³⁷ including the authority to promulgate regulations.³⁸ (See Attachment C). The law directs DNREC to establish procedures "for identifying cleanup levels based on site specific risks."³⁹ The HSCA regulations provide a limited basis for considering cost as well as "background" concentrations, which allows for some consideration of technical practicability (i.e., can it be achieved realistically using available technology) in the law.

The Secretary of DNREC has promulgated regulations under this HSCA authority to establish procedures for determining cleanup levels for releases of hazardous substances, which includes:

All remedies performed under these regulations shall attain a degree of cleanup of hazardous substances and control of further releases of hazardous substances that ensures protection of public health, welfare, and the environment. The cleanup levels will be determined using a risk-based approach on a site specific basis. The risk-based approach may include consideration of existing and likely future uses of the facility and related natural resources.⁴⁰

Accordingly, control of future land use is essential to the protectiveness of the remedy in cases where a cleanup assumes a future land use other than "unrestricted."⁴¹

The statute governing the Department mandate to protect human health and the environment regarding

37. 7 Del.C. Chapter 91

38. Section 9104(a)(2)

39. Section 9104(b)(2)(g)

40. "Regulations Governing Hazardous Substance Cleanup" at Subsection 9.1(1).

hazardous substances such as Arsenic is the HSCA 7 Del.C. Chapter 91. Section 9.4 of the HSCA regulations sets out a risk-based approach for establishing soil cleanup levels, and it identifies two types of risk to human health which must be protected: cancer risks and non cancer risks. The cancer risk level established in Subsection 9.4(2) is “ 10^{-5} ” (also expressed as 10^{-5}) which is defined in Subsection 2.1 to mean “the potential risk for one additional cancer death caused by exposure to a carcinogen in a human population of 100,000 in a lifetime.”

The HSCA regulations require that the Department perform cleanup to achieve levels that are protective of cancer risks using a lifetime cancer risk probability of $1/100,000$ or, in loose scientific notation, 10^{-5} . However, when the background concentration of a hazardous substance is higher than the 10^{-5} risk level, the regulations require that the background concentrations be used as the cleanup level. In the case of Arsenic, the background concentrations of Arsenic average approximately 11 ppm (with a range of up to 25-30 ppm) as discussed in Section 1.3 and Attachment D. Consequently, because the observed background concentration is higher than the concentrations associated (using standard dose and exposure assumptions) with a risk level of 10^{-5} (or a 4 ppm concentration for residential properties), the law directs DNREC to use background concentrations as a cleanup goal.

The law appears clear on this issue, and this is the direction DNREC staff will follow in conducting and overseeing cleanups: remove contaminated soil until a residual concentration is achieved that is equivalent to the local natural background for the area where possible. A “default background” concentration of 11 ppm should be used in cases where the guidance or historic contamination does not allow for a meaningful determination of background that is adequately protective.

2.4 Standards used by USEPA and other states

Several methods are used to determine cleanup standards. Some states call these standards screening values, other use default/site-specific background and/or site specific risk assessments and/or some combination of the above. Table 2 illustrates the various risk management

41. Delaware legislators are now considering a bill to establish a “Uniform Environmental Covenants Act” to provide a state statutory basis for controlling future land use through enforceable restrictive covenants, which proscribe certain activity and use limitations. See S.B. 112.

strategies (Arsenic standard application) by the USEPA and states throughout the region.

Some examples of cleanup goals in certain western sites where industrial contamination has occurred (e.g., ASARCO smelter in Tacoma Washington) include residential land use cleanup of 100 ppm. In Anaconda, Montana, EPA uses residential cleanup concentrations of 250 pm Arsenic.

In the District of Columbia, a panel recommends the adoption of the 20 ppm remediation level as proposed by the USEPA. The Panel believes that the 20 ppm remediation

level should not pose a health hazard to the community.⁴²

Many states, however, seek to reduce Arsenic concentrations to default or site specific background levels. Table 4 illustrates the default or site specific background value used by various states throughout the region. It is important to note that federal law and Delaware regulations do not require site cleanup below the background level.

Determining an Arsenic cleanup standard or goal is a difficult task, the flow chart below outlines Delaware’s Arsenic risk management strategy for the selection of a cleanup standard.

Table 4: State Specific Default Arsenic Background Level/Range⁴³

State	Arsenic (mg/Kg or ppm)
Delaware	11 average background
West Virginia	13 default background
New York	3-12 background range
Maryland	3.6-11 background range
Virginia	2.6-17 background range
Pennsylvania	Site Specific
New Jersey	8 (75th Percentile)

Arsenic Management Strategy

(Flowchart graphic not supported. Contact either DNREC or the Registrar’s office for a copy)

2.5 Environmental Justice Considerations

42. Report Of The District Of Columbia Mayor’s Spring Valley Scientific Advisory Panel, June 2001.

43. Soil Remediation for Natural Background, Historic Fill, Barry Fraco, NJDEP, 08/12/04.

The USEPA defines environmental justice (EJ) as the fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws,

regulations and policies.⁴⁴ DNREC has adopted this definition and policy and strives to implement cleanup strategies equitably in all communities throughout the State with explicit attention to ensuring adequate protection and public participation in situations where disadvantaged populations may bear a disproportionate amount of adverse environmental health effects from pollution. The Department ensures that facilities and environmental sites are held to the same standards throughout the State.

In determining safe cleanup standards for Arsenic, EJ considerations are of paramount importance. Diverse communities are often located in older neighborhood once home to early Delaware industry, including tanneries. For this reasons, it is extremely important that the process of determining “background” concentrations do not result in a less protective cleanup goal being used, simply because of a generally higher level of Arsenic not of natural origin. In other words, citizens should not be given any less protection simply because they live in old industrial neighborhood. This would not only be intolerably unjust, but would defeat the very purpose for which the environmental cleanup program is focused – to cleanup contaminated sites and make communities safe and livable.

To assure that the legacy of higher concentrations of arsenic that might occur in the soil of these communities does not result in less protective cleanup standards, DNREC staff will not use the “background” determination process prescribed in guidance for a local area unless an area can be found that is not impacted by historic contamination. If no un-impacted area can be found, a cleanup goal of 11 ppm, the average background concentration of Delaware soil, will be utilized. It is a Department priority to make environmental justice considerations paramount in these communities.

3.0 Policy Choices

There is no objectively “correct” soil concentration standard based solely on scientific and engineering information, although this information can certainly be useful. The selection of a soil concentrations action level and cleanup goal is ultimately a policy choice – a decision to be made with public involvement with as much public transparency as possible. The public has a fundamental right to be involved in decisions that could affect them. The

44. <http://www.epa.gov/compliance/environmentaljustice/index.html>, June 21, 2005

decisions can and should be informed by good science and engineering, and much of this background document seeks to provide that information in a clearly accessible manner. Nonetheless, despite this sea of scientific information, however deep and carefully plumbed, the decision remains a policy choice. Hence, this section presents a series of possible concentrations and the implications to help inform a policy dialogue and allow for meaningful public involvement.

3.1 Option A - 0.4 ppm

Using standard risk assessment exposure assumptions (e.g., how much soil a child or adult eats,⁴⁵) a soil concentration of 0.4 ppm would result in an incremental

lifetime⁴⁷ cancer risk increase of one in a million. This risk probability (1/1,000,000) is on the conservative end of the spectrum for “acceptable risks” that have been selected in the United States during the past 35 years of environmental policy making. Generally, environmental policy decisions in the U.S. have selected risks ranging from a high end risk of one in ten thousand (1/10,000) to one in a million (1/1,000,000). This risk-to-dose relationship (i.e., 0.4 ppm equals 1/1,000,000) also assumes that all of the Arsenic to which a person is exposed is the Arsenic in the most toxic form (i.e., it is inorganic Arsenic not organic Arsenic), and that the inorganic Arsenic is all trioxide [As (III) with a valence state (electronic charge) of 3], although some Arsenic exists in organic form and some inorganic Arsenic has a valence state of 5 [As(V)] or pentaoxide), rather than 3

45. Referred to as “pica” behavior, EPA estimates toddlers eat 20 grams of soil per day, or a 13.3 kg toddler ingesting 5,000 mg of soil in a single event. For evaluating the risk of cancer, EPA assumed adults weighing 70 kg would be exposed to the maximum concentration of each contaminant for 350 days a year for a lifetime (70 years), and that adults are assumed to ingest 50 mg of soil a day [9]. US Environmental Protection Agency. *Exposure factors handbook*. Washington, DC: US Environmental Protection Agency. Office of Research and Development. EPA/600/C-99/001; February 1999.

46. The term “incremental” here means cancer risk in addition to/above and beyond the “normal” background probability of cancer expected as a result of other factors such as other exposures, diet and genetic predisposition.

47. Assuming a 70-year lifetime xxx of exposure.

(See Section 1.2 on Arsenic Chemistry). It also assumes that 100% of the Arsenic in soil will be absorbed by the individual. A recent study with monkeys showed that only up to 25% is absorbed (bioavailability).

Perhaps the most obvious consideration to evaluating this 0.4 ppm option is technical feasibility. This 0.4 ppm concentration standard cannot be achieved realistically in the field during cleanups because the background concentrations of Arsenic found in the soil in Delaware are significantly higher than 0.4 ppm (See Table 4) Also, 0.4 ppm falsely implies a level of precision to the 1/10th of a ppm that is unattainable using typical analytical instrumentation.

3.2 Option B - 4 ppm

Using similar risk assessment exposure assumptions, a soil concentration of 4.0 ppm would result in an incremental lifetime cancer risk increase of one in a one hundred thousand. This risk probability (1/100,000) is in the middle of the spectrum for "acceptable risks" that have been selected in the United States during the past 35 years of environmental policy making.⁴⁸

This risk-to-dose relationship (i.e., 4.0 ppm equals 1/100,000) is also based on the conservative assumption that all of the Arsenic to which a person is exposed is the Arsenic in the most toxic form (i.e. it is inorganic Arsenic not organic Arsenic), and that the inorganic Arsenic is all trioxide (As (III) with a valence state (electronic charge) of 3), although some Arsenic exists in organic form and some inorganic Arsenic has a valence state of 5 [As(V) or pentaoxide], rather than 3 (See Section 1.2 and 1.3 on the Chemistry and Geology of Arsenic). It also assumes that 100% of the Arsenic in soil will be absorbed by the individual. A recent study with monkeys showed that only up to 25% is absorbed (bioavailability).

This 4.0 ppm concentration would be difficult to achieve during cleanups in most situations because the background concentrations of Arsenic found in the soil in Delaware are, on average, higher than 4.0 ppm (See Table 4).

This option could create a very significant budget shortfall to address many of the historic fill sites in the State that may not pose a risk to human health or the environment. Paradoxically, setting a more strict cleanup goal may result in less health protection because fewer sites may be cleaned up with the available funding, leaving some sites completely untouched by remediation, while other sites are cleaned up to more stringent cleanup goals.

48. Generally, environmental policy decisions in the U.S. have selected risks ranging from a high end risk of one in ten thousand (1/10,000) to one in a million (1/1,000,000).

3.3 Option C- 11 ppm

Using similar risk assessment exposure assumptions, a soil concentration of 11 ppm would result in an incremental lifetime cancer risk increase of approximately three in a one hundred thousand. This risk probability (3/100,000) is roughly in the middle of the spectrum for "acceptable risks" that have been selected in the United States during the past 35 years of environmental policy making. It is important to note that risk probabilities are generally not intended to be interpreted as anything more precise than order of magnitude (i.e., 1/10th or 1/100th NOT 2/100 or 3/100) estimates, so a risk extrapolation of 3/100,000 may imply greater precisions than is technically possible.

This risk-to-dose relationship (i.e., 11 ppm equals 3/100,000) is also based on the conservative assumption that all of the Arsenic to which a person is exposed is the Arsenic in the most toxic form (i.e., it is inorganic Arsenic not organic Arsenic), and that the inorganic Arsenic is all trioxide (As (III) with a valence state (electronic charge) of 3), although some Arsenic exists in organic form and some inorganic Arsenic has a valence state of 5 [As(V) or pentaoxide], rather than 3 (See Section 1.2 on the Chemistry of Arsenic). It also assumes that 100% of the Arsenic in soil will be absorbed by the individual. A recent study with monkeys showed that only up to 25% is absorbed (bioavailability).

This 11 ppm concentration would be possible to achieve during cleanups in most situations because the background concentrations of Arsenic found in the soil in Delaware are, on average, higher than 4.0 ppm (See Table 4). In some cases, the wide area background concentrations of Arsenic are higher than 11 ppm, and significant resources could be used in seeking to attain a cleanup goal of 11 ppm, which would be a relatively small decrease in the Arsenic concentration and accordingly a small incremental decrease in risk.

This option could create a significant budget shortfall to address many of the historic fill sites in the State that may not pose a risk to human health or the environment. Paradoxically, setting a more strict cleanup goal may result in less health protection because fewer sites may be cleaned up with the available funding, leaving some sites completely untouched by remediation, while other sites are cleaned up to more stringent cleanup goals.

3.4 Option D - 23 ppm

Using similar risk assessment exposure assumptions, a soil concentration of 23 ppm would result in an incremental

lifetime cancer risk increase of one in twenty thousand. This risk probability (approximately 1/20,000) is toward the high end of the spectrum for “acceptable risks” that have been selected in the United States during the past 35 years of⁴⁹ environmental policy making.

This risk-to-dose relationship (i.e., 23 ppm equals 1/20,000) is also based on the conservative assumption that all of the Arsenic to which a person is exposed is the Arsenic in the most toxic form (i.e., it is inorganic Arsenic not organic Arsenic), and that the inorganic Arsenic is all trioxide [As (III)] with a valence state (electronic charge of 3), although some Arsenic exists in organic form and some inorganic Arsenic has a valence state of 5 [As(V) or pentaoxide] rather than 3 (See Section 1.2 on the Chemistry of Arsenic).

The then DNREC-DAWM Director signed a memorandum in June 2004 designating 23 ppm as the interim action level and later referred to it as a standard. The basis for this number appears to be the use of a hazard index of 1.0. Because the carcinogen risk is lower (i.e., 4 ppm associated with a risk of 1/100,000) than the hazard index number is not controlling. Moreover, because the background level is lower than this hazard index number, then it does not appear to have a role in carrying out DNREC’s mandate to protect human health and the environment to the extent feasible in HSCA.

3.5 Option E – 40 ppm

Using similar risk assessment exposure assumptions, a soil concentration of 40 ppm would result in an⁵⁰ incremental⁵¹ lifetime cancer risk increase of one in a ten thousand. This risk probability (1/10,000) is on the high end of the spectrum for “acceptable risks” that have been selected in the United States during the past 35 years of⁵² environmental policy making.

This risk-to-dose relationship (i.e., 40 ppm equals 1/10,000) is also based on the conservative assumption that all

49. Generally, environmental policy decisions in the U.S. have selected risks ranging from a high end risk of one in ten thousand (1/10,000) to one in a million (1/1,000,000).

50. The term “incremental” here means cancer risk in addition to/above and beyond the “normal” background probability of cancer expected as a result of other factors such as other exposures, diet and genetic predisposition.

51. Assuming a 70-year lifetime xxx of exposure.

of the Arsenic to which a person is exposed is the Arsenic in the most toxic form (i.e., it is inorganic Arsenic not organic Arsenic), and that the inorganic Arsenic is all trioxide [As (III)] with a valence state (electronic charge) of 3], although some Arsenic exists in organic form and some inorganic Arsenic has a valence state of 5 [As(V) or pentaoxide], rather than 3 (See Section 1.2 on the Chemistry of Arsenic).

This arsenic concentration limit has historically been used for industrial sites as an action level and cleanup goal. This limit should not therefore be considered adequately protective of individuals in residential settings, using common exposure and dose assumptions.

3.6 DNREC Option Analysis

Based on the above options, and the information currently available, the Department proposes the continuation of a risk-based approach to cleanup in accordance with 7 Del.C. Chapter 91 and the HSCA regulations. The HSCA and regulations allow for the use of background levels. In cases where a local background level cannot be developed, the Department will utilize the default background level of 11 ppm.

4.0 Implementation

The revised Arsenic action level will be for all cleanup sites for which future land use is reasonably anticipated to be residential or unrestricted and under the regulatory authorities of the Division of Air and Waste Management. The sites include old industrial properties being redeveloped, active facilities conducting a cleanup and old industrial site undergoing a cleanup. The revised action level will be effective in draft immediately upon release and as a final action level upon adoption by the Secretary of the Department.

4.1 Process for Determining Background Concentrations

The “background concentration” approach relies on empirical correlation between bulk soil concentrations and presumed least impacted, NOT “natural”, locations in the State. Establishing a natural (i.e., uncontaminated by any anthropogenic, or human produced or moved, Arsenic) soil location and concentrations is very difficult. Ultimately, it is impossible to prove a negative – in the case, “Prove that this site has never been contaminated by human beings.” It is important to recognize that background standards merely provide some context for risk-based standards. As a

52. Generally, environmental policy decisions in the U.S. have selected risks ranging from a high end risk of one in ten thousand (1/10,000) to one in a million (1/1,000,000).

technical analysis, background standards cannot be considered a substitute for consideration of fate, transport, exposure and risk, but a full site-specific risk assessment is not always feasible, and cleaning up to background is as much as is technically feasible in most cases. The procedure for determining site specific background levels is found in the Delaware Hazardous Substance Cleanup Act Remediation Standards Guidance, <http://www.dnrec.state.de.us/dnrec2000/Divisions/AWM/sirb/DOCS/PDFS/Misc/RemStd.pdf>. This document will be used by DNREC staff to establish site specific background levels.

4.2 Annual Review Process

The Department will compile all relevant Arsenic data for sites regulated by the Department and sampled after the effective date of the revised action level. The data will be reviewed annually by the Department in consultation with staff from DDA and DHHS/DPH. Each year by September 1 the Department will report on the results of its review and invite public comment, providing public workshops and following the public participation plan process to review and revise the policy. Each year the public review process will involve interested Department advisory committees and the following questions: What should the Arsenic action level be? Should it apply to golf courses, orchards or other sites with properly applied pesticides and fertilizers? Is the public involvement plan adequate? If not, how should it be changed?

5.0 Public Participation Plan

In order to ensure the public has ample opportunity to participate in the development and adoption of an Arsenic action level for the State, a public participation plan is being developed, (See Table 5). DNREC encourages and welcomes comments from the general public and all interested parties. In an effort to do so, DNREC will involve all interested advisory committees, host a minimum of one public workshop in each county, offer to attend any civic or other organization meeting, notice the proposed draft policy in the *Delaware Register of Regulations* and develop press announcements on the draft policy proposal. DNREC will staff all meetings and take notes on the issues and concerns raised. The notes will be made available to the attendees and all interested parties both in hard copy and via the DNREC web site. In addition, DNREC will take written comments either in hard copy or email format. All comments will be reviewed, when possible categorized and responded to as a part of the action level development. Once all comments have been reviewed and a draft response prepared, the DNREC will hold additional public advisory committee

meetings to review and discuss the responses and any proposed changes to the draft document. Once the issues raised from the comments have been resolved to the satisfaction of the majority of the advisory committees, by vote, the final policy will be noticed in the *Delaware Register of Regulations*, the *News Journal* and press releases will be sent out. In addition, the DNREC will be prepared to provide a presentation to any organization or governmental entity that requests such.

The DNREC will provide staff support to the advisory committees for both the administrative and technical needs. The DNREC will coordinate with other State and Federal agencies and when necessary, seek outside contractual support for technical issues. This will require significant staff resources and may require the reassignment or delay of other duties to complete the project on the anticipated timeline. The resources will be required from both the Site Investigation and Restoration Branch and the Public Affairs Office.

Table 5: Implementation Schedule

Activity	Timeframe
Involve Advisory Committees	2 weeks
Hold Advisory Committee Meetings	1 month
Revise Draft Proposal	1 week
Notice Public Workshops in Register	20 days
Press Release on Draft Proposal	1 week
Hold Public Workshops	2 weeks
Attend Civic Organization Meetings	2 weeks
Draft Response to Issues	2 weeks
Hold Advisory Committee Meetings	1 month
Notice Final Policy	20 days
Implement Final Policy	6 months from start

ATTACHMENT A: Governor's Directive**State of Delaware
Office of the Governor**

Ruth Ann Minner
Governor

To: Secretary John Hughes
From: Governor Ruth Ann Minner
Date: June 9, 2005
Cc: David Small
James Werner
Re: Protecting Delaware Citizens from Arsenic

Arsenic is among a number of toxic substances known to cause cancer and to which our citizens may be exposed in their communities and workplaces. Whether it is derived from industrial or natural sources, we have a duty to protect our citizens from harmful exposure to toxic substances, such as arsenic.

It has become clear that there is a lack of understanding regarding the Department's rationale and method for setting an acceptable limit for arsenic in soil **and** whether the current level is protective of public health. This situation has been caused in part by numerous changes to the limit over the years **and** in part by a lack of public input in the recent change in the limit.

Accordingly, I am directing you to lead an immediate and expedited review of standards and policies related to arsenic cleanup. This review should include:

- Evaluation of the best scientific information available;
- Public involvement;
- Involvement of other agencies, including the Department of Health and Social Services; and
- Consideration of standards and policies used by EPA and other states.

My request is that you begin this review immediately and take action to propose appropriate standards and policies within two weeks.

ATTACHMENT B: Staff Work Group Meeting

Attendance at June 7, 2005 Staff Work Group Meeting
To Discuss Changes in DNREC Risk Management for
Arsenic
(Lukens Drive Building, New Castle, DE)

DNREC/DAWM:

- Kathy Stiller Banning
- Betsy Rogers
- Bob Schulte
- Jim Werner

DNREC/DWR:

- Rick Greene

Division of Public Health:

- George Yocher
- Thomas May
- Gerald Llewellyn (on phone),

Department of Agriculture:

- Grier Stayton

AG:

- Bob Kuehl

**ATTACHMENT C: Legal Basis For Arsenic Risk
Management Standards**

The Hazardous Substance Cleanup Act, 7 **Del.C.** Chapter 91 ("HSCA"), gives the Secretary of the Department of Natural Resources and Environmental Control ("DNREC") certain powers and authorities to investigate and remediate releases of hazardous substances. See, generally, 7 **Del.C.** Section 9104. Section 9104(a)(2) grants the Secretary the authority to draft regulations:

"The Secretary shall, after notice and public hearing, promulgate and revise such regulations as deemed necessary for the implementation, administration and enforcement of this Chapter."

In drafting regulations, Section 9104(b)(2)(g) directs the Secretary to establish procedures "for identifying cleanup levels based on site specific risks."

The Secretary has used this authority granted by HSCA to promulgate the Regulations Governing Hazardous Substance Cleanup ("Regulations"). Section 9 of the Regulations establishes procedures for determining cleanup levels for releases of hazardous substances. Subsection

9.1(1), which establishes a risk based approach to cleanup levels, states:

All remedies performed under these regulations shall attain a degree of cleanup of hazardous substances and control of further releases of hazardous substances that ensures protection of public health, welfare, and the environment. The cleanup levels will be determined using a risk-based approach on a site specific basis. The risk-based approach may include consideration of existing and likely future uses of the facility and related natural resources.

Section 9.4 sets out a risk-based approach for establishing soil cleanup levels, and it identifies two types of risk to human health which must be protected: cancer risks and non cancer risks. The cancer risk level established in Subsection 9.4(2) is $10E^{-05}$ which is defined in Subsection 2.1 to mean “the potential risk for one additional cancer death caused by exposure to a carcinogen in a human population of 100,000 in a lifetime.” The non-cancer risk level established in Subsection 9.4(2) is a “hazard index value of one.” A “hazard index” is defined in Subsection 2.1 to mean “the numerical value obtained by dividing a person’s expected daily intake of a non-carcinogen by a level which is not expected to produce toxic effects.” By establishing a “hazard index of one” (expressed as “HI-1”) the Regulations require a soil cleanup level where the daily intake of a hazardous substance is not expected to produce toxic (i.e. non-cancer) effects.

The Regulations also provide that the risk-based cleanup level for a hazardous substance will vary depending on the type of use (such as residential, commercial or industrial) which will occur on the site or property. Subsection 9.1(5) sets out two types of cleanup levels where the risks from hazardous substances are quantifiable: compliance cleanup levels (also referred to as “unrestricted” or “residential” cleanup levels), and conditional cleanup levels (also referred to as “restricted” or commercial or industrial” cleanup levels). These are defined in Subsection 9.1(5) as follows:

(a) Compliance cleanup levels: These will be established at concentrations which are protective of public health, welfare, and the environment and, which require no restrictions on the use of the facility. Compliance cleanup levels shall be established in accordance with Subsections 9.2 – 9.4 and as directed by the Department.

(b) Conditional cleanup levels: These represent concentrations which are protective of public health, welfare, and the environment under restricted facility use conditions. Conditional cleanup levels may be established where the person undertaking the remedy can demonstrate that such levels are consistent with state and federal laws, that all practicable methods of treatment are utilized, and that institutional controls are implemented in accordance with conditions as determined to be appropriate by the Department.

Generally, compliance (i.e. unrestricted/residential) cleanup levels are lower than conditional (i.e. restricted/commercial or industrial) cleanup levels for a given hazardous substance because a residential setting will result in more prolonged exposure to the hazardous substance (in terms of hours of exposure over a lifetime) than will a commercial or industrial setting. Therefore, it will represent a higher risk, and the risk-based cleanup level will be lower in a residential setting than in a commercial or industrial one.

When the risks from a hazardous substance are not quantifiable, Subsection 9.1(5)(c) states:

When there are multiple contaminants at a facility, the cleanup level of each contaminant shall be such that sum of the risks posed by the contaminants shall not exceed $10E^{-05}$ cancer risk or a hazard index value of one.

Many hazardous substances, like Arsenic, are naturally occurring. Once a risk-based cleanup level is established for a hazardous substance, it must be compared to the natural background level for that hazardous substance. Section 2.1 of the Regulations defines “Background” or “Natural Background” as “the level of contamination present in an area from naturally occurring substances, excluding contaminants and other contributions resulting from human activity.” Essentially, this represents the level of a naturally occurring hazardous substance that would have existed in the environment before human activity.

The Regulations do not permit cleanup levels to be set below the natural background level of a hazardous substance. Subsection 9.4(2)(a) states:

When the natural background level exceeds the $10E^{-05}$ cancer risk level or a hazard index value of one level, for direct exposure or inadvertent ingestion, then the background level will be the cleanup level.

Thus, where the natural background level is higher than the risk-based cleanup level for a hazardous substance, the background level becomes the cleanup level.

Alternatively, when the natural background level is below the risk-based cleanup level for a hazardous

substance, then the risk-based cleanup level is the cleanup level. Subsection 9.4(2)(b) states: When the natural background level is less than the $10E^{-05}$ cancer risk level or a level corresponding to a hazard index value of one, for direct exposure or inadvertent ingestion, then the $10E^{-05}$ cancer risk level or a level corresponding to a hazard index value equal to one becomes the cleanup level.

The Regulations require that the cleanup levels established in Section 9 be used in determining an appropriate remedial alternative (i.e. type of cleanup or "remedial action") for a particular site.

The procedure for developing remedial alternatives is described in Subsection 8.5(4)(a), which states:

An initial screening of alternatives to narrow the list of potential remedies for further detailed evaluation. The initial screening shall be conducted to eliminate from the evaluation those alternatives which need no further consideration in the context of the following broad criteria:

(i) The effectiveness in meeting the cleanup level in Section 9 of these regulations to protect public health, welfare, and the environment.

(ii) Acceptable engineering practices based on the following criteria:

(A) applicability to the problem;

(B) feasibility for the locations and conditions of release; and

(C) reliability; and

(iii) Relative cost of the remedial action.

After a number of remedial alternatives are developed, they are evaluated using a number of factors. Subsection 8.5(4)(b) states:

After the initial screening is performed, an evaluation shall be conducted of the remaining alternatives considering the following factors:

(i) The protection of public health, welfare, and the environment. The remedial action that attains compliance cleanup levels, in accordance with Section 9, shall be presumed to demonstrate compliance with this paragraph unless the person undertaking the remedy can demonstrate that conditional cleanup levels, as set forth in section 9.1, are fully protective in accordance with Section 9. When the compliance cleanup levels or conditional

cleanup levels cannot be established, a remedial action which complies with Section 9.1(5)(c) shall be presumed to demonstrate compliance with this paragraph.

(ii) Compliance with all applicable local, state and federal laws and regulations;

(iii) Community acceptance of the alternatives;

(iv) Monitoring the success of the remedial action. In considering this factor the Department will evaluate whether the alternative will provide for monitoring in accordance with Subsection 8.8 of these regulations;

(v) Technical practicability of the alternative at the facility. In considering this factor, the Department will evaluate whether the alternative will meet the following factors:

(A) (I) Technical feasibility;

(II) Ability to be implemented.

(B) A remedial action may not be considered technically practicable if the incremental cost of the cleanup action is substantial and disproportionate to the incremental degree of protection it would achieve.

(vi) A reasonable restoration time frame as determined by the Department;

(vii) Reduction of toxicity, mobility, and volume through treatment or containment of the hazardous substances, either on-site or at an approved off-site facility;

(viii) Long-term effectiveness; and

(ix) Short-term effectiveness.

Subsection 8.4(4)(c) describes how the remedial alternatives are ranked in order of preference:

For remedial action alternatives which comply with Subsection 8.5(4)(b)(i) and (ii), and satisfy the remaining evaluation criteria of subsection 8.5 (4)(b), preference shall be given to the remedial action which is most cost effective, and cost shall include present and future direct and indirect capital costs, operation and maintenance costs, compliance monitoring costs, and other foreseeable costs.

The method of selection of a remedial action from the remedial alternatives is set out in Subsection 8.6 which states:

The Department shall select a remedial action from the alternatives developed for the facility based on the determination of which remedial action complies with Subsection 8.5(4)(b)(i) and (ii) and best complies with the remaining criteria in Subsection 8.5(4)(b), and complies with Subsection 8.5(4)(c).

Therefore, the selected remedial action must be one that:

- 1 complies with the cleanup levels established in Section 9 Subsection 8.5(4)(b)(i);
- 2 complies with all applicable local, state and federal laws and regulations (Subsection 8.5(4)(b)(ii));
- 3 best complies with the remaining criteria in Subsection 8.5(4)(b)(iii)-(ix); and
- 4 is the most cost effective (Subsection 8.5(4)(c)).

ATTACHMENT D: Natural Background Concentrations of Arsenic in Delaware Soils

Determining background concentrations of Arsenic is important to risk management and standard setting because the background information typically provides a lower boundary below which cleanup concentrations cannot normally be achieved. Accordingly, it is equally important that DNREC exercise great care in its evaluation of background concentrations to seek to distinguish between natural background concentrations and background concentrations of Arsenic that may result from widespread distribution as a result of human activity (i.e., "anthropogenic" Arsenic). For this reason, DNREC staff analyzed multiple sources of data on arsenic concentrations to better understand background concentrations and seek to determine what a reasonable "natural" concentration of arsenic would be.

There are a number of methods used to help determine "background" (natural and other) concentrations of arsenic: average, the 95% upper confidence level to name a few. The following is a brief summary in determining background: One method for determining natural background is to analyze Arsenic soil concentrations below the ground surface, which can be obtained from "borrow pits" where clean soil is excavated for use as clean soil elsewhere such as new construction sites. Soil samples collected from borrow pits in New Castle County near Concord Pike (Rt. 202 and I-95) approximately 30-50 ft below ground surface have been found to have Arsenic concentrations ranging from 3 to 18 ppm and a median of approximately 10 ppm (See Table 3). The source of Arsenic is probably from the formation of Glauconite over many years. The minerals that predominate in the Piedmont rocks are not generally considered Arsenic bearing but they do contain trace amounts of Arsenic. The borrow pit samples were obtained from an area where there was no evidence of prior excavation or disposal. The use of deep soil for determining natural background concentrations of Arsenic is a valid method if there is no mechanism for Arsenic to have migrated to the deep soil. Also, the Arsenic is not likely to have migrated down into deep soils because the science indicates that Arsenic does not migrate through

soil except for very short distances and at high source soil concentrations. Although analysis of deep borrow pit data may not be representative of surface soils to which the public may be exposed (i.e. surface soils may have more organic matter), it is useful as a basis for comparison. For example, if deep borrow pit soils have comparable levels of arsenic to surface soils in undisturbed areas, it suggests that Arsenic from air sources is an insignificant source of contamination. In addition, scientific data suggests that arsenic is not very mobile except in extremely high concentrations also supports this hypothesis.

A second method for determining background concentrations of arsenic is direct analysis of Delaware surface soil from location not believed to have been contaminated from industrial sources. DNREC staff analyzed soil samples from various locations throughout the state (See Figure 1) to better understand soil concentrations of Arsenic and to contribute, along with other sources of information, to a determination of background concentrations, natural and otherwise in Delaware. This analysis is described in more detail in a technical background memorandum from Rick Greene, DNREC/DWR to James D. Werner, Director, DNREC/DAWM <http://www.dnrec.state.de.us/dnrec2000/Divisions/AWM/sirb/clnupnum.asp>.

The DNREC soil assessment considered two primary datasets with a total of 55 samples analyzed: 20 soil samples collected from various parks in the Wilmington area at locations unaffected by any known direct industrial input; and 35 soil samples collected through Delaware at background locations as part of analysis to determine area background concentrations during waste site assessments. The samples from this second data set were collected at locations similar in soil and other geological characteristics, but where there was no evidence of being affected by the waste disposal or contamination at the subject waste site.

The results of this analysis provide useful insight into understanding background concentrations of Arsenic in Delaware soils. First, the background concentration of Arsenic in Delaware soils is not a single, constant value. Rather 'background' is a range of values, which can be described as data distributions. Based on the available data, the range of background Arsenic concentrations in Delaware soils falls between 0.58 and 31 ug/g dw (micrograms Arsenic per gram of soil on a dry weight basis, which is approximately the same as milligrams per kilograms or parts per million or ppm).

A second observation regarding this soil concentration data is that the soil concentrations are not distributed with a central tendency of average concentration (i.e. clumped in the middle of the range like a bell-shaped curve of the largest

number of sample concentrations in the middle and fewer data points at the low and high extremes, often referred to as a “normal” distribution). Instead, the data appears to be distributed in a “logarithmic” pattern. The implication of this data distribution is that selecting an average concentration to reflect the observed background concentrations would be relatively arbitrary and would not reflect the actual concentrations of Arsenic concentrations found in soil in Delaware. Moreover, characterizing an average concentration as reflecting “background” would result in half of observed soil concentrations therefore being “above background” when in fact they are actually legitimately within the range of observed background concentrations, and simply above average.

A third observation from the soil Arsenic concentration assessment was the analysis of the upper end of the observed soil concentrations. Using all available background Arsenic data statewide, the 95th percentile concentration (the concentration below which 95 percent of all soil samples are expected to be found) is 29.1 ppm. The 95th percentile for all New Castle County (including Wilmington data) is 21.6 ppm. The 95th percentile concentrations for Kent and Sussex Counties are 24.8 and 14.9 ppm, respectively. This latter observation indicates that, despite the widespread application of chicken litter containing arsenic residues, no widespread elevated concentrations of arsenic in Sussex County were observed in this data analysis.

Finally, a third method of evaluating background soil arsenic concentrations is to compare Delaware data to national data. The U.S. Geological Survey in 1984 published a comprehensive analysis of thousands of soil sample form⁵³ around the country, including analysis of Arsenic. The results of the analyses show that the range of Arsenic concentrations is up to nearly 100 ppm, with an average concentration of approximately 10 ppm. The higher concentrations tend to be present in western alkaline soils. Although this range does not necessarily reflect the pattern DNREC believe to be present in Delaware, it indicates that the other data sources are in the same order of magnitude range of observed concentrations.

Because of the similarity of the findings for multiple studies, using independent data sets and independent analyses, the results appear to be reproducible. In scientific

studies, when an analyst observes such reproducibility of results, it tends to provide additional support for the robustness (i.e., reliability and confidence) of the results.

ATTACHMENT E: University of Delaware Study: Scope, Summary and Schedule

<http://www.dnrec.state.de.us/dnrec2000/Divisions/AWM/sirb/clnupnum.asp>

ARSENIC STUDY BY UNIVERSITY OF DELAWARE

The University of Delaware (Dr. D.L. Sparks and Dr. J. Thomas Sims) prepared a scope of work to address Arsenic (As) in Delaware soils in conjunction with the Department of Natural Resources and Environmental Control under a Collaborative Agreement.

Background: Arsenic commonly occurs in soil and water due to natural geological processes and due to human activities. Agricultural sources of Arsenic to Delaware soils include Poultry Litter (PL), historic use of pesticides, and municipal sewage sludge's used as soil amendments. Industrial sources of Arsenic include wastes from tanneries, wood treating facilities and coal combustion for electric power. Long-term inputs from human activities (e.g., inorganic and organic arsenical pesticides, defoliants, wood preservatives, manures, and biosolids) to agricultural fields have increased total Arsenic levels up to as high as 165 ppm (mg/Kg) in soil. The Delmarva Peninsula is one of the most concentrated poultry production areas in the US. Poultry litter is generally applied on agricultural lands. Total Arsenic concentrations in PL vary. Limited data have shown ground water from agricultural fields of the Pocomoke River Basin in Maryland and Delaware having total dissolved Arsenic concentrations as high as 23 ppb ($\mu\text{g}/\text{L}$). A majority of the Delaware soils are highly susceptible to Arsenic leaching to ground waters due to their sandy texture, low organic matter, clay, and metal oxide contents.

Purpose: The purpose of the study is to characterize the amount, chemical forms, speciation, and solubility of Arsenic in agricultural and industrial soils and forested soils in Delaware (as natural background).

Objectives: The four objectives of the study are as follows:

- 1) To characterize the type of Arsenic (speciation) and its distribution in Delaware soils, as impacted by long term applications of all potential Arsenic sources, such as poultry litter and biosolids.

53. Shacklette, Hansford T. and Boerngen, J.G., “*Elemental Concentrations I Soils and other Surficial Materials of the Coterminous United States*”, U.S. Geological Survey Professional Paper 1270, GPO, 1984.

2) To determine the controlling factors for the retention, release and potential mobility to groundwater of Arsenic in Delaware soils.

3) To quantify the potential for Arsenic leaching from Delaware soils, the Arsenic type leaching to groundwater and the potential for best management practices to mitigate Arsenic leaching to groundwater.

4) To study Arsenic in soils and determine the associations and distributions of Arsenic and other co-contaminating metals in soil contaminated by tannery.

Study Methods:

Objective 1: The type and amounts of Arsenic will be characterized in the profiles of (i) benchmark soils of Delaware, as affected by past land use; and (ii) soils contaminated from industrial activities, particularly tannery wastes. Agricultural soils to be sampled will include those that can be documented to have: (i) received regular application of PL for 10-20 years; (ii) received no PL, or any other organic by-product for 10-20 years (e.g., commercial fertilizer use only); (iii) soils that have been regularly amended with municipal biosolids (and no PL) for 10-20 years. At each site soil samples will also be collected from nearby forested areas mapped as the same soil series; these soils will represent background concentrations of soil Arsenic. Soils will be characterized for properties relevant to Arsenic retention and release.

Objective 2: is to determine the Arsenic retention capacity of Delaware soils. Adsorption of arsenate [As (V)] by selected surface and subsoil horizons will be monitored as a function of time and at pH range of these soils. The As (V) concentration (as $\text{Na}_2\text{HAsO}_4 \cdot 7\text{H}_2\text{O}$) reacted with the soils will be based on typical application rates of As (V) in PL-amended soils, and determined from isotherm studies where equilibrium As (V) in solution will be assessed versus As (V) adsorption. Arsenate will be studied since the recent research has shown that the solid state speciation of Arsenic in aged PL is largely As (V). Desorption studies (in conjunction with other parameters) will be performed. This information will provide an index to the mobility of Arsenic in soils and thus its potential to leach to groundwater.

Objective 3: is to study the mobility of Arsenic in soils, and thus the potential for Arsenic contamination of ground waters by leaching. This will be completed in laboratory studies using large, undisturbed soil columns collected from selected soils. These analyses will provide a mass balance for Arsenic in the soils.

Objective 4: is to characterize the soils for total and water soluble Arsenic. This data will provide an index of the mobility and bioavailability of Arsenic present in the tannery contaminated soils and the impact of long-term residence

time effects on Arsenic fate in the environment. These studies will provide information on the form in which Arsenic is present in the soils.

Timeline:

This study is scheduled for completion by January 2006.

Figure 1: ARSENIC CONCENTRATION MAP 1

(Contact either DNREC or the Registrar's office for a copy of the Map)

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, August 18, 2005 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES****NOTICE OF PUBLIC COMMENT PERIOD****Self-Employment Income**

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 several policies in the Division of Social Services Manual (DSSM) to implement a simplified way to calculate self-employment income.

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 August 31, 2005.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF SOCIAL SERVICES**NOTICE OF PUBLIC COMMENT PERIOD****Client Cost Sharing for Pharmaceutical Services:
Cumulative Maximum**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is

proposing to amend the Division of Social Services Manual (DSSM) regarding the Pharmaceutical Services Program.

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 August 31, 2005.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF SOCIAL SERVICES**NOTICE OF PUBLIC COMMENT PERIOD****Child Care Subsidy 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 Child Care Subsidy Program.

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 August 31, 2005.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DEPARTMENT OF INSURANCE**NOTICE OF PUBLIC HEARING**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Thursday September 1, 2005 at 10:00 a.m. in the Consumer Services Conference Room of the Delaware

Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2005-34**, proposed **Regulation 703** relating to **PROHIBITED PRACTICES RELATED TO THE NONRENEWAL OF RESIDENTIAL HOMEOWNERS POLICIES**.

The purpose for proposing Regulation 703 is to prohibit insurance companies from terminating or nonrenewing residential homeowners real and personal property insurance policies under circumstances where a policyholder merely makes an inquiry about the policy or how claims are handled by the insurer.

The hearing will be conducted in accordance with 18 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 9:00 a.m., Thursday September 1, 2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to michael.rich@state.de.us.

DEPARTMENT OF INSURANCE

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Thursday September 6, 2005 at 10:30 a.m. (or as soon thereafter as possible) in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2005-35**, proposed **Regulation 907** relating to **RECORDS RELATING TO CONSUMER COMPLAINTS**.

The purpose for proposing Regulation 907 is to establish a method by which founded consumer complaints against an insurer can be recorded, tracked and such records be made available to the public.

The hearing will be conducted in accordance with 18 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department

of Insurance no later than 9:00 a.m., Thursday September 1, 2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to michael.rich@state.de.us.

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

NOTICE OF PUBLIC HEARING

Title of the Regulations:

1102 Permits

1144 Control of Stationary Generator Emissions

Brief Synopsis of the Subject, Substance and Issues:

The Department is proposing to adopt a new regulation, Regulation No. 1144, which will require the control of air emissions from both new and existing stationary generators. The Department is also proposing to amend Regulation No. 1102, in order to clarify permitting requirements applicable to stationary generators.

Delaware is not in compliance with federal standards for ground-level ozone and fine particulate matter (PM_{2.5}). Among other things, the purpose of Regulation No. 1144 is to help ensure that the air emissions from new and existing stationary electric generating units do not cause or contribute to these existing air quality problems. Regulation No. 1144 is intended to establish emissions standards, operating requirements, fuel sulfur content limits, and recordkeeping requirements applicable to covered generators.

Regulation No. 1102 Permits details what sources need, or do not need, a permit to begin construction and to operate. Regulation No. 1102 is being amended to clarify the permitting requirements applicable to stationary generators.

Notice of Public Comment:

The public comment period for this proposed regulation and proposed amendment will extend through at least August 31, 2005. Interested parties may submit comments in writing during this time frame to: Mark A. Prettyman, Air Quality Management Section, 156 S. State St., Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 25, 2005, beginning at 6:00 PM in the

DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

Prepared By:

Mark A. Prettyman (302) 739-9402 July 7, 2005

Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-4590, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us)

Prepared By:

John Schneider, Watershed Assessment Section, 739-4590

DIVISION OF WATER RESOURCES**NOTICE OF PUBLIC HEARING****7410 TMDLs for the Naamans Creek and 7411 Shellpot Creek Watersheds****Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily Loads (TMDLs) Regulations for nitrogen, phosphorous, and bacteria for the Shellpot Creek and Naamans Creek Watersheds. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

Possible Terms of the Agency Action

Following adoption of the proposed Total Maximum Daily Loads for the Shellpot Creek and Naamans Creek Watersheds, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with Shellpot Creek and Naamans Creek Tributary Action Teams, other stakeholders, and the public.

Notice of Public Hearing and Comment

A public hearing will be held at 6:00 p.m., Wednesday, September 7, 2005, at the auditorium of Mt. Pleasant Elementary School, 500 Duncan Road, Wilmington, Delaware, 19809. The hearing record will close at the conclusion of the hearing. Please send written comments to Robert P. Haynes, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739- 6242; email: Robert.Haynes@state.de.us.

Additional information and supporting technical documents may be obtained by contacting Hassan Mirsajadi, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1900 BOARD OF NURSING****NOTICE OF PUBLIC HEARING**

The Delaware Board of Nursing in accordance with 24 **Del.C.** Subsection 1906(1) has proposed to promulgate a change to the Rules and Regulations related to the reporting of continuing education.

The proposed change provides that nurses will be able to attest to the completion of the required number of contact hours by approved providers, rather than documenting date, program name, provider and number of contact hours.

A public hearing will be held on Wednesday, September 14, 2005 at 9:00 a.m., in the second floor conference room , 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4515 or (302) 744-4516. Persons desiring to submit written comments concerning this proposed revision to the Board's Rules and Regulations may forward these comments to the above address. The final date to receive written comments will be at the hearing on September 14, 2005

**DIVISION OF PROFESSIONAL REGULATION
3000 BOARD OF MENTAL HEALTH AND
CHEMICAL DEPENDENCY PROFESSIONALS****NOTICE OF PUBLIC HEARING**

The Delaware Board of Mental Health and Chemical Dependency Professionals in accordance with 24 **Del.C.** §3006(a)(1) has proposed changes to Regulation 5.0 in order to make the regulation consistent with the mandate of Senate 229 enacted by the 142nd General Assembly. The proposal

strikes regulation 5.2.4 as currently written with references to felony convictions and replaces it with language that requires an applicant to submit an affidavit stating that the applicant has not been convicted of and has no pending criminal charge(s) relating to any crime that is substantially related to the provision of mental health counseling and chemical dependency counseling. The proposal also amends the rule where applicable to include references to chemical dependency professionals. The proposed regulation also changes the name of the Board in applicable sections to conform to the Board's new title resulting from House Bill 215 as amended by House Amendment No. 1 and Senate Amendment No.1 enacted by the 143rd General Assembly adding licensed marriage and family therapists to those professionals regulated by the Board.

A public hearing will be held on September 27, 2005 at 2:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Mental Health and Chemical Dependency Professionals, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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